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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Third periodic report of States parties**

**Plurinational State of Bolivia\***

[25 August 2011]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## I. Introduction

1. The Plurinational State of Bolivia, having ratified the International Covenant on Civil and Political Rights by Supreme Decree No. 18950 of 17 May 1982 (raised to the status of law on 11 September 2000 by Act No. 2119), hereby submits to the Human Rights Committee, in accordance with article 40 of the Covenant, its third periodic report, in which it describes the changes that have taken place in the legislative, administrative and judicial spheres.
2. The report was drawn up in accordance with the consolidated guidelines for State reports under the International Covenant on Civil and Political Rights (CCPR/C/66/GUI/Rev.2), summarizes information contained in various reports drawn up by institutions and organizations working in this field, and was prepared with the help of civil society.
3. One of the major changes taking place in Bolivia is the transition from a republic to a plurinational State, the fundamental pillars of which include full recognition of human rights, the existence of a new constitutional body of law consisting of international human rights instruments ratified by Bolivia, and the elimination of all forms of discrimination.

## II. General

4. The State party has a surface area of 1,098,581 km<sup>2</sup>, divided for political and administrative purposes into departments, provinces, municipalities and native indigenous campesino territories. There are nine departments: Beni, Chuquisaca, Cochabamba, La Paz, Oruro, Pando, Potosí, Santa Cruz and Tarija, divided into 112 provinces and 327 municipalities.
5. At the time of the most recent population and housing census, carried out in 2001, Bolivia had a population of 8,274,325 inhabitants. The figure for 2009 was estimated at 10,426,154 inhabitants, with the majority of the population (62.42 per cent) living in urban areas, and only 37.58 per cent of inhabitants recorded as living in rural areas. Importantly, according to the most recent census, 4,133,138 respondents said that they were native indigenous persons, 27.5 per cent of whom lived in rural areas.
6. One of Bolivia's main characteristics is its cultural diversity. The following ethno-linguistically diverse peoples and nations are currently present: Aymara, Araona, Afro-Bolivan, Ayoreo, Baure, Canichana, Cavineño, Cayubaba, Chácobo, Chimane or Tsimane, Chiquitano, Quechua, Uru (Chipaya, Murato and Hiruitu), Leco, Machineri, Moré, Movima, Mosen, Moxeño (Ignaciano and Trinitario), Nahua, Yuki, Yuracaré, Yaminahua, Ese Ejja, Guaraní (Ava, Izoceño and Simba), Guarayo, Itonama, Joaquiniano (multi-ethnic conglomerate), Pacahuara, Paiconeca, Reyesano, Sirionó, Tacana, Tapiete, Toromona and Weenhayek (Mataco).
7. Against the background of this diversity, the official languages of the State are Spanish and all the languages of native indigenous campesino nations and peoples.<sup>1</sup>

<sup>1</sup> Under article 5 of the Constitution, the languages of native indigenous campesino nations and peoples are: Aymara, Araona, Baure, Bésiro, Canichana, Cavineño, Cayubaba, Chácobo, Chimán, Ese Ejja, Guaraní, Guarasu'we, Guarayu, Itonama, Leco, Machajuyaikallawayaya, Machineri, Maropa, Mojeño-Trinitario, Mojeñoignaciano, Moré, Mosen, Movima, Pacawara, Puquina, Quechua, Sirionó, Tacana, Tapiete, Toromona, Uru-Chipaya, Weenhayek, Yaminawa, Yuki, Yuracaré and Zamuco.

8. Since Bolivia submitted its last periodic report in 1997, major changes have been made to the structure of the State. That year saw the start of constitutional reforms, the most important of which included the 2004 constitutional reform, under which new democratic instruments were introduced, such as the Constituent Assembly, the citizens' legislative initiative and the referendum.

9. Despite these changes, social unrest in February and October 2003, bound up with widespread demands by the public for the recovery of national resources and for the convening of a Constituent Assembly, brought about a change of President, which led to elections being held on 4 December 2005, resulting in an indigenous president being elected for the first time. He was directly elected — with no intervention by the National Congress — by a majority (54 per cent) of the votes cast.

10. Mr. Juan Evo Morales Ayma took office as Constitutional President of the Republic on 22 January 2006, marking the start of an important phase for the Bolivian State, in which decolonization became the guiding principle of Government policy, accompanied by the framework that subsequently became known as the "re-founding" of the State. The Constitutional President was later confirmed in the first-ever recall referendum.

11. The most important change in recent times was the introduction of the Constituent Assembly, established by Act No. 3364 of 6 March 2006, which was inaugurated in the city of Sucre, in the department of Chuquisaca, on 6 August 2006, attended by 255 Assembly members,<sup>2</sup> including representatives of political parties, leaders and representatives of indigenous campesino peoples and organizations from all over the country. The Assembly provided an opportunity for all kinds of organizations, political parties and individuals to submit proposals with no limits or restrictions of any kind. The outcome was a social pact containing more than 138 proposals.<sup>3</sup>

12. The new Political Constitution of Bolivia is the seventeenth constitution in the country's history; however, it is the first to be based on a social pact. The Constitution was promulgated on 7 February 2009 by President Morales, after being approved in a referendum held on 25 January 2009, when it was supported by 61.43 per cent of the votes cast.

13. The Plurinational State of Bolivia, according to the Constitution, is a unitary, social, plurinational and communitarian State governed by the rule of law, which is free, independent, sovereign, democratic, intercultural and decentralized, with autonomous entities. The Bolivian nation is made up of all Bolivian men and women, native indigenous campesino nations and peoples, and intercultural and Afro-Bolivian communities, who together make up the Bolivian people.

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<sup>2</sup> The work of the Assembly members was organized in 21 committees: 1. Vision for the country; 2. Citizenship, nationality and nationalities; 3. Obligations, rights and guarantees; 4. Organization and structure of the new State; 5. Legislature; 6. Judiciary; 7. Executive; 8. Other bodies; 9. Autonomous departments, provinces, municipalities and indigenous communities; 10. Education and interculturalism; 11. Comprehensive social development; 12. Hydrocarbons; 13. Mining and metallurgy; 14. Water resources and energy; 15. Development of production; 16. Renewable natural resources, land, territory and the environment; 17. Comprehensive development in the Amazon region; 18. Coca; 19. Economic and financial development; 20. National borders; 21. Security and national defence.

<sup>3</sup> Five proposals were submitted by citizens' groups, 9 by political parties, 19 by public organizations, 45 by social organizations and movements, 9 by civic and departmental organizations, 11 by indigenous peoples, 3 by private entrepreneurs, 15 by NGOs, and 4 by churches, along with 16 individual statements and 2 mixed proposals.

14. Sovereignty resides in the Bolivian people, is exercised in a direct, delegated manner, and is the basis of the duties and powers of government bodies. The State is organized into the executive, legislative, judicial and electoral branches; the executive consists of the President, the Vice-President and the ministers of State.

15. One of the structural changes brought about by the new Constitution is the emergence of autonomous departments, regions, municipalities and native indigenous campesino communities, which elect their authorities directly, are responsible for the administration of their own finances, and exercise legislative, regulatory, oversight and executive powers. With the adoption of the Constitution, the new structure of the State is being consolidated by the organic laws adopted by the Plurinational Legislative Assembly.

16. The President and Vice-President, departmental governors and municipal mayors are elected by free, direct suffrage held by secret ballot. The Constitution establishes that judges of the Supreme Court of Justice, the Plurinational Constitutional Court and the Agricultural and Environmental Court, and members of the Council of the Judiciary, are elected by universal suffrage; the aim of this provision is to bring about greater participation by the people, in a real and legitimate manner, and to guarantee the independent administration of justice.

17. Similarly, another important mechanism has been introduced: that of social participation and oversight, by means of which civil society organizations have oversight of the State administration at all levels, and of those public, private and public-private businesses and institutions that use tax revenue to provide strategic services or services of collective interest.

18. The Plurinational Legislative Assembly is made up of the Chamber of Deputies, whose 130 members are elected by direct universal suffrage held by secret ballot, and the Senate, whose 36 members — 4 representatives for each department — are also elected by direct universal suffrage held by secret ballot.

19. The Plurinational Electoral Branch is made up of the Supreme Electoral Court, departmental electoral courts, electoral courts, polling-station panels and electoral officials. The Supreme Electoral Court is the highest body of the electoral branch of government and has national jurisdiction; it has seven members — at least two of whom are of native indigenous campesino origin — with a term of office of six years.

20. With regard to the protection of human rights, the Constitution has established a new set of fundamental rights based on the main universal and regional human rights instruments. Unlike the previous Constitution, this set of fundamental rights is broad in nature, and classifies fundamental rights in the following groups: civil rights; political rights; rights of native indigenous campesino nations and peoples; social and economic rights; rights of children, adolescents and young people; rights of families; rights of older persons; rights of persons with disabilities; rights of persons deprived of their liberty; rights of customers and consumers; education; interculturalism; and cultural rights.

21. For the first time, therefore, collective rights and the rights of groups at risk of vulnerability are now fully recognized.

22. The process of ratification of international treaties in Bolivia involves the executive and legislative branches, since it falls to the President to sign international treaties, and to the Plurinational Legislative Assembly to ratify them. In addition, it has been established that international human rights treaties and instruments that have been signed, ratified or acceded to by Bolivia and that contain rights more favourable than those set out in the Constitution take precedence over the Constitution; furthermore, the rights recognized by the Constitution are to be interpreted in accordance with international human rights treaties, when the provisions of the latter are more favourable.

23. Also, education is declared to be one of the State's paramount tasks and responsibilities; the State and society have the role of full guardians of the education system. Education is established as being unitary, public, universal, democratic, participatory, community-based, focused on decolonization and of good quality, in addition to being intracultural, intercultural and multilingual.

24. As required by the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights held in Vienna in 1993, Bolivia has a national human rights action plan for 2009–2013, entitled "Bolivia: Dignity for a Good Life", which was promulgated on 10 December 2008 by Supreme Decree No. 29851, and is therefore binding. The aim of the national action plan is to establish a general framework for public policies to be implemented between 2009 and 2013, in order effectively to guarantee the promotion, respect, protection, defence, realization and exercise of human rights, taking into account a plurinational and intercultural perspective.

25. Since the action plan constitutes the most important State policy in this area, it has a specific chapter on the actions that must be carried out in order to bring about the full exercise of civil and political rights, taking into account the obligations entered into under the International Covenant on Civil and Political Rights and the recommendations made by the Human Rights Committee.

26. Furthermore, the protection of human rights is one of the responsibilities of the Ombudsman's Office, a body that is tasked with ensuring that the human, individual and collective rights established in the Constitution, legislation and international instruments are effectively exercised, promoted, disseminated and respected, and whose remit covers the administrative actions of the entire public sector and the actions of private institutions that provide public services.

27. The Plurinational Constitutional Court is responsible for upholding the supremacy of the Constitution, exercising oversight of constitutionality and safeguarding respect for, and the effective exercise of, constitutional rights and guarantees. The Court is plurinational in that its members, who are elected judges, represent on an equal basis both the ordinary system of justice and the native indigenous campesino system. On 16 October 2011 judges will be elected for the first time, thus providing Bolivia with a plurinational, democratically elected body.

### **III. Implementation of the articles of the Covenant**

#### **Article 1**

28. The Constitution governs and guarantees the civil and political rights of Bolivian men and women, in compliance with international treaties and domestic laws, and establishes that Bolivia is a unitary, social, plurinational and communitarian State governed by the rule of law, which is free, independent, sovereign, democratic, intercultural and decentralized, with autonomous entities, and guarantees the provision of social benefits that improve the living conditions of the least advantaged groups in society, including women, children and adolescents, older persons, persons with disabilities, and persons of different sexual orientation.

29. The Constitution recognizes the following civil and political rights:<sup>4</sup>

#### Section I. Civil rights

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<sup>4</sup> See Constitution, chap. 3, arts. 21–29.

Article 21. Bolivian men and women shall have the following rights:

1. Right to cultural self-identification.
2. Right to privacy, intimacy, honour, reputation, dignity and one's own image.
3. Right to freedom of thought, spirituality, religion and worship, expressed individually or collectively, in public or in private, for lawful purposes.
4. Right to freedom of assembly and association, in public or in private, for lawful purposes.
5. Right freely to express or disseminate thoughts or opinions using any means of communication, orally, in writing or visually, whether individually or collectively.
6. Right freely to access, interpret, analyse and communicate information, whether individually or collectively.
7. Freedom of residence, sojourn and movement throughout Bolivian territory, including the right to leave and enter the country.

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#### Section II. Political rights

Article 26. I. All citizens shall have the right, individually or collectively, to participate freely in the formation, exercise and control of political power, directly or through their representatives. Participation by men and women shall be equitable and on an equal basis.

II. The right to participate shall include:

1. Organization for purposes of political participation, in accordance with the Constitution and the law.
2. Equal, universal, direct, individual, free and compulsory suffrage by secret ballot and with public counting of votes. Citizens 18 years of age and older shall have the right to vote.
3. Where community democracy is practised, elections shall be organized in accordance with the community's own rules and procedures, overseen by the electoral branch, unless the right to vote is exercised through equal, universal, direct, free and compulsory suffrage by secret ballot.
4. Direct election, appointment and nomination of representatives of the native indigenous campesino nations and peoples, in accordance with their own rules and procedures.
5. Oversight of the acts of public officials.

30. Article 2 of the Constitution guarantees the self-determination of the native indigenous campesino nations and peoples and their ancestral domain. This means that they have the right to autonomy, self-government, their own culture, recognition of their institutions and the consolidation of their territorial entities, in conformity with article 30, paragraph 4, of the Constitution, which establishes that indigenous peoples have the right to self-determination and to recognition of their territories.

31. The autonomy of native indigenous campesino nations and peoples consists in self-government, that is, the exercise of self-determination; such nations and peoples share territory, culture, history and languages and have their own legal, political, social and economic systems and institutions.

32. Bolivia's natural resources were recovered as a result of protests by social movements and organizations, which clashed with the authorities, first during the "water war" in Cochabamba in 2000, and then in the "gas war" in La Paz in 2003, which ultimately led to a change of President.

33. Since one of the people's demands was the recovery of hydrocarbon resources, Supreme Decree No. 28701 was passed on 1 May 2006, resulting in the nationalization of hydrocarbons and the recovery of gas and its by-products. These were then made available in such a way as to benefit the entire population, on the grounds that the inalienable right to the ownership and utilization of natural resources is a fundamental right of the people.

34. In title II, chapter 4, on "Rights of native indigenous campesino nations and peoples", the Constitution establishes the rights of such peoples to live in a healthy environment, with proper management and use of ecosystems, and the right to autonomous indigenous territorial administration, and to the exclusive use and exploitation of the renewable natural resources in their territory, without prejudice to rights legitimately acquired by third parties.

35. Article 349, paragraph I, states that natural resources are owned — in a direct, indivisible and inalienable manner — by the Bolivian people, and are managed by the State in the collective interest. Article 352 states that the exploitation of natural resources in a given location is subject to a process of free and informed prior consultation with the population concerned, to be organized by the State. In accordance with the Constitution and legislation, citizens' participation in the process of environmental management is guaranteed, and conservation of ecosystems promoted. Consultation with native indigenous campesino nations and peoples follows their own rules and procedures.

36. Importantly, the Ministry of Hydrocarbons and Energy (a government department), before granting an environmental licence, carries out consultations with native indigenous campesino nations and peoples, as part of the participatory management process. The aim of the consultations is to compile comments, suggestions, supplementary information and recommendations in cooperation with these peoples. To date, some 17 participatory consultation processes have taken place.

37. The third part of the Constitution establishes the structure and territorial organization of the State, which is conceived as a State with autonomous departments, regions, municipalities, and native indigenous campesino autonomous entities, which operate within the limits established in the Constitution and the "Andrés Ibáñez" Framework Act on Autonomy and Decentralization (Act No. 031), promulgated on 19 July 2010. The aim of the Act is to build a mutually supportive, democratic, advanced society, which seeks to attain "a good life", in which a decent quality of life is ensured for all persons. The Act constitutes a legal instrument that links the Constitution to the statutes and legislation on autonomy.

38. The Framework Act on Autonomy and Decentralization, drawn up within the framework of the Constitution, introduces provisions that create, strengthen or perfect the instruments of autonomous governments, establish competencies and improve the functioning of institutions, acknowledging the social rights of citizens on the basis of three fundamental principles: autonomy, solidarity and unity. The principle of autonomy determines the scope of political power — in other words, the sphere of competence of each autonomous territorial entity — and has, under this Act, three main implications: hierarchical independence vis-à-vis the State, the power to create a legal order and the power to self-govern within the framework of its competencies. The principle of solidarity has its basis in the State as a community of common interests; the State generates a community of interests that takes precedence over its constituent parts, namely the territorial governments. The principle of unity is one of the structural aspects that shape the



model of the Bolivian State and is the essential logical correlate of the very principle of autonomy. There can be no autonomy without unity.

## Article 2

39. Article 13, paragraph I, of the Constitution (in title II (Fundamental rights and guarantees), chapter 1 (General provisions)) states: “The rights recognized by this Constitution are inviolable, universal, interdependent, indivisible and progressive. The State has a duty to promote, protect and respect them.”

40. Article 14 states that: “II. The State shall prohibit and punish all forms of discrimination based on sex, colour, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious belief, ideology, political or philosophical affiliation, marital status, economic or social status, occupation, level of education, disability, pregnancy or any other grounds that might have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of the rights of any person. III. The State guarantees to all persons and community groups, without any discrimination whatsoever, the free and effective exercise of the rights embodied in this Constitution and in laws and international human rights treaties.”

41. The following legislative texts have been adopted with the aim of eliminating discrimination and racism:

(a) Supreme Decree No. 189 of 1 July 2009, which declares 28 June as the Day of the Rights of People of Different Sexual Orientation throughout the Plurinational State of Bolivia in order to foster respect for and to promote the human rights of people of different sexual orientation;

(b) Supreme Decree No. 213 of 22 July 2009, which provides that both internal and external recruitment processes in the public and private sectors must contain no criteria that seek to exclude candidates on the grounds of sex, age, religious belief, gender, race, origin, political ideology, physical appearance, marital status, HIV/AIDS status or other grounds that might have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of the rights of such persons;

(c) Supreme Decree No. 131 of 20 May 2010, subsequently elevated to the status of law by Act No. 139 of 14 June 2011, which declares 24 May as the National Day against Racial Discrimination and provides that public and private institutions in the Bolivian educational system and other State bodies must undertake public education, prevention and awareness-raising activities to combat racial discrimination; and

(d) Supreme Decree No. 762, which sets out the regulations for implementing Act No. 045 on the Elimination of Racism and All Forms of Discrimination and establishes prevention and information policies, the categories of misconduct that constitute racism and discrimination and the corresponding penalties.

42. Supreme Decree No. 29894 of 7 February 2009, on the organizational structure of the executive branch of the plurinational State, established the Office of the Deputy Minister for Decolonization, under the Ministry of Cultures, with the following mandate:

(a) To coordinate the implementation of decolonization programmes and projects with ministries and autonomous territorial entities;

(b) To propose and implement plurinational governance policies;

(c) To encourage the participation of native indigenous campesino nations and peoples and the intercultural and Afro-Bolivian communities in the public administration of the plurinational State;

(d) To implement policies and measures to enhance the status of the ancestral knowledge and skills of the native indigenous campesino nations and peoples and the intercultural and Afro-Bolivian communities;

(e) To encourage the elimination of feudal, patrimonial, patriarchal, racist and bureaucratic practices;

(f) To develop policies to prevent and eradicate racism and cultural intolerance;

(g) To promote interculturalism as a development tool for producing shared cultural expressions based on mutual respect and social harmony; and

(h) To implement training programmes in the official languages of the plurinational State.

43. On the basis of recommendations made by international human rights mechanisms, such as the Human Rights Council under its universal periodic review procedure, the various committees and the Special Rapporteur on the rights of indigenous peoples, Bolivia adopted Act No. 045 of 8 October 2010 on the Elimination of Racism and All Forms of Discrimination. The Act is divided into five chapters: chapter I on general provisions; chapter II on prevention and education measures aimed at eradicating racism and all forms of discrimination; chapter III on the National Committee against Racism and All Forms of Discrimination; chapter IV on the authorities responsible for the protection of victims of racism and all forms of discrimination; and chapter V on offences against human dignity.

44. Chapter I of Act No. 045, on general provisions, outlines the purpose of the Act and the principles on which it is based, and provides clear definitions of racism, discrimination and other terms for purposes of implementing the Act. It also provides the scope and coverage of the Act, differentiating between persons who are public servants and those who are private individuals, as a factor to be considered when imposing sanctions, since stiffer penalties are provided for acts of racism or discrimination committed by public servants or authorities.

45. Chapter II establishes prevention and education measures in the following areas: education; public administration; communication, information and dissemination; and economic matters. These measures are also aimed at eradicating racism and all forms of discrimination.

46. Chapter III creates the body responsible for designing and implementing policies, strategies, remedies and comprehensive regulations against racism and all forms of discrimination. This body operates independently of other State bodies.

47. Chapter IV specifies the bodies responsible for protecting victims of racism and all forms of discrimination. It also sets out the offences against human dignity that must be investigated and prosecuted before the relevant bodies, distinguishing between administrative, constitutional and criminal proceedings. Lastly, chapter V incorporates and amends the provisions of the Criminal Code relating to offences against human dignity.

48. Supreme Decree No. 762 of 5 January 2011, which sets out the regulations for implementing the Act on the Elimination of Racism and All Forms of Discrimination, specifies prevention and education measures; the acts of misconduct in public office that constitute racism and discrimination and the corresponding penalties; and acts that do not entail the direct responsibility of the mass media.

49. Similarly, laws based on the Constitution incorporate the principle of non-discrimination. For example, the Judiciary Act (No. 025) of 24 June 2010 establishes that the administration of justice is free of charge, without discrimination or exclusion, thereby laying the foundations for solving the problem of the lack of access to justice, the main victims of which have traditionally been impoverished or excluded population groups.

50. In accordance with the International Covenant on Civil and Political Rights, Bolivia has enacted the following legislation:

<i>Date of enactment</i>	<i>Number</i>	<i>Title</i>
5 January 2011	Supreme Decree No. 762	Regulations implementing the Act on the Elimination of Racism and All Forms of Discrimination
29 December 2010	Act No. 073	Jurisdiction Demarcation Act
8 October 2010	Act No. 045	Act on the Elimination of Racism and All Forms of Discrimination
19 July 2010	Act No. 031	Framework Act on Autonomous Entities and Decentralization
16 July 2010	Act No. 018	Act on the Plurinational Electoral Branch
6 July 2010	Act No. 027	Act on the Plurinational Constitutional Court
30 June 2010	Act No. 026	Electoral Act
24 June 2010	Act No. 025	Judiciary Act
24 May 2010	Act No. 017	Transitional Act on the Functioning of Autonomous Territorial Entities
18 May 2010	Act No. 007	Act amending the Code of Criminal Procedure
31 March 2010	Act No. 004	Act on Corruption, Illegal Enrichment and Scrutiny of Wealth
7 February 2009		Political Constitution of the State
10 December 2008	Supreme Decree No. 29851	National Human Rights Action Plan: "Bolivia: Dignity for a Good Life"
10 December 2008	Supreme Decree No. 29850	National Equal Opportunities Plan
5 November 2007	Act No. 3760	Act ratifying the United Nations Declaration on the Rights of Indigenous Peoples
12 September 2007	Supreme Decree No. 29272	National Development Plan: "Bolivia: Dignity, Sovereignty, Productivity and Democracy for a Good Life"
2 August 2007	Supreme Decree No. 29215	Implementing Act No. 1715 on the National Agrarian Reform Service, as amended by the Community-Based Agrarian Reform Renewal Act (No. 3545)

<i>Date of enactment</i>	<i>Number</i>	<i>Title</i>
28 November 2006	Act No. 3545	Amending Act No. 1715, the Community-Based Agrarian Reform Renewal Act
8 March 2006	Supreme Decree No. 28631	Implementing the Executive Organization Act
17 May 2005	Act No. 3058	Hydrocarbons Act
8 June 2000	Act No. 2209	Act on the Intellectual Property Regime, Act on the Promotion of Science, Technology and Innovation
14 April 2000	Act No. 2074	Act on the Promotion and Development of Tourism in Bolivia
15 December 1995	Act No. 1674	Family and Domestic Violence Act
22 September 2000	Supreme Decree No. 26330	Implementing the Basic Health Insurance Scheme for Native Indigenous Peoples
21 June 1997	Supreme Decree No. 24676	Implementing Decision No. 391 of the Commission on the Cartagena Agreement <sup>5</sup>
22 December 1997	Act No. 1818	Ombudsman Act
25 March 1999	Act No. 1970	Code of Criminal Procedure
15 November 1994	Act No. 1602	Act on the Abolition of Imprisonment and Physical Coercion for Indebtedness

51. Article 115, paragraph I, of the Constitution states that everyone has the right to the timely and effective protection of the judges and courts in the exercise of their rights and legitimate interests. Paragraph II provides that the State shall guarantee the right to due process, the right to a defence and the right to a system of justice that is plural, swift, timely, free, transparent and administered without delay. This means that the rights of every individual are protected in proceedings before all administrative and judicial authorities.

52. In this regard, judicial guarantees and remedies have been established. They are recognized in article 109, paragraph I, which provides that all the rights recognized in the Constitution are directly applicable and guarantees that they are equally protected. Paragraph II establishes that rights and their guarantees are governed solely by the law. Article 110, paragraph I, states that those who violate constitutional rights are subject to the jurisdiction and powers of the Bolivian authorities. Lastly, paragraph II states that “perpetrators and instigators of constitutional rights violations shall be held accountable for their actions”.

<sup>5</sup> Implementing the Common Regime for Access to Genetic Resources, establishing the requirement to sign an access contract between the applicant and the Bolivian State. The contract sets out the obligations and scope of the rights of the contracting parties.

53. The Constitution establishes various actions and remedies, which are described below.

54. A habeas corpus action is the remedy available to any person who considers their life to be in danger, or that they are being unlawfully or wrongly prosecuted, tried or detained. Such person may bring a habeas corpus action orally or in writing, in person or through any other person acting on their behalf, without the need for legal formalities, before any judge or court empowered to hear criminal cases, and request that their life be protected, the wrongful prosecution be stopped, legal formalities be re-established or their right to freedom be restored.

55. The action of *amparo* is the constitutional remedy against unlawful or wrongful acts or omissions by public servants or by a natural or legal person that, in any way, restrict or suppress or threaten to restrict or suppress the rights recognized by the Constitution and other laws.

56. An action for protection of privacy may be brought by any natural or legal person who believes they have been wrongfully or unlawfully prevented from having access to, challenging, deleting or correcting data that have been recorded by any physical, electronic, magnetic or computerized means and stored in public or private archives or databanks, or that may affect their basic right to personal or family privacy or their own image, honour and reputation. An action for the protection of privacy may not be brought to obtain confidential journalistic material.

57. An action for unconstitutionality may be brought by any natural or legal person who considers they are affected by a law that is incompatible with the Constitution.

58. Lastly, an enforcement action may be brought to ensure compliance with the Constitution or the law when public officials fail to comply with it.

59. Public interest actions were established following the promulgation of the Constitution and the recognition of collective rights in Bolivia. These are actions that may be brought for any act or omission by the authorities or natural or legal persons that violate or threaten to violate collective rights and interests related to heritage, land, public safety, public health, the environment and other rights and interests of a similar nature recognized by the Constitution.

60. Similarly, Act No. 027 of 6 July 2010, on the Plurinational Constitutional Court, establishes the procedures governing the above-mentioned actions. Article 8 provides that the Court's rulings and decisions are binding and mandatory and that no ordinary appeal is possible.

61. With the promulgation in 2011 of Act No. 027 on the Constitutional Court, the fundamental principles of the new judicial system were established. These include plurinationalism, legal pluralism, interculturalism, social harmony and independence. This last principle ensures that constitutional justice is administered independently of other State bodies. Other principles such as impartiality and legal certainty also ensure the proper administration of justice.

### **Article 3**

62. The promotion of the equal participation of women and men is a cornerstone of the Constitution. Consequently, the Constitution is based on the principle of the inclusion and active participation of women in the process of transforming a patriarchal society into one based on gender equality. Article 26, paragraph I, establishes that all citizens have the right, individually or collectively, to participate freely in the formation, exercise and control of political power, directly or through their representatives and that participation by men and

women is to be equitable and on an equal basis. Paragraph II of article 26 establishes that the right to participate includes:

1. Organization for purposes of political participation, in accordance with the Constitution and the law.
  2. Equal, universal, direct, individual, free and compulsory suffrage by secret ballot and with public counting of votes. Citizens 18 years of age and older shall have the right to vote.
  3. Where community democracy is practised, elections shall be organized in accordance with the community's own rules and procedures, overseen by the electoral branch, unless the right to vote is exercised through equal, universal, direct, free and compulsory suffrage by secret ballot.
  4. Direct election, appointment and nomination of representatives of the native indigenous campesino nations and peoples, in accordance with their own rules and procedures.
  5. Oversight of the acts of public officials.
63. In accordance with international instruments, Bolivia adopted a national equal opportunities plan by Supreme Decree No. 29850 of 10 December 2008. The plan is a development strategy that includes public policies aimed at eliminating all forms of violence against women, improving and consolidating their political, economic, social and health situation and promoting equal treatment of men and women.
64. The national equal opportunities plan includes: the principle of equal rights for all women and men, without discrimination of any kind; the inclusion of gender equality as a fundamental principle of the State; the prohibition and punishment of all forms of discrimination, including on the grounds of gender; the right of women to live free from physical, sexual or psychological violence, both within the family and in society; the duty of the State to take the necessary measures to enforce this right; the right of women to participate freely in the political life of the country, without discrimination and on an equal footing; recognition of housework as a source of wealth that should be reflected in public accounts; and women's access to land and the duty of the State to implement policies to eliminate all forms of discrimination in that regard.
65. Mention should also be made of legislation designed to ensure to men and women equally the enjoyment of all rights, such as Supreme Decree No. 012 of 19 February 2009, which regulates the conditions governing security of employment for parents working in the public and private sectors.
66. Gender has been mainstreamed in strategic development plans and women are now allowed to serve in the Bolivian navy.
67. As a result of legislation that entered into force between 2006 and 2009, 10,299 land titles were granted to women, representing a total of 164,401 hectares.
68. Since 2010, 50 per cent of posts in the ministerial cabinet of the Plurinational State of Bolivia, appointed by President Morales, have been held by women. This has had an impact on other executive bodies and other branches of government; for example, an indigenous woman has been appointed to the Council of the Judiciary for the first time.

#### **Article 4**

69. The Constitution establishes that the international treaties and conventions ratified by the Plurinational Legislative Assembly that recognize human rights and regulate their

restriction in states of emergency take precedence over domestic legislation. The rights and duties enshrined in the Constitution are to be interpreted in accordance with the international human rights treaties ratified by Bolivia. The Constitution applies article 4 of the Covenant and emerging international human rights obligations.

70. The Constitution also establishes that a state of siege may be declared only in exceptional circumstances in order to ensure public safety, State security and social peace, in the event of a threat to national security, an external threat, internal disorder or a natural disaster.

71. In accordance with international instruments, a state of siege was declared in the department of Pando by Supreme Decree No. 29705 of 12 September 2008. This measure was taken to preserve law and order in the department. The Organization of American States and the United Nations were informed of the situation so that monitoring mechanisms could be put in place.

## Article 5

72. The Constitution enshrines fundamental rights; articles 13 to 144 incorporate virtually the entire range of rights recognized in international human rights instruments in the inter-American and universal systems, thereby ensuring compliance with article 2, paragraph 1, of the International Covenant on Civil and Political Rights.

73. Article 13, paragraph I, establishes that the rights recognized by the Constitution are inviolable, universal, interdependent, indivisible and progressive. It is the duty of the State to promote, protect and respect them. Paragraph II states that the rights enumerated in the Constitution should not be understood as invalidating other rights not proclaimed therein, in strict accordance with the provisions of article 5 of the Covenant and the *pro homine* principle of international human rights law.

## Article 6

74. Bolivia ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty by Act No. 3447 of 21 July 2006.

75. Under the Constitution, the right to life and the rights arising therefrom are recognized, respected and guaranteed as fundamental rights. In accordance with the guidelines of international organizations and bodies on the core human value of respect for life, article 15, paragraph I, states that “there shall be no death penalty”. It further states that it is the primary duty of the State to respect and protect the dignity and freedom of the person, whose rights are inviolable.

76. Article 118 of the Constitution states that: “I. Corruption, deprivation of civil rights and confinement are prohibited. II. The maximum criminal penalty shall be 30 years’ imprisonment, with no right to pardon.”

77. In accordance with the Rome Statute of the International Criminal Court, to which Bolivia is a party, and other international conventions and treaties, article 111 of the Constitution provides that genocide, crimes against humanity, treason and war crimes are not subject to a statute of limitations.

## Article 7

78. The Plurinational State of Bolivia recognizes the right of everyone to life and to physical, psychological and sexual integrity; it therefore prohibits all forms of torture and cruel, inhuman, degrading or humiliating treatment. Article 15 of the Constitution establishes that everyone has the right to life and to physical, psychological and sexual integrity. No one may be tortured or subjected to cruel, inhuman, degrading or humiliating treatment. It guarantees that everyone, in particular women, has the right to be free from physical, sexual or psychological violence, both within the family and in society. As a result, the State is required to take the necessary steps to prevent, eliminate and punish any act or omission intended to debase the human condition or cause death, pain and physical, sexual or psychological suffering, in either the public or private spheres.

79. Article 144 of the Constitution prohibits all forms of torture, disappearance, confinement, coercion, extortion or other form of physical or moral violence. Public servants or authorities who commit, instigate or consent to such acts are to be removed from office, without prejudice to such penalties as may be applicable under the law.

80. In accordance with the Constitution and in conformity with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Act No. 3298 of 12 December 2005, a preliminary bill has been drafted on a national mechanism for the prevention of torture and other cruel, inhuman, degrading or humiliating treatment or punishment.<sup>6</sup> The bill takes into account the principles of dignity, equality and non-discrimination, objectivity and responsibility.

81. The above-mentioned bill reproduces the concepts of international instruments. It defines torture as any act or omission intentionally performed by a public servant or other person whereby pain or suffering, whether physical, mental, moral or sexual, is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any reason based on discrimination of any kind or for any other purpose. Torture is also understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his or her physical or mental capacities, even if they do not cause physical pain or mental anguish.

82. Although the bill is still being discussed,<sup>7</sup> it establishes that the main tasks of the national preventive mechanism will be to provide constant monitoring of places of detention, including police cells, prisons and remand centres, with a view to preventing acts of torture and cruel treatment; to carry out regular prison visits; to conduct private interviews with and to collect evidence from detainees freely chosen by the visiting team; and to carry out programmes to prevent human rights violations in places of detention.

83. Article 44, paragraph I, of the Constitution establishes that no one may be subjected to any surgical operation or medical or laboratory examination without his or her consent, or that of legally authorized third persons, save when his or her life is in imminent danger. Paragraph II states that no one may be subjected to scientific experiments without his or her consent. The Constitution thus ensures the right of women and men to physical integrity.

84. Article 295 of the Criminal Code establishes the criminal offence of harassment and torture and provides for a penalty of imprisonment for any public official who harasses a

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<sup>6</sup> The bill was prepared jointly by the Ministry of Justice, the Ministry of Foreign Affairs, the Prisons Directorate and the Ombudsman's Office, with the support of the Office of the United Nations High Commissioner for Human Rights.

<sup>7</sup> The justice sector has scheduled the initial stage of drafting of the Criminal Code for 2011.



detainee or orders or permits a detainee to be harassed, or who inflicts any kind of suffering or torture. The Code also establishes the criminal offence of coercion and provides penalties for any person who uses violence or threats of violence to compel a person to do, to refrain from doing or to tolerate anything that the person is not required to do.

## Article 8

85. The Plurinational State of Bolivia is a party to the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and the following International Labour Organization conventions: the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), ratified by Bolivia by Act No. 1257. The Constitution establishes that no one may be subjected to servitude or slavery and prohibits all forms of forced labour and similar modes of exploitation which oblige a person to perform work without his or her consent and without fair pay.

86. Mention should be made of the situation of the Guaraní indigenous people,<sup>8</sup> whose difficulties began when their ancestral lands were indiscriminately plundered. This resulted in Guaraní families and communities being forced to work as labourers in conditions of semi-slavery for large landowners. The plight of the indigenous Guaraní people was first highlighted by Guaraní organizations themselves. Since 2006, when President Morales took office, efforts have been made to raise awareness of the issue and affirmative action measures have been introduced for this vulnerable group.

87. The Inter-Ministerial Council for the Eradication of Servitude, Forced Labour and Slavery-like Practices<sup>9</sup> was established by Supreme Decree No. 29292 of 3 October 2007 with a view to implementing the 2007–2008 transitional inter-ministerial plan for the Guaraní people. The Council's most important tasks were to define and adopt a national plan to eradicate slavery, forced labour and similar practices and to guarantee the freedom, dignity and human rights of these people.

88. Supreme Decree No. 29215 of 2 August 2007 establishes that where there is evidence that land is not fulfilling its economic and social function or that a system of servitude, forced labour, bonded labour or slavery of captive families exists in a rural area, the land reverts to the State and is granted to families originally from the region. On the basis of legislative provisions and as part of the agrarian revolution carried out by the Government since 2006, the National Agrarian Reform Institute has put in place three schemes to return agricultural lands on the estates of Ñacamiricito, Inti Pilcomayo-Ñaca Pucu and Itane in view of the existence of servitude and forced labour in Chaco, Chuquisaca.

89. In addition to these land restitution schemes that are part of the land reorganization process, five estates have been designated native community lands in Alto Parapetí in the department of Santa Cruz and the regularization of community lands has begun in

<sup>8</sup> The Guaraní indigenous people live mainly in the towns of Cuevo and Lagunillas (Santa Cruz), Huacareta and Muyupampa (Chuquisaca), and in the provinces of Gran Chaco and O'Connor (Tarija). According to information provided by the Assembly of Guaraní People, there are 25 Guaraní municipalities (*capitanías*) and communities.

<sup>9</sup> The Council was made up of representatives of the Ministry of the Presidency, the Ministry of Justice, the Ministry of Development Planning, Production and Microenterprise, the Ministry of Rural Development, Agriculture and the Environment and the Ministry of Labour, which chaired the Council.

Yakuigua and the El Carmen estate, Tabayerupa Baho, Sacariua and Charaguayto Itahuazurenda.

90. Under the transitional inter-ministerial plan for the Guaraní people, the Public Prosecution Service (*Ministerio Público*) has included the topics of labour rights and indigenous peoples in its training institute's programmes. Research has been conducted and published in this area as part of policy development.<sup>10</sup>

91. A programme of production projects has benefited 1,200 Guaranís, belonging to 200 families in seven communities: Anguaguasu (47 families) and Kamatindi (25 families) in Chuquisaca; Iviyeka (35 families) and Tasete (25 families) in Santa Cruz; and Kapiaguasuti (25 families); Cañita (13 families) and La Grampa in Tarija (30 families).

92. In May 2011, the Ministry of Justice, in conjunction with the Supreme Electoral Court, the indigenous municipality of Alto Parapetí, the United Nations Population Fund and Visión Mundial Bolivia signed a letter of understanding defining the roles and tasks of each institution in a scheme to issue identity documents to Guaraní communities in the area of Alto Parapetí.

### Articles 9, 14 and 15

93. The Constitution recognizes the right to freedom: article 22 states that individual dignity and freedom are inviolable and that it is the primary duty of the State to respect and protect them. Article 23 states that:

I. Everyone has the right to personal freedom and security. Personal freedom may be restricted only within the limits prescribed by law, to ensure that historical truth is revealed in the proceedings of judicial bodies.

II. Custodial measures for adolescents shall be avoided. All adolescents who are deprived of their liberty shall receive priority attention from the judicial, administrative and police authorities. These authorities shall ensure that their dignity is respected at all times and that their identity is not disclosed. They shall be held in areas separate from adults, taking into account the needs of their age.

III. No one may be held, arrested or deprived of liberty, except in the cases and according to the forms prescribed by law. The necessary warrant must be issued by the competent authority and served in writing.

IV. Any person caught in *flagrante delicto* may be arrested by any other person, even without a warrant, for the sole purpose of being brought before a competent judicial authority, who must resolve his legal situation within 24 hours.

V. Any person who is deprived of their liberty shall be informed, at the time of their arrest, of the reasons for their detention and the charges against them.

VI. The authorities in charge of places of detention shall maintain a register of persons deprived of their liberty. Such authorities shall not admit any person without entering in the register a copy of the respective warrant. Failure to do so will result in prosecution and penalties as provided by law.

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<sup>10</sup> Official publications include: *Quiero ser libre sin dueño* (2005), *Comunidades Cautivas* (2007), *Diagnóstico Socioeconómico del Pueblo Guaraní del Departamento de Tarija* (2009) and *Justicia Comunitaria Guaraní* (2009). Likewise, there are the documentaries *Quiero ser libre sin dueño* (2006), *Comunidades Cautivas* (2007) and “*Cheko Che*” *Orgullo Guaraní* (2009).

94. The Constitution recognizes the following personal guarantees: the right to due process; the right to a defence and the right to a system of justice that is plural, swift, timely, free, transparent and administered without delay (art. 115). Article 116 guarantees the right to the presumption of innocence and establishes that, where there is doubt regarding the applicable law, the one that is most favourable to the accused or defendant must be applied and that any penalty must be based on a law in effect prior to the punishable act. Article 117 states that no one may be convicted without having being heard and tried in accordance with the principles of due process and that no one may be tried or convicted more than once for the same offence. Lastly, it establishes that restricted rights must be restored immediately upon completion of the sentence.

95. Every person has the right to be heard by a competent, independent and impartial judicial authority and no one may be tried by special commissions or brought before judicial authorities other than those established before the offence was committed. Every person has the right to be tried in their own language; in exceptional circumstances, the presence of a translator or interpreter may be required.

96. In criminal proceedings, no one may be compelled to testify against himself or herself or against blood relatives up to the fourth degree, or by affinity up to the second degree. Exercising the right to remain silent may not be interpreted as a sign of guilt. Victims may participate in criminal proceedings in accordance with the law and have the right to a hearing before every judicial decision. If they lack the necessary funds, they are assisted free of charge by a lawyer assigned by the State.

## Article 10

97. In accordance with the Covenant, the Constitution provides that all persons subjected to any form of deprivation of liberty are to be treated with due respect for human dignity, and furthermore that all persons deprived of their liberty have the right to communicate freely with their lawyer, interpreter, friends and family members. Incommunicado detention is prohibited. Any restrictions on communication may be imposed only in the context of an investigation of a criminal offence and may not last for more than 24 hours.<sup>11</sup>

98. It is the responsibility of the State to ensure the social reintegration of persons deprived of their liberty, respect for their rights, and their detention and custody in an appropriate environment, in accordance with the category, nature and seriousness of the offence, as well as the age and sex of the detainee. Persons deprived of their liberty have the opportunity to work and study in prison.

99. In accordance with international human rights instruments, Act. No. 2298 (the Penal Implementation and Supervision Act) of 20 December 2001 establishes the framework for the implementation of sentences and protective measures under a progressive system for the classification and social reintegration of offenders.

100. The Penal Implementation and Supervision Act guarantees the rights of persons deprived of their liberty while they are serving their sentence or subject to protective measures, and sets out the obligations and restrictions placed on the civilian and police prison staff. Article 5 of the Act establishes respect for the dignity of persons deprived of their liberty as follows: "In penitentiary establishments, respect for human dignity, constitutional guarantees and human rights shall prevail. All cruel, inhuman or degrading treatment is prohibited. Anyone who orders, engages in or tolerates such conduct shall be

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<sup>11</sup> See Constitution, arts. 73 and 74.

liable to the penalties set out in the Criminal Code, without prejudice to any other applicable penalties.”<sup>12</sup>

101. The Directorate-General of Prisons was established by article 33, paragraph II, of Supreme Decree No. 29894 of 7 February 2009 on the organizational structure of the executive branch of the plurinational State, and is one of the directorates-general of the Ministry of the Interior. Article 46 of Act No. 2298 stipulates that the Directorate-General is the administrative body of the prison system and that it is subordinate to the Ministry of Justice through the Office of the Deputy Minister of Justice, which is currently in a state of transition.

102. The Directorate-General of Prisons has identified the following as major challenges facing the national prison service: the need to build new prisons that comply with infrastructure standards and are suited to the prison population of each department; and the need to consolidate policies on the social reintegration of persons deprived of their liberty in the areas of psychological well-being, work and study opportunities.<sup>13</sup>

103. For this reason, the management plan for 2011 includes policies to: (a) improve prison infrastructure; (b) equip prison security staff; (c) reduce the number of prisoners in pretrial detention; (d) classify and separate prisoners; and (e) reintegrate prisoners, taking into consideration their social, psychological, educational and employment needs.<sup>14</sup>

104. One of the main problems facing the Bolivian Government with regard to persons deprived of their liberty is poor infrastructure and overcrowding. The Prisons Directorate has therefore planned for the following work on new prison facilities to be carried out in 2011: completion of Yacuiba Prison; completion of phase 3 of Montero Prison; completion of blocks B and C of Palmasola Prison; construction of the perimeter wall of the Oruro Compound; and completion of the women’s block in Qalahuma.

105. The Qalahuma pilot rehabilitation centre for young offenders opened in February 2011 in the department of La Paz.

106. A call for proposals was issued for the design of the new Chonchocoro Prison in La Paz.

107. Following a technical study, there are plans in 2011 to refurbish and expand the prisons in San Pedro, Chonchocoro, San Antonio, San Sebastián, Morros Blancos, Villa Busch, Palmasola, Puerto Suárez, Mocovi, San Roque, San Pedro-Oruro and Montero.

## **Article 11**

108. In accordance with this article of the Covenant, article 117 of the Constitution establishes that custodial sentences shall not be imposed for debts or financial obligations, except in the cases established by law.

109. The Act on the Abolition of Imprisonment and Physical Coercion for Indebtedness (No. 1602), enacted on 15 November 1994, put an end to all forms of deprivation of liberty for indebtedness.

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<sup>12</sup> Act No. 2298, art. 5.

<sup>13</sup> Directorate-General of Prisons, Note DGRP/553/2010 of 17 May 2010.

<sup>14</sup> Ibid.

## Article 12

110. Article 21 of the Constitution establishes the freedoms of residence, sojourn and movement throughout national territory, including the freedom to enter and leave the country.

## Article 13

111. Bolivia ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by Act No. 1976 of 30 April 1999. It also ratified the Convention relating to the Status of Refugees by Act 2071 of 4 April 2000, and the Protocol relating to the Status of Refugees by Act No. 2043 of 21 December 1999.

112. Certain rights of migrants that previously did not have constitutional rank were recognized with the promulgation of the Constitution. Article 27 of the Constitution stipulates that foreigners residing in Bolivia have the right to vote in municipal elections, in accordance with the law and the principles of international reciprocity. In addition, it establishes that foreigners have the right to seek and receive asylum or refuge on grounds of political or ideological persecution, in accordance with international law and treaties. Any person who has been granted asylum or refuge in Bolivia shall not be deported or returned to a country where his or her life, integrity, security or freedom may be at risk. The State will give a clear, humanitarian and prompt response to applications for family reunification submitted by parents or children granted asylum or refugee status.

113. As stipulated in the national human rights action plan, a preliminary bill on migration is currently being drafted in accordance with international standards and the Constitution.

114. With regard to refugees and asylum-seekers in Bolivia, Supreme Decree No. 28329 of 12 September 2005 established the National Commission for Refugees (CONARE) and sets out the principle of non-refoulement. The Commission is currently preparing a law on refugees, in accordance with the national human rights action plan.

## Article 14

115. Article 109 of the Constitution stipulates that all rights recognized in the Constitution are directly applicable and protected by the same guarantees. It also establishes that all parties to a conflict have equal opportunities during the proceedings to exercise their rights, through either the ordinary courts or the native indigenous campesino courts. Furthermore, the country's rules of criminal procedure establish equality before the law as a fundamental principle.

116. Under articles 331 and 332 of the Code of Criminal Procedure (Act No. 1970 of 25 March 1999), the judge or court may authorize the installation of recording, photographic, radio, film and other equipment, provided that it does not adversely affect the proceedings and that there are no minors on trial. It further establishes that children under 12 years of age may not enter the courtroom unless accompanied by an adult who takes responsibility for their actions. Entry is also prohibited to persons carrying placards or emblems of trade unions, political parties or associations, and to uniformed members of the Armed Forces or the police, unless in performance of their duties.

117. Pursuant to the Constitution, the Judiciary Act provides, *inter alia*, for the democratic election of judges to the Supreme Court. The judges will be elected by secret ballot in universal, free and compulsory elections to be held on 16 October 2011. Anti-

corruption courts have also been established, and priority is given to mediation from the very outset of proceedings in ordinary courts.

118. Native indigenous campesino justice is recognized in the Constitution in accordance with international treaties on the self-determination of peoples, bearing in mind that historically this type of restorative, oral and simple justice has been applied in the country in accordance with the peoples' own principles, cultural values, norms and procedures and with respect for fundamental rights.

119. The Jurisdiction Demarcation Act, adopted by Act No. 073 of 29 December 2010, calls for a harmonious relationship between the ordinary and the native indigenous campesino courts. This law establishes the scope of the native indigenous campesino courts and the mechanisms for coordination and cooperation between the two types of court.

### **Article 17**

120. Article 25 of the Constitution stipulates that all persons have the right to the inviolability of their home and the confidentiality of all forms of private communication, in the absence of a court order. In addition, all correspondence, private papers and private statements in any medium are inviolable and may not be confiscated except in cases established by law for the purposes of a criminal investigation, subject to a written order from a competent judicial authority. It further establishes that no public authority or any person or organization may intercept private communications or conversations by installing equipment to monitor or divert them. Information and evidence obtained by violating any form of correspondence or communication has no legal effect.

121. In this context, an action for protection of privacy may be brought by any natural or legal person who believes they have been wrongfully or unlawfully prevented from having access to, challenging, deleting or correcting data that have been recorded by any physical, electronic, magnetic or computerized means and stored in public or private archives or databanks, or that may affect their basic right to personal or family privacy or their own image, honour and reputation.

122. The established procedure for such an action is the same as that for *amparo*.

### **Article 18**

123. Article 21 of the Constitution recognizes the right to freedom of thought, spirituality, religion and worship, expressed individually or collectively, in public or in private, for lawful purposes; to freedom of assembly and association, in public or in private, for lawful purposes; freely to express and disseminate thoughts or opinions using any means of communication, orally, in writing or visually, whether individually or collectively; and freely to access, interpret, analyse and communicate information, whether individually or collectively.

### **Article 19**

124. Article 21 of the Constitution establishes that Bolivians have the right to freely express and disseminate thoughts or opinions using any means of communication, orally, in writing or visually, whether individually or collectively.

125. Despite this, the Government recognizes the need to adopt new legislation regulating the media, given that the Press Act of 19 January 1925 has become obsolete. The

Government has expressed its willingness to adapt and amend the Act in accordance with the Constitution, current legislation and international standards.

## Article 20

126. Pursuant to article 10 of the Constitution, Bolivia is a pacifist State that promotes a culture of peace and the right to peace, as well as cooperation among the peoples of the region and the world, in order to foster mutual understanding, equitable development and the promotion of interculturalism, with full respect for the sovereignty of States. Within this framework, the Constitution explicitly rejects any war of aggression as a method for resolving disputes and conflicts between States and reserves the right to defend itself against any act of aggression that jeopardizes the independence and integrity of the State. It also prohibits the installation of foreign military bases in Bolivian territory.

127. Moreover, the Criminal Code (Act No. 1768) punishes with deprivation of liberty any Bolivian national or foreigner who rises up against the State or places the State in danger and by their actions causes a declaration of war with another State. Articles 109 to 129 of the Act also prohibit armed uprisings, sedition, conspiracy, the corruption of troops, and insults and attacks against the State, the President and national symbols, whether Bolivian or foreign. This shows that the Bolivian State opposes any act that may lead to war; it seeks development for the country with the participation and for the benefit of the entire population, pursuant to article 108 of the Constitution, which lists among the duties of Bolivian citizens the duty to defend, promote and contribute to the right to peace and to encourage a culture of peace.

128. Within the constitutional framework for the prohibition and punishment of all forms of discrimination, the Act on the Elimination of Racism and All Forms of Discrimination was enacted to establish prevention and education mechanisms and to criminalize incitement to racism or discrimination, with a view to preventing endorsements of racism,<sup>15</sup> as regulated by article 21 of Supreme Decree No. 0762 on behaviours that do not directly engage the liability of the media.

## Article 21

129. Article 21, paragraph 4, of the Constitution establishes the freedom of assembly in public or in private for lawful purposes. The only limitations on this right are during states of emergency or in the event of a threat to national security, an external threat, internal disorder or a natural disaster.<sup>16</sup>

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<sup>15</sup> The definition of the offence provides that: “Any person who disseminates through any means ideas based on racial superiority or racial hatred, or ideas that promote or justify racism or any form of discrimination on the grounds outlined in articles 281 bis and 281 ter, or that incite violence or the persecution of individuals or groups on racist or discriminatory grounds, shall be punished with deprivation of liberty for 1 to 5 years.

I. The penalty shall be increased by one third to one half if the act is committed by a public servant or public authority.

II. If the act is committed by an employee or owner of a social communication medium, no immunity or privilege whatsoever may be invoked.”

<sup>16</sup> See Constitution, arts. 137–140.

## Article 22

130. This right is enshrined in section 3 of the Constitution, where articles 51 and 52 recognize the right to form trade unions and guarantee this right as a means of providing defence, representation, assistance, education and culture for workers in rural areas and in cities. Trade unions are granted legal personality simply by virtue of being established and being recognized by their parent institutions.

131. Self-employed workers, business associations and democratic forms of business organization also have the right to organize in defence of their interests.

132. Rights and obligations in the context of labour relations are regulated by the General Labour Act of 8 December 1942, which recognizes the right to join trade unions or associations of employers, tradesmen, professionals, or combinations thereof, or industries. Work is currently under way to update the General Labour Act to bring it into line with the Constitution, which establishes unionization as a right.

## Article 23

133. Article 62 of the Constitution recognizes and protects the family as the fundamental unit of society and guarantees the social and economic conditions necessary for its overall advancement, recognizing that all family members have equal rights, obligations and opportunities.

134. It is recognized that in civil marriage and common-law or de facto marriage the spouses or partners have a duty to share equally in the joint effort and responsibilities related to the upkeep of the home and the education and upbringing of the children (Constitution, art. 63). In order to serve the best interests of children and adolescents and their right to an identity, the presumption of filiation may be exercised. This presumption is recognized only on the basis of a statement by the mother or father and shall hold in the absence of proof to the contrary, as established in articles 63 to 65 of the Constitution.

135. The Family Code, adopted by Decree-Law No. 10426 of 23 August 1972 (raised to the status of law on 4 April 1988 by Act No. 996), establishes in articles 3 and 4 that members of the family are entitled to equal treatment under the law with regard to conjugal relations and filiation, as well as in the exercise of parental authority and in other similar situations, subject to no discriminatory provision or criterion incompatible with the essential worth and dignity of the human person. Furthermore, the State has an obligation to protect the family.

136. Pursuant to the Family Code, in the event of a divorce or the dissolution of a marriage, it is the judge who decides on custody of the children, taking into account where their care and moral and material interests will best be served. Thus, underage children remain in the custody of the parent who can best provide for the children's care and moral and material interests, and the other parent must contribute financial support for the children in accordance with their ability to pay and as indicated by the judge.

137. On 19 February 2009, Supreme Decree No. 012 was issued to regulate job security for mothers and fathers working in the public or private sector. Under this decree, mothers and fathers, regardless of their marital status, benefit from job security from the start of a pregnancy until the child is 1 year old. They may not be dismissed, and no change may be made in their salary level or their post. In the event of non-compliance, the employer must reinstate the parent with pay and other social benefits for the same length of time that the employment contract was suspended, without prejudice to the applicable penalties for



infringements of social laws, thus safeguarding the rights of the mother or father in the relevant judicial proceedings.

138. In order to protect the right of all children to an identity and filiation, a presumption of paternity was introduced by Supreme Decree No. 011 of 19 February 2009.

## Article 24

139. Pursuant to the Code on Children and Adolescents (Act No. 2026, enacted on 26 October 1999), children and adolescents enjoy equal rights regarding their parents, without any distinction on the ground of their origin. Any distinction between children is prohibited and is subject to punishment by law. It is the duty of the State, society and the family to ensure that children and adolescents are given first priority in terms of their rights, protection and assistance. Furthermore, any form of violence against children and adolescents, either in the family or in society, is prohibited and punishable.<sup>17</sup>

140. Article 173 of the Family Code establishes that all children are equal without any distinction on the basis of their origin, and that they have the same rights and obligations with respect to their parents. Article 174 sets out the rights of children, which include the right to establish their maternal and paternal filiation and to bear their parents' surname, to be kept and brought up by their parents while they are minors, and to inherit from their parents.

141. Work is currently under way to reform the Code on Children and Adolescents.

142. In terms of public policy, the national human rights action plan sets out the actions to be taken by the competent bodies to ensure respect for the rights of children and adolescents. It also identifies the expected outcome, the deadline for reaching it and the State body responsible for implementing it. This plan has been implemented since 2009, and all of its objectives are due to be met by 2013. Action is therefore being taken to ensure protection for all the rights of children and adolescents and to promote decent living conditions.

## Article 25

143. The Constitution establishes that all citizens have the right to participate freely in the formation, exercise and control of political power, either directly or through their representatives, individually or collectively, and that their participation must be equitable, with equal conditions for men and women. It also sets out the rights of Bolivian citizens, such as the right to equal, universal, direct, individual, free and compulsory suffrage by secret ballot and with public counting of votes, from the age of 18.

144. Act No. 026 of 30 June 2010 (the Electoral Act) sets out political rights and duties in articles 3 to 5 and establishes the following forms of democracy that are open to everyone: intercultural democracy, direct and participatory democracy, and representative and community democracy. Article 11 of the Constitution establishes that participation is put into practice through referendums (a constitutional mechanism for direct and participatory democracy, whereby citizens decide by universal suffrage on legislation, policies or matters of public interest), the right of recall, assemblies, local councils and prior consultation. Furthermore, everyone has the right to vote and to be elected.

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<sup>17</sup> Ibid., arts. 58–61.

145. The vote in Bolivian democracy is universal, and each citizen's vote is of equal value.

146. The right to vote from abroad was introduced by the Transitional Electoral Act and was exercised in the general elections in December 2009. Article 27, paragraphs I and II, of the Constitution deals with Bolivians abroad, who have the right to participate in general elections in Bolivia. In addition, foreign nationals residing in Bolivia have the right to vote in municipal elections under the principle of international reciprocity.

147. Participation is to be equitable, with equal conditions for men and women, and is understood to include organization for the purposes of political participation, voting, elections, appointments, direct nominations and oversight.

148. Articles 10 and 11 of Act No. 26 stipulate that Bolivian intercultural democracy guarantees gender equity and equality of opportunity for women and men. Thus, candidate lists for senators, members of parliament, members of departmental and regional assemblies, municipal councillors and other elected authorities, and their alternates, must respect gender parity and alternation between women and men, whereby there shall be a female candidate followed by a male candidate, and then an alternate male candidate followed by an alternate female candidate, and so on.

149. The composition of the electoral branch was amended through the enactment of Act No. 018 of 16 June 2010 (the Act on the Plurinational Electoral Branch). It now comprises the Supreme Electoral Court, the local departmental courts, the electoral courts, polling-station panels and electoral officials. The Supreme Electoral Court has seven members, including at least three women.

150. The Act aims to regulate the electoral function, jurisdiction, competencies, duties, powers, organization, operation, services and responsibilities of the plurinational electoral branch, in an effort to guarantee intercultural democracy in Bolivia. Article 5 of the Act states that the electoral function is exercised by the plurinational electoral branch throughout the country and in circumscriptions abroad, in order to ensure the full and complementary exercise of direct and participatory democracy in both its representative and community forms.

## **Article 27**

151. The Constitution (arts. 4, 21 and 86) respects and guarantees freedom of religion and spiritual belief, in accordance with each individual's world view.

152. As a culturally diverse nation, the Plurinational State of Bolivia recognizes in its Constitution the 36 languages spoken by the native indigenous nations or peoples: Aymara, Araona, Baure, Bésiro, Canichana, Cavineño, Cayubaba, Chacobo, Chimán, Esse Eja, Guaraní, Guarasúwe, Guarayu, Itonama, Leco, Machajuyai-Kallawaya, Machineri, Maropa, Mojeño-Trinitario, Mojeño-Ignaciano, More, Moseten, Movima, Pacawara, Puquina, Quechua, Sirionó, Tacana, Tapiete, Toromona, Uru Chipaya, Wennhayek, Yaminahua, Auki, Yuracaré and Zamuco.<sup>18</sup>

153. Cultural diversity has been established as the foundation of the communitarian plurinational State, and interculturalism as the tool for creating cohesion and harmonious and balanced coexistence among peoples and nations, given that it is the primary responsibility of the State to preserve, develop, protect and disseminate the various cultures in the country.

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<sup>18</sup> Ibid., art. 5.

154. Within this context, the Ministry of Cultures was established by Supreme Decree No. 29894 of 7 February 2009 on the organizational structure of the executive branch of the plurinational State. The tasks of the Ministry include: drafting and implementing policies to protect and disseminate the various cultures in the country; protecting cultural, religious, documentary and historical treasures, and promoting their safekeeping and conservation; coordinating the drafting of cultural policies for the decolonization of the plurinational State; promoting the research, dissemination and practice of ancestral cultures and the cultures of original nations and indigenous peoples from an anthropological, sociological, architectural, archaeological, religious, ethnographic and economic point of view.

#### **IV. Compliance with the recommendations in the Committee's concluding observations on the second periodic report of Bolivia (CCPR/C/79/Add.74)**

##### **Recommendation in paragraph 26**

155. As has already been mentioned, the adoption by the Bolivian legislature of Act No. 3364 (Special Act Convening the Constituent Assembly) on 6 March 2006, with the aim of involving Bolivians in the adoption of a new constitution, was a major step towards the conclusion of a genuine social pact and the inclusion of the most vulnerable sectors of society.

156. The Constitution subsequently adopted guarantees human rights, including all the rights recognized in international human rights treaties (at the universal and regional levels), and recognizes that these rights are inviolable, universal, interdependent, indivisible and progressive, and that the State party has a duty to promote, protect and respect them.

157. Rights specific to groups that were at risk at the time were also included: these include the rights of children, adolescents and young people; the rights of families; the rights of older persons; the rights of persons with disabilities; the rights of persons deprived of liberty; and the rights of consumers and users.

158. Basic laws were also adopted to form the basis of the new legal system, including Act No. 025 of 24 June 2010 (the Judiciary Act) regulating the structure, organization and functioning of the judiciary. The Act recognizes and establishes native indigenous campesino courts within the judicial system and thus facilitates the exercise by native indigenous campesino nations and peoples of their basic right to access to justice. It also recognizes the validity and competence of their courts, whose officials apply their own principles, cultural values, rules and procedures.

159. Act No. 027 of 6 July 2010 on the Plurinational Constitutional Court establishes the structure, organization, functioning and procedures within the Court's jurisdiction, as well as the procedures for actions brought before the judges and courts called on to uphold the observance and validity of constitutional rights and freedoms and other laws.

160. Given the importance of the above structural reforms, and in light of the Human Rights Committee's recommendation, the new Code of Criminal Procedure was introduced by Act No. 1970 of 25 March 1999. Unlike the code it replaced, the new one safeguards the constitutional guarantees of both parties in a criminal case.

161. One of the main aims of Act No. 007 of 18 May 2010, amending the Code of Criminal Procedure, is to provide greater protection for victims by speeding up criminal trials, as in cases of *flagrante delicto*. The amendments also affect precautionary measures,

as the Act amends the Code of Criminal Procedure, the Criminal Code and the Sentence Enforcement Act.

### **Recommendation in paragraph 27**

162. The Constitution of the Plurinational State of Bolivia provides for mechanisms to guarantee the exercise and observance of the human rights of every person, establishing administrative disciplinary proceedings to punish violations and the excessive use of force by public officials. Article 15 establishes the following:

I. Everyone has the right to life and to physical, psychological and sexual integrity. No one shall be tortured or subjected to cruel, inhuman, degrading or humiliating treatment. There shall be no death penalty.

II. All persons, in particular women, have the right to be free from physical, sexual or psychological violence, both within the family and in society.

III. The State shall take the necessary steps to prevent, eliminate and punish gender-based and generational violence, as well as any act or omission that is intended to debase the human condition or cause death, pain and physical, sexual or psychological suffering, in either the public or the private spheres.

These provisions are further developed in the Prevention of Torture Bill so as to eliminate any cruel, inhuman or degrading treatment.

163. The Constitution establishes that the international treaties and conventions ratified by the Plurinational Legislative Assembly that recognize human rights and restrict the application of states of emergency take precedence over domestic law.

164. The Bolivian police now has a human rights directorate whose work involves the observance, protection and promotion of human rights within and outside the police. Human rights are now part of the curriculum.

165. The national human rights action plan devotes a chapter to the Bolivian police and human rights activities, with the aim of guaranteeing respect for human rights and international humanitarian law within the police and promoting the elimination of any kind of discrimination by police officers.

166. The last time a state of emergency was declared was in 2008, by Supreme Decree No. 29705 of 12 September, when a state of siege was declared in the department of Pando in order to maintain order there. The Organization of American States and the United Nations were informed of the situation for monitoring purposes.

### **Recommendation in paragraph 28**

167. Since the Constitution was enacted, the rights of all persons have been guaranteed and bodies have been set up to investigate the different kinds of violations, including those involving the police and security forces. The corresponding sanctions have also been introduced, and are applied either by internal disciplinary bodies or by the ordinary courts, as set out in laws, decrees and other legislation.

168. Article 114 of the Constitution provides as follows: "I. Any form of torture, disappearance, confinement, coercion, extortion or any other form of physical or moral violence is prohibited. Any public servant or public official who uses, instigates or consents to such acts shall be dismissed, without prejudice to the penalties prescribed by law. II. The

statements, acts or omissions obtained or made as a result of torture, coercion, extortion or any other form of violence shall be null and void *ab initio*.”

169. The following regulations were adopted by Supreme Decree No. 221886 of 31 July 2003:

(a) Regulations on police misconduct and punishment (four sections, 14 chapters, 142 articles);

(b) Regulations on the organization and functions of the National Directorate of Professional Responsibility (seven chapters, 23 articles);

(c) Handbook of the National Directorate of Professional Responsibility (four chapters, 12 articles).

170. These regulations determine, govern and guide the actions of public servants working for the Bolivian police, whose conduct must conform with established procedures and mechanisms. They also define what constitutes a misdemeanour or offence committed by a police officer, and set out the appropriate punishments. These range from a fine or suspension to dismissal, depending on the seriousness of the misdemeanour.

171. Act No. 101 of 4 April 2011, establishing the disciplinary regime for the Bolivian police, identifies misdemeanours and punishments, the competent authorities and the corresponding procedures, thereby guaranteeing an efficient and effective disciplinary procedure that respects human rights while upholding the dignity of public servants in the police force. A preliminary bill has been drafted on the establishment of a national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **Recommendation in paragraph 29**

172. There are currently two proposed amendments to Act No. 1008; they were brought before Congress in 2009 and taken up during the 2010 legislative session. However, pursuant to House Resolution 047/2010-2011, no action is taken on the bills of past legislatures, since they need to be brought into line with the Constitution in force since 7 February 2010.

173. The Ministry of the Interior, through the Office of the Deputy Minister of Social Defence and Controlled Substances and in collaboration with the European Commission, is carrying out a comprehensive study on coca, which will provide the basis for amendments to Act No. 1008 in the two legal texts.

174. The amendments to Act No. 1008 will establish two general laws: the General Coca Leaf Act and the Controlled Substances Act. The latter will be brought into line with the Constitution, which protects the native, ancient coca leaf as a cultural heritage, a renewable natural resource of biodiversity in Bolivia and a factor in social cohesion.

### **Recommendation in paragraph 30**

175. According to the international human rights instruments and domestic legislation dealing with prisons, inmates must be separated by sex. Bolivia has prisons for men and women all round the country, as well as for convicted offenders and persons in pretrial detention.

176. Under the 2010 annual operational management plan of the Prisons Directorate, prison infrastructure is due to be upgraded to improve living conditions for prisoners, who at the moment face overcrowding in facilities that are not suitable for separating inmates.

177. As for separating adults from juveniles in different custodial centres, building work started in the department of La Paz in 2004 on the Calahuma centre for adolescents and youths facing charges. In 2007, the Ministry of the Interior, through the Directorate-General of Prisons, took charge of the work on this rehabilitation centre. Having inspected the work done, it is now in the process of completing the administrative formalities to have basic services installed. Because of the delays, the centre could not be opened in 2009 as planned, but it is expected to open in 2011, when the first juveniles will be transferred from the prison in San Pedro de La Paz.

178. In 2009, the Directorate-General of Prisons prepared a handbook on the use of the “progressive system” for the professionals on the Penitentiary Council. The handbook was approved by Administrative Decision No. 01/09 of 7 April 2009 for use throughout the country. The progressive system focuses on making gradual progress at the various stages of imprisonment, taking account of the inmate’s responsibilities and skills in the areas of discipline, work and study.

179. In August and September 2009, the Directorate-General of Prisons ran training courses on the human rights of detainees for the administrative staff on the penitentiary councils in each facility in the department of La Paz, as well as for prison guards. The courses will be held again in 2010 in other prisons in the country.

### **Recommendation in paragraph 31**

#### **Ombudsman**

180. The position of Ombudsman was established by Act No. 1818 of 22 December 1997 (the Ombudsman Act) to ensure that personal rights and freedoms are effective and respected. The Ombudsman is responsible for promoting, enforcing, publicizing and defending human rights within the framework of the amendment made to the Constitution by Act No. 1585 of 12 August 1994. The institution and organization of the Ombudsman’s Office is provided for by articles 118 to 224 of the Constitution of 7 February 2009. Its role is to ensure the enforcement, promotion, dissemination and observance of individual and collective human rights under the Constitution, the law and international instruments. The Ombudsman’s mandate covers administrative work throughout the public sector and the activities of private institutions that provide public services. The Ombudsman’s Office also promotes the defence of the rights of native indigenous campesino nations and peoples, urban and multicultural communities, and Bolivian citizens abroad. The Ombudsman’s Office is an institution with operational, financial and administrative autonomy, as provided for by law. Its work is governed by the principles of free service, accessibility, expeditiousness and solidarity. It receives no instructions on how to do its work from any organ of State.

181. The Ombudsman’s Office is headed by the Ombudsman, who exercises his or her duties for six years, and whose appointment may not be renewed. The Ombudsman may not be prosecuted, detained, charged or tried for acts carried out in the performance of his or her duties (art. 119). The Ombudsman is appointed by no less than two thirds of the members of the Plurinational Legislative Assembly present for the vote. The appointment follows the publication of a vacancy announcement and an open competition for suitably qualified candidates drawn from people with documented experience in the defence of

human rights (art. 220). This process led to the appointment of the theologian Rolando Villena Villegas as Ombudsman for the period May 2010 to May 2016.

182. The tasks of the Ombudsman under Act No. 1818 are as follows:

(a) To institute proceedings for unconstitutionality, annulment, *amparo* and habeas corpus, without the need for specific instructions;

(b) To investigate and report, of his or her own motion or in response to a complaint, any acts or omissions that might entail a violation of human rights, guarantees, or individual and collective rights established in the Constitution or the law or in the international treaties and conventions adopted by Bolivia;

(c) To request information on the matter under investigation from the authorities and public servants, who may not withhold it for any reason;

(d) To transmit recommendations, reminders of legal obligations, and suggestions for the adoption of remedies and measures to all public administration bodies, to the Council of the Judiciary or to the Attorney-General's Office, whenever the acts are related to the administration of justice or constitute an offence;

(e) To propose amendments to laws, decrees and non-judicial decisions relating to human rights;

(f) To monitor the situation of detainees, with a view to ensuring that detention limits are not exceeded;

(g) To recommend that the Government sign international human rights treaties and conventions and that these be approved by the legislature;

(h) To enjoy free, unhindered access to places of detention, imprisonment, internment or confinement;

(i) To protect the multi-ethnic and multicultural nature of the Bolivian State and to promote the defence of the human rights of the country's indigenous and native peoples;

(j) To promote and recommend in the course of his or her duties the observance of international conventions and treaties relating to women's rights;

(k) To perform his or her duties without any interruption whatsoever, even in the event of a declaration of a state of emergency;

(l) To request any department of the public administration to officially second any technical officials whose specific and temporary services he or she requires;

(m) To devise, elaborate, implement and supervise programmes for the defence, promotion and dissemination of human rights, and to establish mechanisms for coordination with governmental and non-governmental organizations to that effect;

(n) To monitor the fundamental rights and duties of persons in the Armed Forces and the police;

(o) To negotiate technical or financial cooperation agreements with national and international organizations;

(p) To draft whatever regulations are required for the performance of his or her duties.

183. The State, the authorities, civil servants and individuals and companies who provide public services are under the obligation to cooperate urgently and immediately with the Ombudsman in the course of the latter's investigations. The Ombudsman's Office issues reasoned and informed decisions which take the form of recommendations or reminders of

legal obligations. The Office reports and answers for its actions to the Plurinational Legislative Assembly. It may also produce reports on specific issues.

184. The work of the Ombudsman's Office since 1998 has included the submission of 12 reports to the National Congress; the 2 most recent reports were submitted to the Plurinational Legislative Assembly.

## **Constitutional Court**

185. The Constitutional Court was established by Act No. 1836 (the Constitutional Court Act) of 1 April 1998 to oversee constitutionality and to ensure the primacy of the Constitution and the observance and enforcement of the fundamental rights and freedoms of persons, as well as the constitutionality of conventions and treaties, within the framework of the reform of the Constitution introduced by Act No. 1585 of 12 August 1994.

186. The Constitutional Court, as an institution and entity, was reorganized by articles 196 to 204 of the Constitution of 7 February 2009, which states that the function of the Plurinational Constitutional Court is to ensure the supremacy of the Constitution, oversee constitutionality and safeguard the observance and enforcement of constitutional rights and guarantees.

187. In accordance with the mandate set out in the Constitution, Act No. 027 (the Constitutional Court Act) establishes that constitutional jurisdiction is to be exercised by the Plurinational Constitutional Court with the aim of ensuring the supremacy of the Constitution, overseeing constitutionality and safeguarding the observance and enforcement of constitutional rights and guarantees.

188. Article 12 of Act No. 027 establishes that the Plurinational Constitutional Court is competent to hear and rule on the following:

1. Direct or abstract actions of unconstitutionality in relation to laws, statutes of autonomy, organizational charters, decrees and all kinds of regulations and non-judicial decisions.
2. Direct or abstract actions of unconstitutionality in relation to the unconstitutionality of laws, statutes of autonomy, organizational charters, decrees and all kinds of regulations and non-judicial decisions.
3. Conflicts of jurisdiction and powers between public authorities.
4. Conflicts of jurisdiction between the plurinational Government and the autonomous and decentralized entities, and between the latter.
5. Appeals against levies, taxes, fees, business taxes, duties or contributions introduced, modified or abolished in violation of the Constitution.
6. Appeals against decisions of the legislature, when these affect one or more rights, whoever is affected by them.
7. Review of actions for habeas corpus, *amparo*, protection of privacy and mandamus, and popular actions.
8. Proposals of the President of the Plurinational State, the Plurinational Legislative Assembly, the Supreme Court of Justice or the Agricultural and Environmental Court on the constitutionality of draft laws.
9. Prior verification of constitutionality for the purposes of ratifying international treaties.



10. The constitutionality of the procedure for partial reform of the Constitution.
11. Conflicts of jurisdiction between native indigenous campesino courts and the ordinary and agricultural and environmental courts.
12. Proposals of the native indigenous campesino authorities on the application of legal rules to a particular case.
13. Direct appeal for annulment.
14. Other matters as established by law.

### **Recommendation in paragraph 32**

189. In the past three years, the Bolivian Government has drawn up policies to combat the exploitation of children. One of the most important outcomes has been the “triple seal”, or certification, policy, which provides for an agreement between workers, businesses and the State to eliminate child labour; every product must have a triple seal to guarantee that it was produced without the use of child labour, as borne out by on-site inspections.

### **Recommendations in paragraphs 33 and 37**

190. One of the aims of the national human rights action plan entitled “Bolivia: Dignity for a Good Life 2009–2013” prepared with the participation of civil society was to draw up a State policy on the introduction of human rights into the educational curriculum at all levels, from preschool to higher education. The policy will be a long-term, sustainable policy, and will not be confined to formal education. In 2011, a special commission was set up to draft a plurinational plan on human rights education.

191. This commission has begun its work, collecting input for a participatory analysis of human rights education in Bolivia after establishing a number of principles based on the international standards in this area.

192. The new educational curriculum drawn up since 2008 reflects human rights principles and values such as non-discrimination and interculturalism and promotes bilingualism. Also, between 2006 and 2009, a total of 269 new educational facilities were built – more than doubling their number.

193. Act No. 070 of 20 December 2010 (the Avelino Siñani-Elizardo Pérez Education Act) establishes education as a basic right, sets out the principles of the new Bolivian education system and sociocultural and linguistic diversity, and implements the plurinational educational system.

### **Recommendation in paragraph 34**

194. The Constitution establishes the independence of the organs of the State and the mechanisms for cooperation between them, as mentioned earlier.

195. As has already been mentioned, in order to comply with the Committee’s recommendation, Act No. 025 (the Judiciary Act) was promulgated on 24 June 2010. The Act guarantees that the administration of justice will be free of charge and regulates its structure, organization and functioning. It lays the basis for a system of justice that is free of charge, humane and free of discrimination, that excludes no one, treats everyone equally and decently, and guarantees job security for judges, provided that they demonstrate

competence, professionalism and high standards of ethics, since access to justice is a basic human right and one of the most important social goods in society.

196. The Judiciary Act consists of 7 titles, 230 articles, 13 temporary provisions, 1 abrogation and 1 derogation. It observes the principle of plurality, which recognizes that the Bolivian people consist of native indigenous campesino nations and peoples and Afro-Bolivian intercultural communities.

197. The Judiciary Act (Act No. 025) establishes that this branch of government, based on plurality and legal pluralism, has the same constitutional rank as the legislative, executive and electoral branches of government, and operates on the principles of independence, separation, coordination and cooperation; thus, article 3, paragraph 2, states that the judiciary is founded on the principle of independence, that is, it does not answer to any other branch of government.

198. To guarantee this independence, on 16 October 2011 elections to the Supreme Court, the Council of the Judiciary and the Agricultural and Environmental Court were held by direct universal suffrage, as provided for in the Constitution and Act No. 045.

### **Recommendation in paragraph 35**

199. In accordance with the recommendation and the Constitution, the practices, culture and political and legal systems of the native indigenous campesino population have been recognized, and a special jurisdiction has been established.

200. In accordance with the Constitution, Act No. 073 of 29 December 2010 (the Jurisdiction Demarcation Act) provides for the harmonious practice of native indigenous campesino justice, within the limits of respect for human rights.

### **Recommendation in paragraph 36**

201. In 2007, the Bolivian Government invited the Office of the United Nations High Commissioner for Human Rights to set up an office in the country and provide technical support for the process of change. The High Commissioner's office in Bolivia has provided such cooperation in every area, making a positive contribution to the promotion, enforcement and observance of human rights in Bolivia.

202. According to the regulations of the National Human Rights Council, the High Commissioner's office in Bolivia supervises the national human rights action plan "Bolivia: Dignity for a Good Life 2009–2013".

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