



International Covenant on Civil and Political Rights

Distr.: General
6 December 2013
English
Original: Spanish

Human Rights Committee

Concluding observations on the third periodic report of the Plurinational State of Bolivia*

1. The Human Rights Committee considered the third periodic report of the Plurinational State of Bolivia (CCPR/C/BOL/3) at its 3010th and 3011th meetings (CCPR/C/SR.3010 and 3011), held on 14 and 16 October 2013. At its 3030th meeting (CCPR/C/SR.3030), held on 29 October 2013, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of the Plurinational State of Bolivia and the information it contains. It appreciates the constructive dialogue held with the high-level delegation of the State party on the measures adopted during the reporting period to implement the provisions of the Covenant. The Committee wishes to thank the State party for its written replies (CCPR/C/BOL/Q/3/Add.1) to the list of issues (CCPR/C/BOL/Q/3), which were supplemented by the delegation's oral responses and additional information provided in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and other measures adopted by the State party:

(a) A broad legislative framework for the protection of human rights, including Comprehensive Act No. 348 of 27 February 2013, which guarantees women a life free from violence;

(b) Anti-discrimination measures, together with the establishment of the National Committee against Racism and All Forms of Discrimination in 2011 and the creation of departmental committees in Chuquisaca and Tarija;

(c) The Plurinational Constitutional Court decision of 2012 in which the Court ruled that the prohibition of expressions of disrespect was unconstitutional.

* Adopted by the Committee at its 109th session (14 October to 1 November 2013).



4. The Committee welcomes the State party's ratification of or accession to the following international human rights instruments:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (12 July 2013);

(b) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (23 May 2006);

(c) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (27 September 2000);

(d) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (16 October 2000);

(e) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (3 June 2003);

(f) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (22 December 2004);

(g) The International Convention for the Protection of All Persons from Enforced Disappearance (17 December 2008);

(h) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto (16 November 2009); and

(i) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

C. Principal subjects of concern and recommendations

5. The Committee takes note of the information provided by the State party confirming that the provisions of the International Covenant on Civil and Political Rights may be invoked in the domestic courts and are directly applicable, as indicated in the State party's additional replies. The Committee is nevertheless concerned at the absence of any specific procedure for implementing the Committee's Views under the Optional Protocol (art. 2).

The State party should ensure that the national legal order is fully compliant with its obligations under the Covenant. To that end, the State should ensure that officials responsible for the administration of justice and the general public are aware of the Covenant rights and the fact that they are directly applicable under national law. The State party should also establish a mechanism for the implementation of the Committee's Views.

6. The Committee takes note of the new provisions governing states of emergency in the Constitution. The Committee is nevertheless concerned that, notwithstanding its previous concluding observations (CCPR/C/79/Add.74, para. 14), there is no law that clearly prohibits derogation from the rights set forth in article 4, paragraph 2, of the Covenant during a state of emergency (art. 4).

The Committee recalls its general comment No. 29 (2001) on derogations during a state of emergency and urges the State party to prepare legislation containing provisions on states of emergency which clearly stipulate that no derogation from the rights protected under article 4, paragraph 2, of the Covenant is permitted under any circumstances.

7. Although the Committee applauds the legislative and regulatory framework adopted to eliminate all forms of discrimination, it is concerned by the inadequacy of the

mechanisms and resources for its implementation and by the lack of information on the progress of criminal or administrative proceedings involving discrimination cases. The Committee is also disturbed about the persistence of impunity for acts of violence and discrimination on grounds of sexual orientation or gender identity (arts. 2 and 26).

The State party should ensure that its public policies are such as to ensure that sufficient resources and mechanisms are in place for the implementation of its legislative framework to combat discrimination at all levels of the State. It should also conduct extensive campaigns to educate and sensitize the general public and to provide training for members of the public sector that will promote tolerance and respect for diversity. The State party should state publicly that it will not tolerate social stigmatization, discrimination or violence of any kind based on a person's sexual orientation or gender identity. The State party should also ensure that all acts of violence motivated by the victim's sexual orientation or gender identity are investigated and that the perpetrators are brought to justice and punished. It should also take appropriate steps to ensure that acts of discrimination are investigated and that victims obtain reparation.

8. The Committee welcomes the gradually increasing involvement of women in political life. It nevertheless repeats its previous recommendation (CCPR/C/79/Add.74, para. 21) and notes with concern that the majority of women in political posts are alternates and that indigenous women continue to face obstacles in obtaining decision-making positions. The Committee also notes with particular concern the murder of two female town councillors in 2012 (arts. 2, 3, 25 and 26).

The State party should step up its efforts to eliminate gender stereotypes and conduct awareness-raising campaigns to that end. It should also adopt any temporary special measures necessary to continue to increase women's — and particularly indigenous women's — participation in public life at all levels of the State and their representation in decision-making positions in the private sector. The Committee encourages the State party to take practical steps on an urgent basis to issue implementing regulations for the new Act on Political Harassment and Violence against Women so as to ensure that the perpetrators of political harassment and murders of women are investigated, tried and punished in an appropriate manner and that victims are properly protected.

9. The Committee wishes to express its concern about the fact that prior court authorization is needed in order for therapeutic abortions and abortions following rape, statutory rape or incest not to be punishable offences. It is also concerned by reports according to which only six legal abortions have been authorized by the courts in the State party. The Committee is concerned by reports which indicate that a large percentage of maternal deaths are due to unsafe abortions and that an alarming number of criminal investigations of women suspected of having had illegal abortions are being conducted. The Committee also finds the high rate of teen pregnancies to be regrettable (arts. 2, 3, 6 and 26).

The Committee recommends that the State party:

(a) Lift the requirement for prior court authorization for therapeutic abortions and abortions following rape, statutory rape or incest in order to effectively guarantee access to legal, safe abortions;

(b) Refrain from prosecuting women who have had an illegal abortion because of the difficulties involved in obtaining the required prior court authorization; and

(c) **Ensure the effective implementation of current national health plans and programmes for educating people and raising their awareness about the importance of using contraceptives and about their sexual and reproductive health rights and ensure their implementation at the formal (schools and universities) and informal (mass media) levels.**

10. Although the Committee welcomes the measures taken to eliminate violence against women, it takes note of reports that the regulatory framework has not yet been equipped with the necessary resources for the implementation of those measures. The Committee regrets that the number of shelters is so limited (arts. 3 and 7).

The State party should step up its efforts to prevent and eliminate all forms of gender-based violence by ensuring the effective application of the legislative framework at all levels of the State and providing the necessary resources for that purpose. The State party should investigate acts of violence against women promptly and effectively, prosecute the perpetrators of such acts and punish them appropriately. The State party should also expedite the updating of the National Information System on Domestic Violence so as to make it possible to adopt suitable measures in that regard. In addition, the State party should ensure that victims are able to avail themselves of their right to redress, which includes fair and adequate compensation, and their right to protection by, inter alia, increasing the number of shelters, particularly at the municipal level.

11. The Committee is concerned by the large number of mob attacks that have occurred and by reports that criminal proceedings are rarely brought against those who may be responsible (arts. 6 and 7).

The State party should, as a matter of urgency, take steps to ensure that all mob attacks are investigated without delay, the perpetrators are duly tried and punished, and the victims receive appropriate reparation. The State party should also strengthen the role of the police and the Public Prosecution Service in preventing and prosecuting these offences and should intensify its prevention and awareness-raising campaigns in schools, the media and elsewhere.

12. The Committee repeats its previous concluding observations (CCPR/C/79/Add.74, paras. 26 and 28) and expresses its concern about the fact that there have been so few trials and convictions for human rights violations committed under the de facto regimes of 1964–1982. The Committee is also concerned by the fact that 70 per cent of all reparations claims have been dismissed and that the burden of proof borne by victims may have been excessive. The Committee also regrets that only 20 per cent of the amount of compensation that has been awarded has been settled to date and that the only form of redress that has been granted has been financial in nature (arts. 2, 6 and 7).

The State party should:

(a) **Actively investigate human rights violations committed during the period in question so as to identify those responsible, prosecute them and punish them accordingly;**

(b) **Ensure that the Armed Forces cooperate fully in the investigations and promptly hand over all the information at their disposal;**

(c) **Revise the standards of proof in relation to acts for which reparation is sought so that the burden of proof borne by victims is not an insurmountable obstacle; establish a mechanism for appeal and review of applications; and make available the resources needed to ensure that victims will receive the full amount of compensation awarded to them;**

(d) Guarantee the effective enjoyment of the right to full redress, including psychosocial care and counselling and the honouring of historical memory, as established in Act No. 2640. Particular attention should be paid to gender considerations and victims in vulnerable situations.

13. The Committee is concerned that the rules of military criminal law have still not been adjusted to reflect the Plurinational Constitutional Court ruling which excludes human rights violations from the jurisdiction of military courts and that the definition of the offence of torture is not in line with international standards. The Committee also notes that there have been ongoing delays in the prosecution of cases involving torture and ill-treatment and that no national prevention mechanism has yet been established (arts. 2, 6 and 7).

The State party should amend the current rules of military criminal law to exclude human rights violations from military jurisdiction. It should also amend the Criminal Code to include a definition of torture that is fully in line with articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and with article 7 of the Covenant. The State party should ensure that all alleged acts of torture or ill-treatment are promptly investigated, that the perpetrators are prosecuted and punished in a manner that is commensurate with the seriousness of the offence and that the victims obtain appropriate redress and protection. The State party should expedite its adoption of the measures required to establish a national mechanism for the prevention of torture and ensure that that body is provided with sufficient resources to enable it to operate efficiently.

14. The Committee is concerned that the proceedings relating to the incidents of racial violence that occurred during the massacre of El Porvenir, Pando, and in Sucre in 2008 have still not advanced through the courts (arts. 2, 6, 7 and 14).

The State party should speed up the proceedings relating to the incidents of racial violence that occurred in Pando and in Sucre in 2008 in order to put an end to the prevailing situation of impunity. The State party should also award full redress to all the victims, including appropriate medical and psychosocial treatment for the injury suffered.

15. The Committee repeats its previous recommendation (CCPR/C/79/Add.74, para. 24) and takes note with concern of reports of excessive use of force by law enforcement officers during demonstrations, as occurred in Chaparina during the Seventh Indigenous March in 2011 and in Mallku Khota in 2012 (arts. 6, 7 and 9).

The State party should continue taking steps to prevent and put a stop to the excessive use of force by law enforcement officers, strengthen the human rights training that it provides and hold regular human rights courses, and ensure that officers comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The State party should also ensure that all complaints of excessive use of force are investigated promptly, effectively and impartially and that those responsible are brought to justice.

16. The Committee is concerned by the fact that there is no explicit prohibition of corporal punishment as a disciplinary measure in the home or in institutional settings. The Committee is also concerned that corporal punishment continues to be used as a punishment in the community-based justice system (arts. 7, 24 and 27).

The State party should take steps to put an end to corporal punishment in all domains. It should also encourage non-violent forms of discipline as alternatives to corporal punishment and conduct public information campaigns in the native

indigenous campesino and other jurisdictions in order to raise awareness among the general public of the prohibition and harmful effects of corporal punishment.

17. While recognizing the State party's efforts to combat human trafficking, the Committee is concerned by reports that trials for this crime are rare. The Committee is also concerned that the protocols on prevention, protection and rehabilitation of victims have not yet been implemented (arts. 7 and 8).

The State party should ensure the effective application of the legal and regulatory framework that is in place at all levels of government to combat trafficking and smuggling of persons, provide the necessary resources for this purpose and compile disaggregated data on the scale of the problem. The State should also ensure that reports of these practices are investigated, that those responsible are brought to justice and sentenced to appropriate penalties and that victims receive protection in comprehensive treatment centres, free legal advice and redress, including rehabilitation. The State should run prevention and sensitization campaigns to make the general public aware of the negative effects of trafficking and smuggling of persons.

18. While recognizing the State party's efforts to combat the practice of bonded and captive labour among the Guaraní people, the Committee is disturbed by reports which indicate that some 600 Guaraní families are still living as captives (arts. 8 and 27).

The State party should redouble its efforts to prevent the use of bonded labour and punish the persons responsible for that practice by developing a sustainable State policy, in consultation with those subjected to bonded labour, that will extend the transitional interministerial plan and improve the Guaraní people's living conditions. The State party should establish effective oversight mechanisms to ensure that employers observe the relevant legislative and regulatory provisions, that violations of those provisions are investigated and the offenders punished, and that victims have access to justice.

19. The Committee is concerned by the fact that more than 80 per cent of the prison population has not been brought to trial. The Committee is also concerned at the fact that the criteria used for ordering alternatives to custodial measures do not take account of the itinerant nature of some members of the population, which makes the use of pretrial detention more likely. The Committee notes that, as a result, the State party has adopted amnesty decrees under which it may pardon detainees who have not been tried. The Committee also finds it regrettable that access to free legal counsel for persons in detention is limited (arts. 9 and 14).

The State party should take concrete action to review its regulations on pretrial detention and to expedite the application of alternatives to that form of detention. These alternative measures should be based on criteria that take account of the itinerant nature of some members of the population and thus remove the obstacles to the effective use of such alternatives. The State party should also step up training for officials responsible for the administration of justice in order to ensure that pretrial detention is not the norm and that its duration is strictly limited, in accordance with article 9, paragraph 3, of the Covenant. The State party should also guarantee that anyone who is detained has effective access to a lawyer.

20. The Committee is concerned by reports of prison overcrowding in excess of 230 per cent of capacity. It is also concerned by the use of systems of inmate self-government in prisons in cases where those systems make it impossible for the prison authorities to effectively control inter-prisoner violence. The Committee is also concerned about the large number of children now living in prison with their families (arts. 10 and 24).

The State party should take urgent steps to do away with overcrowding in prisons through the use of alternative forms of punishment such as electronic tagging, conditional release and community service. The State party should improve prison conditions and ensure that those awaiting trial are held separately from convicted prisoners, in accordance with the Covenant. The State party should also maintain effective control of all prison facilities and should investigate any incidents of violence or extortion among prisoners, prosecute those responsible and impose appropriate penalties upon them. The State party should also ensure that minors live with their father or mother in prison only when this is in the best interests of those children and that effective alternative forms of guardianship are available when that is not the case.

21. The Committee is concerned that there is no alternative civilian service that permits conscientious objectors to exercise their rights in accordance with the provisions of the Covenant (art. 18).

The State party should promulgate legal provisions that recognize the right to conscientious objection to military service and establish an alternative to military service that is accessible to all conscientious objectors and is not punitive or discriminatory in terms of its nature, cost or duration.

22. The Committee repeats its previous concluding observations (CCPR/C/79/Add.74, para. 19) and takes note with concern of the continuing reports of widespread political interference and corruption in the judicial system. The Committee is also concerned that the criteria used for the appointment of judges effectively exclude lawyers who have defended anyone convicted of offences against national unity. The Committee is also concerned at the long delays in the administration of justice, the poor geographical coverage of the judicial system and the limited number of public defenders. It is also concerned at the lack of information on mechanisms for ensuring the compatibility of the native indigenous campesino justice system with the Covenant (art. 14).

The State party should redouble its efforts to provide legal and practical guarantees of judicial independence and pursue its efforts to establish, as a matter of urgency, a system of judicial appointments and judicial service based on objective, transparent criteria that do not conflict with the right to a defence, together with an independent disciplinary regime for the judiciary and the Public Prosecution Service. It should also step up its efforts to combat corruption, particularly in the police force and among officials responsible for the administration of justice, by undertaking prompt, thorough, independent and impartial investigations into all cases of corruption and imposing not only disciplinary sanctions but also criminal penalties on the persons found to be responsible. The State party should also develop, as a matter of priority, a national policy for reducing the backlog of court cases, increasing the number of courts and appointing more judges and public defenders, in particular in rural areas. The Committee urges the State party to set up the necessary mechanisms to ensure that the native indigenous campesino justice system is at all times compliant with due process and other guarantees established in the Covenant.

23. While recognizing the State party's efforts to combat child labour, the Committee is concerned at the persistence of this problem and at the lack of information on measures to combat the sexual exploitation of children (arts. 8 and 24).

The State party should redouble its efforts to ensure the effective application of the legal and regulatory framework for the elimination of child labour and child sexual exploitation and should ensure that violations of the relevant legislation are effectively investigated and those responsible are tried and punished. The State party should also adopt sustainable strategies for providing support to families at risk of becoming victims of such practices and reinforce its awareness-raising campaigns.

24. The Committee is concerned by reports of verbal and physical violence against journalists and the increasing number of criminal proceedings being brought against them. The Committee is also concerned about Act No. 351 of 2013 and its implementing regulations (Supreme Decree No. 1597), under which the legal status of NGOs can be revoked for non-compliance with sectoral policies or involvement in activities other than those referred to in their statutes (arts. 7, 19 and 22).

Recalling its general comment No. 34 (2011) on freedoms of opinion and expression, the Committee recommends that the State party ensure that any restriction imposed on the freedom of the press should be in accordance with article 19, paragraph 3, of the Covenant. The Committee also recommends that reports of attacks on journalists should be effectively investigated and those responsible should be tried and punished. The State party should also amend its legislation on the legal status of NGOs in such a way as to eliminate the requirements that place excessive restrictions on their ability to operate freely, independently and effectively.

25. The Committee welcomes the preliminary framework bill on consultation mentioned in the State party's replies, but is concerned by information to the effect that, where extractive projects are concerned, the preliminary bill as yet provides only for consultation with the peoples affected, but not their free, prior and informed consent. The Committee is also concerned at reports of tensions in the Isiboro Securé National Park and Indigenous Territory caused by a road-building project that does not have the support of all the communities concerned (art. 27).

The State party should ensure that the preliminary framework bill on consultation complies with the principles set forth in article 27 of the Covenant and provides guarantees that indigenous communities' free, prior and informed consent will be sought when decisions are to be taken concerning projects that have a bearing on their rights and that, in particular, all the indigenous communities concerned will take part in the consultation process and that their views will be duly taken into account. The State party should also ensure that indigenous communities' free, prior and informed consent is obtained through representative institutions before any measures are adopted that would substantially jeopardize or interfere with culturally significant economic activities of those communities.

26. The State party should widely disseminate the Covenant, the Optional Protocol to the Covenant, the text of its third periodic report, the written replies it has provided in response to the list of issues drawn up by the Committee and the present concluding observations so as to raise awareness among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into all the official languages of the State party. The Committee requests the State party, when preparing its fourth periodic report, to broadly consult with civil society and NGOs.

27. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, within a year's time the State party should provide it with information on its implementation of the recommendations set forth by the Committee in paragraphs 12, 13 and 14 above.

28. The Committee requests the State party to provide specific, up-to-date information on all its recommendations and on the Covenant as a whole in its next periodic report, which will be due on 1 November 2018.