



人权理事会  
第十九届会议  
议程项目 2  
联合国人权事务高级专员的年度报告以及  
高级专员办事处的报告和秘书长的报告

## 联合国人权事务高级专员的年度报告

增编

### 联合国人权事务高级专员关于人权高专办在多民族玻利维亚国活动的 报告\*\*\*

#### 概要

该国在实施 2009 年《宪法》所设想的改革的过渡进程中继续前进。在这方面，在制定反对种族主义和一切形式歧视的政策和措施方面取得了重大进展，包括建立了一个多元、参与性的反对种族主义和一切形式歧视全国委员会，分析了种族主义现状以及该国存在的不同形式的歧视，并以协商一致方式起草了打击这些现象的行动计划。

妇女的健康权和受教育权等领域的与国家人权政策有关的一些指标和生活在贫困或极端贫困中的人口数据均显示出积极的变化趋势。这包括孕产妇和儿童死亡率及辍学率的降低，以及在制定多民族人权教育计划方面的进展。一些方案，诸如扫盲后方案，证明对弱势群体有利。

对所谓“黑色十月”案的定罪是打击有罪不罚现象的一个重要步骤。然而，其他象征性的审判进展缓慢，并且一再推迟。

\* 本文件迟交，以反映最新信息。

\*\* 本报告摘要以所有正式语文分发。作为本文件附件的报告本身仅以英文和西班牙文印发。



10 月，司法机构高级成员和多民族宪法法院成员的首次选举以和平方式举行，并得到广泛的公众参与。这些机构的新组成反映了跨文化性和性别平等。无效票和空白票的比例很高，反对派对整个选举过程给予了批评。对预选候选人和向选民提供信息的程序都需要审查。

在选举之前及在实施旨在扩大诉诸司法的渠道、加强司法机构独立性和打击司法官员腐败的一系列意义深远的改革之前那段时期，司法危机曾出现恶化。

落实土著人民的权利陷于停顿，特别是涉及他们就可能影响他们的行政或立法提案和措施而被咨询的权利。一些土著人组织了要求尊重他们权利的示威活动。在此背景下，玻利维亚土著人民联合会领导了一场保卫伊西博罗土著居民保护地国家公园的游行，但对游行使用了过度的武力。游行到达拉巴斯后，政府和领导游行的土著领导人达成协议，其中包括颁布第 0180 号法律。政府还推动设立高级特别调查委员会。

在非洲人后裔国际年，非裔玻利维亚人成功地设立了一个代表基层组织的全国论坛，但是限制他们享受经济、社会和文化权利的情况仍然存在。

据新闻界人士称，私刑案件数量四年来首次下降。然而，针对妇女的暴力水平仍然令人担忧。还出现了个别警察过度使用武力的案件，这些案件侵犯了受害者的生命权或人身完整权。

报告还提到了以前建议的执行情况，介绍了人权高专办开展的主要活动，以及高级专员提出的改善玻利维亚境内人权状况的两项新建议。

## Annex

### Report of the United Nations High Commissioner for Human Rights on the activities of her Office in Bolivia

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## **I. Introduction**

1. The Office of the United Nations High Commissioner for Human Rights in Bolivia (OHCHR-Bolivia) was established by an agreement signed in February 2007 between the High Commissioner and the Government of Bolivia and approved by the Congress on 13 July 2007.
2. On 18 May 2010, the Office's mandate was extended to August 2013. Its main activities are to provide technical assistance to public institutions and civil society organizations, promote human rights and monitor and report on the human rights situation in the country.

## **II. National context**

3. The Plurinational Legislative Assembly continued to work on bringing the legislative framework into line with the 2009 Constitution, although less intensively than in the previous year. Developments in this area include Act No. 0144 on the revolution in agricultural production and Act No. 0164 on telecommunications and information and communication technologies.
4. The Ombudsman published a report on the human rights situation in 2010, as well as reports on specific human rights issues. The Ombudsman's Office is in a period of transition while it readjusts its organization and activities to the context of the plurinational State, in particular by stepping up its activities in the area of indigenous peoples' rights.
5. A number of demonstrations were held in the country's main cities to protest at price increases for various basic necessities and to support wage demands by the Central Obrera Boliviana (Bolivian Workers' Confederation). Persons deprived of their liberty also organized prison protests demanding better treatment, especially their right to adequate food. Some of these protests were resolved through negotiations with the Government. However, the police used excessive force to put down the protests in La Apacheta (La Paz) and Yucumo (Beni).
6. On 25 September, the police used excessive force to disperse some 700 indigenous people taking part in a protest march against the building of a road through the Isiboro Sécur National Park and Indigenous Territory (TIPNIS). These events triggered a serious political crisis and intense public debate, prompting the resignation of two ministers and other senior public officials. President Evo Morales apologized publicly, condemning the police's excesses and abuses, which he said had not been ordered by the Government. He then pushed for the adoption of Act No. 0180 in order to veto the plan to build a road inside the national park.
7. The Bolivian police are experiencing a long-standing crisis of credibility, especially with regard to guaranteeing respect for human rights. In 2011, they faced criticism over allegations that police officials had committed illegal acts, resulting in the resignation and dismissal of senior police officials. To combat corruption and other illegal conduct in the police force, the Ministry of the Interior pushed for the adoption of a plan to reorganize and overhaul the police, including new internal disciplinary rules.
8. Pursuant to the Constitution, on 16 October the first elections of senior judicial officials were held in an atmosphere of calm and public participation.
9. Bolivia ratified the Additional Protocol to the International Covenant on Economic, Social and Cultural Rights and the procedure for depositing the instrument of ratification is under way. The Government engaged in a dialogue with the Committee on the Elimination of Racial Discrimination on its combined seventeenth to twentieth periodic report on the implementation of the International Convention on the Elimination of All Forms of Racial

Discrimination (CERD/C/BOL/17-20). It also submitted the reports due to the Human Rights Committee and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

### **III. Human rights situation**

#### **A. Public policies against racism and discrimination**

10. Pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination and the newly adopted Act No. 045 of 2010, the National Committee against Racism and All Forms of Discrimination was established on 11 February 2011. Its rules of procedure define it as the national lead entity for public policies in this area.

11. It is particularly important that the Committee's composition should be broad-based and pluralist and that it should assign responsibilities for the formulation of public policies against racism and all forms of discrimination to authorities from different levels of government. The Government has allocated special resources for the functioning of the Committee.

12. Acting on the recommendations made by the Committee on the Elimination of Racial Discrimination and in the framework of the Human Rights Council's Universal Periodic Review, the National Committee against Racism and All Forms of Discrimination, chaired by the Vice-Minister for Decolonization, drew up the National Action Plan against Racism and All Forms of Discrimination 2012-2015 on a participatory basis. The Plan comprises 16 programmes, including the system for recording and monitoring complaints, which has already registered over 110 cases.

13. Mention should also be made of the promulgation of Supreme Decree No. 1022 declaring 17 May the National Day of Struggle against Homophobia and Transphobia.

#### **B. Rights of Afro-Bolivians and indigenous peoples**

##### **1. Rights of Afro-Bolivians**

14. Government policies in favour of Afro-Bolivians were carried out in coordination with the Ministries of Justice and Education. Afro-Bolivian organizations set up the National Council of the Afro-Bolivian People, a non-governmental forum made up of representatives of rural and urban grass-roots organizations. The Council also participates in the National Committee against Racism and All Forms of Discrimination and the National Human Rights Council.

15. The information available<sup>1</sup> on Afro-Bolivian rural communities indicates that limitations on their enjoyment of the rights to health, education, housing and adequate food persist, especially for women, children and older persons.

<sup>1</sup> World Food Programme: "Evaluación de la seguridad alimentaria de los pueblos afrodescendientes en las comunidades de los Yungas de La Paz". Available at: <http://es.wfp.org/sites/default/files/pma-afrobolivianosyyungas.pdf>.

## 2. Right to consultation

16. During the reporting period, there was an increase in complaints alleging violations of indigenous peoples' right to consultation. The State has approved and implemented a number of projects without the prior consultation of indigenous peoples stipulated by international law. OHCHR-Bolivia notes that while this right is recognized in the Constitution and in the law incorporating the United Nations Declaration on the Rights of Indigenous Peoples into domestic law, the State does not yet have a specific legal framework (except in the case of hydrocarbons) or institutional mechanisms that guarantee respect for the right to consultation.

17. In this connection, OHCHR-Bolivia received complaints about lack of consultation or free, prior and informed consent on the exploration and exploitation of natural resources in La Paz, Oruro, Potosí, Tarija and Santa Cruz, as well as on the drafting process for new laws such as Act No. 0144.

18. One noteworthy case is that involving the 64 indigenous communities of the Mojeño, Yuracaré and Chimán peoples in the Isiboro Sécure National Park and Indigenous Territory (TIPNIS) and the plan to build a section of the Villa Tunari-San Ignacio de Moxos highway across the territory. TIPNIS qualified for consultation on the road project on two counts : it has been a national park since 1965 and a titled indigenous territory since 2008.

19. The Confederation of Indigenous Peoples of Bolivia convened an indigenous march in defence of TIPNIS and indigenous peoples' rights, which set out on 15 August from Trinidad (Beni) and reached La Paz on 19 October. Before and during the march, OHCHR-Bolivia received complaints of threats and intimidation suffered by a number of indigenous leaders and human rights defenders.

20. In this context, sectors of the population who viewed the indigenous marchers' demands as conflicting with their interests tried to obstruct the march's progress. Near Yucumo (Beni), a group of individuals, most of them belonging to the Confederación Sindical de Comunidades Interculturales de Bolivia (Trade Union Confederation of Intercultural Communities of Bolivia), blocked the way for more than 20 days.

21. On 24 September, several marchers stopped the Foreign Minister, David Choquehuanca Céspedes, forcing him to cross the police barrier near the indigenous encampment and march with them against his will for some seven kilometres. A number of marchers and police were injured during this incident.

22. The next day, the police launched an operation, in the course of which OHCHR-Bolivia observed the excessive use of force against indigenous marchers, including women, children, human rights defenders and medical and paramedical staff. According to the Beni prosecutor's office, 70 people, including children, were injured, most of them slightly. In addition, 250 marchers were detained for 17 hours, transferred without knowing where they were going and only released when residents of Rurrenabaque pressured the police to let them go. Several children were temporarily separated from their parents as a result of the police action. President Morales apologized publicly on two occasions for the police's excesses and abuses.

23. Five days after the march arrived in La Paz, the Government and indigenous peoples' representatives reached an agreement, the key part of which guaranteed, by means of Act No. 0180, that the road would not be built in TIPNIS. The Act also included a number of commitments in response to 15 other points raised in the marchers' demands. The prosecutor's office launched an investigation into the violent events of 24 and 25 September and the Government arranged for a high-level investigatory commission, comprising national and international experts, to be set up to investigate the incident impartially. The Ombudsman published his report, alleging that several police chiefs and Government officials, including the former Minister of the Interior, had been involved in

the planning and execution of the police operation. The Minister resigned in order to facilitate the investigation.

### **3. Political rights of indigenous peoples and autonomy**

24. OHCHR-Bolivia was concerned about the violation of the political rights of two Yuracaré and Mojeño indigenous members of the Departmental Legislative Assembly of Santa Cruz, who, after being elected in April 2010 according to their own communities' procedures, were prevented from taking office for over a year by a majority of members of the Departmental Assembly.

25. Various rulings by different judicial bodies and the Supreme Electoral Tribunal had confirmed the legitimacy of the election and ordered the Departmental Assembly to instate the two indigenous members. When the Assembly refused to comply with the order, a warrant for the arrest of its President and Vice-President was issued on 6 May. On 19 May 2011, at a tumultuous meeting of the Assembly, the indigenous members were finally instated.

26. To date, the 11 municipalities that are in the process of converting to indigenous autonomies have yet to complete the procedure for approving their autonomous statutes and no results are expected any time soon. Indigenous organizations claim that the legal procedure for gaining autonomy is slow and complicated and that the many requirements that have to be fulfilled are impeding the full exercise of the right to autonomy and self-government.

### **4. Highly vulnerable indigenous peoples**

27. Effective measures for the protection of highly vulnerable indigenous peoples remain to be taken. Since last year, the Office of the Deputy Minister of Rural Native Indigenous Justice has been working on a collective, participatory basis to draft a bill on such protection, which has not yet been submitted to the Legislative Assembly. OHCHR-Bolivia is concerned about the serious deterioration in the conditions of some of these peoples, as a result of the failure to take appropriate action to guarantee, inter alia, their rights to health and education and their collective rights to their territories. The health situation of the Yuqui people, whose members continue to suffer from preventable diseases such as tuberculosis, warrants particular attention. The activities carried out thus far by State and human rights institutions have not had a noticeable impact on reducing the degree of vulnerability of these peoples.

28. Moreover, the Office remains concerned about the absence of governmental programmes of humanitarian support to the communities of the Guaraní people who are subject to servitude<sup>2</sup>. However, progress was reported in the case before the judiciary on the land restitution process in Alto Parapetí, even though the landowners affected by the restitution managed to delay the award of community land titles.

## **C. Economic, social and cultural rights**

29. According to Economic Commission for Latin America and the Caribbean (ECLAC) data,<sup>3</sup> between 2002 and 2009 the percentage of the population living in poverty fell from

<sup>2</sup> Permanent Forum on Indigenous Questions, "Mission to Bolivia – Report and recommendations", 28 May 2009.

<sup>3</sup> [www.eclac.cl/prensa/noticias/comunicados/8/45168/tabla-pobreza-indigencia-18países-es.pdf](http://www.eclac.cl/prensa/noticias/comunicados/8/45168/tabla-pobreza-indigencia-18países-es.pdf).

62.4 per cent to 54 per cent and that of the population living in extreme poverty from 37.1 per cent to 31.2 per cent.

30. With respect to education, Act No. 070, adopted in December 2010, aims to transform the existing education system into a system offering free, universal, democratic, participatory, community-based, decolonizing and quality education on a non-discriminatory basis. In this framework, the Ministry of Education presented officially the new curriculum design that will underpin the plurinational education system. It is also leading a participatory process to draw up a plurinational human rights education plan in conjunction with the Ministry of Justice, the Ombudsman's Office and the Office of the United Nations High Commissioner for Human Rights.

31. By August, 160,215 people in 112 provinces and 337 municipalities had taken part in the "Yes, I can go on" post-literacy programme, receiving instruction in various native indigenous languages.

32. Moreover, the Juancito Pinto cash transfer programme, involving the payment of 200 bolivianos a year to school-age children, has benefited 1,747,945 boys and girls in the first to sixth years of primary school and the first and second years of secondary school, <sup>4</sup> thereby assisting low-income families and creating greater opportunities for children to stay in school.<sup>5</sup>

33. With regard to the right to health, according to official figures 61,838 mothers and 74,691 children nationwide received the Juana Azurduy cash transfer in August. Since recipients of this conditional transfer have no health coverage, the payment helped reduce the under-1 mortality rate to 41.65 per 1000 in 2010.<sup>6</sup> Thanks to the cash transfer and the Zero Malnutrition Programme, chronic malnutrition declined from 21 per cent in 2010 to 20 per cent in 2011.<sup>7</sup> Nevertheless, for every 1,000 live births, there are 63 deaths of children under the age of one year.

34. Although the progress outlined above is significant, differences remain among different departments of the country. According to data from the same source, in 2011 chronic malnutrition declined in only four of the country's nine departments, remaining unchanged in three and even increasing in two.<sup>8</sup> OHCHR-Bolivia is also concerned at the lack of updated figures on the maternal mortality rate and the fact that the abovementioned programmes have no baseline for measuring progress.

35. The Ministry of Justice, through its Office of the Deputy Minister for the Protection of Users' and Consumers' Rights, has drafted a user and consumer protection bill. As Bolivia is the only South American country without such legislation, it is hoped that the bill will facilitate the protection of economic and social rights in the country.

36. Through Act No. 0156 of 26 July 2011, the Legislative Assembly approved the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

<sup>4</sup> Preliminary date provided by the Ministry of Education.

<sup>5</sup> Educational Information System, Directorate of Planning, Ministry of Education.

<sup>6</sup> Source: National Institute of Statistics, Bolivia: Under-1 mortality rate.

<sup>7</sup> Preliminary data provided by the Juana Azurduy cash transfer coordinating office and the National Food and Nutrition Council.

<sup>8</sup> Source: information provided by the Juana Azurduy cash transfer coordinating office.



## D. Women's rights

37. The Government has taken positive preventive measures with respect to women's right to health. The Ministry of Health and Sports began to implement the third phase of the campaign of free immunization against Human Papillomavirus, which causes cervical cancer, aimed at benefiting 50,000 school-age girls in the highest-risk municipalities.

38. To protect the health of women workers, the Ministry of Labour, Employment and Social Security issued Ministerial Resolution No. 268/11 giving all women working in the public or private sector one working day off per year to have a Pap smear and a mammogram in order to permit the early detection of breast and cervical cancer.<sup>9</sup>

39. At the initiative of the Office of the Deputy Minister of Equal Opportunities, a coalition was formed to draw up a legislative agenda in favour of women, with the participation of women legislators and representatives of 28 non-governmental organizations. Adopting a gender perspective and a participatory approach, the coalition drafted three bills<sup>10</sup> that are pending submission to the Plurinational Legislative Assembly. Supreme Decree No. 1053 declaring 25 November the National Day against All Forms of Violence against Women was also adopted and the Year of Struggle against All Forms of Violence against Women, which will end on 25 November 2012, was proclaimed.

40. The domestic violence registry and the domestic violence information system, set up under the National Equal Opportunities Plan, compile and analyse the information produced by 98 integrated municipal legal services (SLIM) and five non-governmental organizations that provide care for women victims of violence in different municipalities throughout the country.<sup>11</sup> However, consolidated data are available only up to 2009 because the Office of the Deputy Minister of Equal Opportunities has failed to keep the information received from the legal services up to date.

41. According to police data, there were 226 female homicides in the first seven months of 2011, compared with 144 for the whole of 2010, an increase of 60 per cent. A women's organization that monitors press sources recorded 104 cases of violent deaths between January and August 2011, identifying 65 of these as femicides (killings of women by men because they are women).<sup>12</sup>

42. In monitoring a number of criminal proceedings for female homicide, it was observed that social, cultural and patriarchal stereotypes and prejudices against women persist among judges, prosecutors and members of the police. This often means that investigations and expert opinions do not include a gender approach or overlook or fail to follow up relevant data.

43. The Office of the Deputy Minister of Equal Opportunities, with the assistance of the Gender Group of the United Nations Country Team and civil society, is drafting Bolivia's combined fifth and sixth periodic report to the Committee on the Elimination of Discrimination against Women, covering the period from January 2008 to June 2010.

44. Civil society played an active role, firstly by organizing the first national ethical tribunal on sexual violence, at which emblematic cases were presented and recommendations were made to the State, and secondly by holding events in Bolivia's nine departments to gather inputs for drafting an alternative report to the Committee.

<sup>9</sup> Available at [www.mintrabajo.gob.bo/NormativaLaboral.asp](http://www.mintrabajo.gob.bo/NormativaLaboral.asp).

<sup>10</sup> The violence and political harassment bill, the comprehensive bill against all forms of violence against women and the bill on trafficking in persons.

<sup>11</sup> See [www.ine.gob.bo/indice/EstadisticaSocial](http://www.ine.gob.bo/indice/EstadisticaSocial).

<sup>12</sup> CIDEM, Boletín *La Escoba*, 11 October 2011.

## **E. Rule of law and administration of justice**

45. The crisis in the administration of justice that has long affected the enforceability and justiciability of human rights, despite efforts to overhaul the justice system, worsened in the period preceding the elections of senior judicial officials and the implementation of a number of long-awaited, far-reaching reforms designed to broaden access to justice, strengthen the independence of the judiciary and combat corruption among judicial officials.

46. On 16 October, members of the Supreme Court, the Agriculture and Environment Court, the Plurinational Constitutional Court and the Council of the Judiciary were elected by popular vote. Once they take office, a period of interim appointments in the justice system will come to an end.

47. It is hoped that the new elected authorities will contribute to strengthening the independence of the judiciary and help implement the reforms urgently needed to overcome the structural crisis in the administration of justice, particularly with the entry into force of Act No. 025 on the organization of the judiciary.

48. The outcome of this novel electoral process means that the composition of the high courts will be intercultural and characterized by gender equity. However, there was a significant percentage of void and blank votes, as well as criticism of the process as a whole by the opposition.

49. The candidate selection process involved a large number of candidacies, totalling 581 in all. The procedure for vetting candidates was conducted transparently, although the inclusion of weighted merit-based criteria would have resulted in a more comprehensive vetting procedure. The procedure for informing the public about the various candidacies also needs improvement. Both processes need to be reviewed in the future.

50. The crisis with regard to the independence of the judiciary can be explained, *inter alia*, by the very inefficient way in which the judicial career system has been implemented since its creation in 1997. In fact, only the system for admission to the judiciary has been implemented, not the promotion and performance assessment system, as can be seen from the fact that since the creation of the Institute of the Judiciary, only 274 trainee judges have graduated, of whom 69 per cent (190) have been appointed judges and only 9 per cent (24) have been promoted. The new authorities elected to the Council of the Judiciary face the challenge of implementing the judicial career system effectively.

51. According to official data, up to September 2011 the Council of the Judiciary had instituted 109 disciplinary proceedings.

52. With regard to access to justice, data from the Council of the Judiciary indicate that there are 764 judges and courts nationwide, of which 341 or 44 per cent are in provinces, and they cover only 47.6 per cent of Bolivia's municipalities. Moreover, the Council estimates that by the close of the 2011 judicial year, there will be a total of 498,895 pending cases, or roughly 653 ongoing cases per court. Although Act No. 025 provides for the introduction of compulsory conciliation services on judicial premises, little progress has been made in discussing how such services are to be operated.

53. With respect to rural native indigenous justice, the Committee on the Elimination of Racial Discrimination noted that by excluding certain personal, material and territorial matters from indigenous jurisdiction, Act No. 073 on jurisdictional boundaries is not in line with the Constitution and international law and does not correspond to the actual reality of coexistence between indigenous and non-indigenous persons. It therefore recommended that the Act should be amended.

54. In the framework of Act No. 4 on combating corruption and illegal enrichment and investigating fortunes, between 2006 and November 2011 the Ministry of Transparency handled a total of 290 criminal complaints against current or former public officials.

According to official data, of the total number of criminal proceedings instituted, 59 resulted in indictments, 12 reached the oral proceedings stage and eight reached the sentencing stage, while most cases remain at the pretrial or preparatory stage. This situation continued to give rise to criticisms and complaints from the opposition, several of whose leaders face charges.

## **1. Case against former President Sánchez de Lozada**

55. On 30 August, the Supreme Court sentenced two former ministers of the Government of President Gonzalo Sánchez de Lozada to three years in prison and five former members of the military high command to prison terms of between 10 and 15 years. The convictions confirmed their responsibility for the deaths of over 60 people during the September and October 2003 mass protests, the highest death toll ever recorded in the country during a democratic regime. The then President and nine other ministers, who were also indicted in this case, fled the country and are currently the subject of extradition requests.

56. Despite the many procedural and material obstacles that arose during the almost eight years that this trial lasted (more than two years for the oral proceedings), the convictions were an important step in the fight against impunity for grave human rights violations committed in the past, as the High Commissioner emphasized in her 2 September press release. However, the necessary measures have yet to be taken to ensure that victims and their families receive appropriate reparation.

## **2. Case of the massacre in El Porvenir**

57. The trial in the case of the September 2008 massacre in El Porvenir (Pando), in which 13 people were killed and over 50 injured, is ongoing against six of the original 27<sup>13</sup> accused. Evidence for the prosecution is currently being heard.

58. The court decided to increase the number of hearings to two days a week and ruled that in the absence of defence counsel the accused would be represented by the public defender's office, without requiring the consent of the accused and without deferring the hearing. Even so, the trial has proceeded far too slowly and has been affected by a disproportionate number of deferrals, most of them caused by the accused and their defence lawyers, in what appeared in some instances to be a delaying tactic. At a number of hearings, the accused made offensive gestures and comments against members of the court ; in one case, objects were even thrown at them. Threats were also reported against members of the court, prosecutors and lawyers for the private plaintiffs, but investigations into the complaints went nowhere.

59. It should be noted that some of the accused have already served or have nearly served the maximum period of pretrial detention under domestic law. It was seven months before the administrative order for the transfer of the accused Leopoldo Fernández to Chonchocoro prison was reviewed by a judge, who ordered his return to San Pedro prison in La Paz city on health grounds.

<sup>13</sup> Of the original accused, one has died, 18 have been declared in default and two who appeared in person several months after being declared in default have been separated from the case in order to guarantee their right to defence.

### **3. Case of the violent racist incidents of 24 May 2008 in Sucre**

60. The oral public proceedings against 18 individuals accused of the crimes of sedition, public incitement to commit a crime, abuse and torture, as well as armed uprising against the security and sovereignty of the State, began on 3 March. The trial, which is continuing against 16 of the accused after two of them were declared in default, has been deferred repeatedly and is still at a preliminary stage.

61. On 6 October, the court ordered house arrest and other precautionary measures against nine of the accused, including the former mayor and the former governor of Sucre.

62. The absence of State programmes to help victims address the consequences of their abuse is cause for concern, as are the material difficulties faced in attending hearings and exercising the right to defence.

## **F. Rights of victims of unconstitutional regimes**

63. For the most part, victims of human rights violations committed during the unconstitutional regimes that ruled Bolivia between 1964 and 1982 remained unable to exercise their rights to justice, truth and reparation. The Government adopted symbolic measures of reparation, such as naming a public square in La Paz after José Luis and Rainer Ibsen, who disappeared in 1971, and creating a museum of memory, still under construction, in the Ministry of the Interior buildings that were used as cells and torture chambers.

64. With respect to the implementation of Act No. 2640 of 2004, which provides for the payment of administrative compensation to victims of human rights violations, as of 29 March 2011, when the application review process ended, 1,683 applications for compensation out of the 6,221 originally submitted had been accepted. However, at the time of writing, no compensation had actually been paid. Victims' organizations complained about the overly rigorous qualification process, in which the burden of proof fell mainly on victims, and the difficulties of filing and substantiating petitions for review within the deadlines.

65. A number of human remains found in different locations are being analysed with a view to identifying victims of enforced disappearance. However, the whereabouts of most victims is still unknown. Little progress has been made in judicial proceedings or in gaining access to information contained in military archives.

## **G. Right to life and physical integrity**

66. During the reporting period, OHCHR-Bolivia was informed of few cases in which members of the police and the army allegedly violated the right to life and physical integrity.

67. In Trinidad (Beni), the allegedly arbitrary use of firearms by members of the police caused the death of Marco Antonio Gálves Salvatierra. Excessive, disproportionate use of force was also observed in police operations to break up demonstrations by schoolteachers in La Apacheta (La Paz) and members of indigenous peoples in Yucumo (Beni).

68. In Sanandita (Tarija), sublieutenant Grover Poma Guanto died after being beaten up by several fellow soldiers, allegedly incited by their instructors, during a military training exercise. The Minister of Defence later issued a resolution prohibiting activities that could endanger life and safety and ordered other measures to encourage respect for human rights within the armed forces. OHCHR-Bolivia is nevertheless concerned that the military criminal court has refused to relinquish jurisdiction over the case, ignoring rulings handed down by the ordinary justice system.

69. Concerning the cases mentioned in last year's report, it should be noted that the prosecutor's office charged seven members of the police, including the former director of the El Alto special anti-crime force, who are in pretrial detention, with the murder of David Alorio Apaza as a result of his alleged torture in police custody. There was no progress, however, in the case brought for the deaths of Fidel Hernani Jiménez and David Calisaya Mamani, which occurred in May 2010 in Caranavi during violent clashes between police and demonstrators who were blocking a main road. OHCHR-Bolivia observed that no progress was made in some cases attributed last year to members of the security forces, due to the inefficiency and slow pace of the investigations carried out by police and prosecutors.

70. According to press data, there was a marked decline in cases of lynching compared with the previous two years. In the first 10 months of 2011, OHCHR-Bolivia recorded 20 cases of lynching or attempted lynching, in which nine men died and 30 were injured, eight of them teenagers, and one woman died and one was injured. There has been no progress in most of the criminal proceedings related to cases from previous years.

## **H. Right to personal liberty and prison situation**

71. According to official data up to October 2011, 9,613 men and 1,282 women were deprived of their liberty, most of them in conditions of serious overcrowding. In practice, this situation also prevents prisoners awaiting trial, who account for around 80 per cent of the prison population, from being held separately from convicted prisoners. On several occasions, prisoners were the targets of threats and attacks on their lives and physical integrity, as occurred in a prison in Cochabamba, where at least two prisoners died and a further 10 were seriously injured between January 2010 and June 2011 as a result of attacks carried out by a group of prisoners, to which the Bolivian police's prison security authorities allegedly turned a blind eye. In June 2011, the prosecutor's office launched an investigation and the prison director was dismissed.

72. It should be noted that after a number of meetings were held between the authorities and civil society organizations in 2010 to draw up a consensus legislative proposal on the creation of a national mechanism for the prevention of torture, no further progress was made. OHCHR-Bolivia recommends that the law in question be adopted as soon as possible. It also recommends that prisoners' conditions of detention should be improved and, in particular, that prisoners awaiting trial should be separated from convicted prisoners in accordance with international law.

73. One positive development was the inauguration in Viacha (La Paz) of a rehabilitation centre for young offenders, who previously were imprisoned with adults. The centre's facilities, with capacity for 120 men and 40 women, make it possible to offer young offenders vocational training, labour reintegration and social rehabilitation programmes. There are plans to open a similar centre in Santa Cruz before the end of the year.

## **I. Human rights defenders and freedom of expression**

74. OHCHR-Bolivia welcomed the creation of new institutional mechanisms for human rights organizations to work with the Government, such as the National Committee against Racism and All Forms of Discrimination. Several human rights organizations also observed the pre-selection process and the elections for the new judicial authorities, providing the public with information thereon.

75. On the occasion of the indigenous march for the defence of TIPNIS, however, senior members of the executive and legislative branches made verbal attacks and accusations against indigenous leaders and human rights organizations that were supporting the march, as well as against certain media. In this context, the Plurinational Legislative Assembly set up a commission to investigate where some non-governmental organizations obtain their funding and how they use it.

76. According to the National Media Observatory, verbal and physical attacks against journalists in Bolivia increased in 2011 by comparison with 2010. Most of these attacks occurred during protests, marches and blockades by organized sectors of the population, although the trend towards less serious attacks, first observed in 2009, continued. OHCHR-Bolivia remains concerned at the failure to investigate the cases of attacks on journalists that occurred in previous years.

77. In the first half of 2011, at least six new criminal cases were brought for the crime of contempt for legally constituted authorities, three of them affecting four opposition members of the Plurinational Legislative Assembly, even though the High Commissioner for Human Rights has recommended repeatedly that this crime should be eliminated from Bolivia's criminal legislation as being contrary to freedom of expression.<sup>14</sup>

78. On the occasion of the election of senior judicial officials, there was considerable public debate about the restrictions placed on freedom of opinion and expression by the prohibition on campaigning for or against the candidates. In this context, the Plurinational Legislative Assembly repealed<sup>15</sup> some provisions of Act No. 026 on the electoral system in order to facilitate the communication of information about the candidates to the public.

79. Act No. 0164 on telecommunications was promulgated in August. The Act created a body, answerable to the executive branch, with responsibility for the regulation and oversight of telecommunications and transport. Because of its dependence on the executive branch, however, this body does not meet international standards of independence with respect to monitoring, regulation and oversight, although its decisions can be challenged in court through the administrative appeal procedure.

#### **IV. Main activities of the Office of the High Commissioner for Human Rights in Bolivia**

80. OHCHR-Bolivia assisted the Office of the Deputy Minister of Decolonization in finalizing an analysis of racism and discrimination in Bolivia, prepared through regional events in which women, Afro-Bolivians, indigenous peoples, persons with disabilities and lesbians, gays, bisexuals and transsexuals, among others, participated. It also provided technical support for the drafting of the Action Plan against Racism and All Forms of Discrimination, helped organize meetings of the National Committee against Racism and All Forms of Discrimination and supported the process of establishing two departmental committees in Chuquisaca and Tarija.

81. In coordination with the Office of the Deputy Minister of Justice and Fundamental Rights and the Ombudsman's Office, OHCHR-Bolivia provided technical and financial assistance to the Ministry of Education in holding workshops to consult on the drafting of a plurinational human rights education programme.

<sup>14</sup> See A/HRC/13/26/Add.2, para. 117.

<sup>15</sup> By means of Act No. 125 of 27 May 2011.

82. OHCHR-Bolivia also provided technical assistance to the Office of the Deputy Minister for the Protection of Users' and Consumers' Rights in the participatory process of drafting a consumer protection bill.

83. With respect to women rights, OHCHR-Bolivia participated actively in the meetings of the coalition responsible for bringing the domestic legal framework into line with international standards, supported the Office of the Deputy Minister of Equal Opportunities and helped organize an international event on femicide in November.

84. With regard to legislative technical assistance, OHCHR-Bolivia sent recommendations for the formulation of draft amendments to the Code of Criminal Procedure in response to a request from the specialized legal unit for constitutional development.

85. OHCHR-Bolivia provided technical and financial assistance to the Plurinational Constitutional Court for the holding of an international seminar on constitutional justice. It also provided financial and technical support to the Council of the Judiciary for the drafting of implementing guidelines for Act. No. 025 on the organization of the judiciary.

86. A number of activities were organized jointly with the Ombudsman's Office, and OHCHR-Bolivia provided technical and financial assistance for the institution-building of some local offices.

87. In order to monitor the human rights situation, OHCHR-Bolivia carried out 60 missions, lasting a total of 183 days, in urban and rural areas of every department. It also monitored several emblematic criminal trials, cases of femicide and cases of violations of indigenous peoples' rights. It spent more than 150 hours monitoring the pre-selection process for candidates for senior judicial positions, as well as the 16 October elections.

88. A number of training activities were carried out for public officials and civil society representatives. A panel discussion was also organized, with the participation of representatives of the judiciary, the legislative and executive branches and civil society, on the model for operating the judicial conciliation service.

89. OHCHR-Bolivia advised civil society organizations on the mechanisms for participating in the seventy-eighth session of the Committee on the Elimination of Racial Discrimination in Geneva and assisted the women's coalition in organizing departmental events to draft an alternative report to the Committee.

90. Within the United Nations system, OHCHR-Bolivia assisted the Country Team and continued to participate in the Technical Group on Interculturality and the Gender Group. In the latter, it assisted the Office of the Deputy Minister of Equal Opportunities in drafting the report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and in holding a regional event on gender equity.

91. OHCHR-Bolivia was also active in the process of evaluating the United Nations Development Assistance Framework 2008-2012 and drawing up the new Framework for 2013-2017, which incorporates a human rights approach.

92. In coordination with the implementing unit of the peacebuilding window joint programme, the Justice Studies Centre of the Americas and Fundación Construir, OHCHR-Bolivia has begun an investigation into pretrial detention in Bolivia, which will end in the first quarter of 2012.

93. Lastly, in September, OHCHR-Bolivia, with the support of the Office of the High Commissioner in Mexico, organized training activities with staff of the different Ministries in order to promote the establishment of a system of human rights indicators that will provide information for the design of public policies and make it possible to measure the extent to which international recommendations have been implemented.

## **V. Follow-up to the implementation of the High Commissioner's earlier recommendations**

94. Special mention should be made of the progress in combating racism and all forms of discrimination and the holding of judicial elections, even though the procedures for pre-selecting candidates and providing information to voters need to be reviewed.

95. Two years before the National Human Rights Action Plan comes to an end and according to a preliminary analysis made by the Office of the Deputy Minister of Justice and Fundamental Rights, the implementation rate for activities under the Plan is 40 per cent, only a little higher than last year. The implementation rate was highest for training activities and campaigns to promote human rights and lowest for activities related to the amendment of norms or laws or the development of public policy.

96. With regard to the trials for grave human rights violations, the Supreme Court's ruling in the so-called "Black October" case is noteworthy. However, OHCHR-Bolivia is concerned that other emblematic trials have proceeded slowly, with frequent deferrals. The Ministry of Defence took some steps to eradicate cruel, inhuman or degrading treatment or conducts that violate the physical integrity of members of the armed forces.

97. On the issue of violence against women, although progress was made in discussing a number of legislative amendments and measures of prevention and protection for women, girls, boys and adolescents, as well as in increasing the problem's visibility, much remains to be done.

98. Lastly, no progress was observed with regard to access to justice and the creation of a mechanism for following up international human rights recommendations. Likewise, indigenous peoples' right to consultation was not implemented.

## **VI. Conclusions and recommendations**

99. **The human rights situation in the country showed signs of progress, especially in combating racism and all forms of discrimination and in some indicators in the area of economic, social and cultural rights. However, the crisis in the administration of justice worsened ; the implementation of indigenous peoples' right to consultation came to a standstill ; and levels of violence against women and girls remained cause for concern.**

100. **To help confront the human rights challenges identified in this report, the High Commissioner makes the following recommendations :**

101. **The High Commissioner recommends to the Government, the Supreme Electoral Tribunal and the Plurinational Legislative Assembly that they analyse the recent process of election to senior judicial positions closely in order to review the pre-selection procedure for candidates and the process of informing voters about candidacies.**

102. **The High Commissioner recommends to the new elected senior judicial authorities that they contribute effectively to strengthening the independence of the judiciary and help implement the reforms urgently needed to overcome the structural crisis in the justice system.**

103. **The High Commissioner recommends to the judiciary that it implement the judicial career system effectively, speed up the transformation of the Institute of the Judiciary into the School of Judges and expedite the introduction of conciliation services on judicial premises. She also recommends that it reduce the backlog of judicial cases, which is contributing to the high incarceration rate.**



104. The High Commissioner encourages the judiciary and the executive and legislative branches to take the necessary measures to apply the principle of free access and to establish judicial conciliation services in order to promote access to justice.

105. The High Commissioner encourages the Plurinational Legislative Assembly to amend Act No. 0174 on jurisdictional boundaries, bringing it into line with the Constitution and basing it on the outcome of the consultation on the preliminary bill, which has the agreement of indigenous peoples' organizations.

106. The High Commissioner urges the Plurinational Legislative Assembly to adopt an appropriate legislative framework for protecting women against all forms of violence, including trafficking and femicide. She also reiterates to the Public Prosecutor's Office and the judiciary the need to promote effective measures for identifying, prosecuting and punishing those responsible for any form of violence against women.

107. The High Commissioner recommends to the State that it develop a system of indicators that permits disaggregated, updated monitoring of the progressive realization of human rights in Bolivia and of the impact of public policy in that area.

108. The High Commissioner encourages the State to continue its efforts to draw up and implement, on an inclusive, participatory basis, a plurinational human rights education plan.

109. The High Commissioner urges the Government to guarantee, through appropriate norms and procedures, respect for indigenous peoples' right to consultation with a view to obtaining their free, prior and informed consent, as provided for in the Constitution and the United Nations Declaration on the Rights of Indigenous Peoples, and to adopt the corresponding legislation.

110. The High Commissioner reiterates to the Government and the Plurinational Legislative Assembly her earlier recommendation to eliminate from criminal legislation the crime of contempt for legally constituted authorities.

111. The High Commissioner recommends that an impartial investigation be carried out into the human rights violations committed during the police operation against the pro-TIPNIS marchers, respecting the due process rights of anyone who may be charged. The High Commissioner also recommends that, among other sources used in the investigations, account be taken of the report published by the Ombudsman.

112. The High Commissioner recommends that the law establishing a mechanism for the prevention of torture should be adopted without delay. She also recommends making improvements in conditions of detention in accordance with international law, particularly with regard to the separation of convicted prisoners from those awaiting trial.

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