



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Concluding observations on the combined seventeenth to
twentieth periodic reports of Bolivia, adopted by the
Committee at its seventy-eighth session (14 February to
11 March 2011)**

Addendum

**Information received from the Government of Bolivia
regarding the recommendations in paragraphs 17 and 21 of
the concluding observations***

[13 March 2013]

* In accordance with the information transmitted to States parties regarding the processing of their reports, this document has not been edited.

Observation No. 17

Observation

1. The Committee regrets the occurrence of conflicts and acts of racist violence against members of indigenous original campesino peoples and nations, some of which have resulted in deaths, and notes that these incidents have become worse since 2006 and have included clashes in Cochabamba, Chuquisaca, Santa Cruz and Pando. The Committee is concerned at the impunity that continues to prevail in respect of the majority of the human rights violations perpetrated during these incidents and at the delays in their investigation (arts. 4–6).

Recommendation

2. “The Committee reaffirms the duty of the State party to put an end to impunity for these acts and urges it to expedite the administration of justice, the investigation of the complaints, and the identification and prosecution of the perpetrators and to guarantee victims and their family members an effective remedy. It also recommends that the State party demonstrate the political will to carry out the necessary measures, including educational and public policies, in order to create and promote forums for dialogue and understanding among the members of society.”

Reply

Public and educational policies to develop and encourage forums of dialogue and understanding among the members of society

Ministry of Cultures

3. Through the Vice-Ministry for Decolonization, the Ministry of Cultures has worked in conjunction with civil society and with human rights organizations to draw up Act No. 045 of 8 October 2010 on the Elimination of Racism and All Forms of Discrimination.¹ The purpose of the Act is to establish mechanisms and procedures to prevent and punish acts of racism and all forms of discrimination, within the framework of the Bolivian Constitution which determines that the essential aims and functions of the State include the development of a fair and harmonious society based on decolonization, without discrimination or exploitation and with comprehensive social justice, in order to consolidate plurinational identities within the framework of the international human rights treaties ratified by Bolivia.

4. Furthermore, Act No. 045 provides for the creation of the National Committee against Racism and All Forms of Discrimination, which has been given the responsibility of drawing up government policies and a plan of action. This task has been completed and its outcome is now awaiting the approval of the executive, after having received the approval of the standing council of the National Committee. The relevant document will provide the

¹ Report MC-VD-DGLCR-UPGRADI Inf. 004/13 of 21 January 2013 (Vice-Ministry for Decolonization).

major guidelines for political action in this sphere as it will be implemented via a cross-sectoral approach.²

5. The Act also incorporates, under Section Two, Title VIII of the Criminal Code, a chapter V entitled Crimes against human life, integrity and dignity, which contains the following provisions: article 281 bis (Racism); article 281 ter (Discrimination); article 281 quater (Dissemination of and incitement to racism or discrimination); article 281 septies (Racist or discriminatory organizations or associations); article 281 octies (Insults and other verbal attacks on racist or discriminatory grounds).³

6. In addition, it incorporates under Section One, Title III, chapter II of the Criminal Code an article 40 bis (General aggravating circumstances) which determines that the minimum sentence shall be increased by one third and the maximum by one half for all offences classified under the special section of the Code and under supplementary criminal laws, whenever the offences have been committed on racist and/or discriminatory grounds as described in articles 281 bis and 281 ter of the same Code. In no case may the penalty exceed the maximum laid down by the Constitution.⁴

7. Consequently, persons who have been affected by acts of racism or discrimination may choose between the constitutional, administrative, disciplinary and/or criminal channels, as appropriate.⁵

8. In the sphere of education, article 78, paragraph 1 of the Constitution stipulates that education shall be unitary, public, universal, democratic, participatory, community-based, focused on decolonization and of good quality.

9. In this regard, Act No. 070 (the Avelino Siñani-Elizardo Pérez Education Act) was drawn up in consultation with social organizations, and first and foremost with the indigenous, original campesino peoples, the intercultural communities and the Afro-Bolivian people. As a result, its principles, foundations and policies respond to their expectations in the sphere of education and the Plurinational Education System is intra-cultural and multilingual as well as being focused on decolonization, community-based, territorial, productive and participative.

10. *Basic curriculum:* within the framework of the Avelino Siñani-Elizardo Pérez Act and in response, essentially, to the educational demands of the indigenous, original campesino populations, the basic plurinational curriculum has been drawn up and agreed upon; the curriculum is intra-cultural and multilingual as well as being focused on decolonization, community-based, territorial, productive and participative. The cornerstones of the curriculum are harmony and equilibrium with Mother Earth, an education that imparts societal and community values, intra- and intercultural education, multilingualism and education turned towards production. In addition, the original indigenous languages serve as means of communication, development and generation of wisdom and knowledge throughout the education system and of reclaiming the technologies of the original indigenous nations and peoples.

11. *Regionalized curriculum:* since cultural and linguistic diversity represent the strength and potential of the Plurinational State, the basic curriculum is being supplemented in the different regions by curricula that incorporate wisdom and knowledge, world views and history inspired by the original nations and peoples. In practical terms, this involves seven specific regions defined in terms of their cultures, languages, geography, territory and

² Ibid.

³ Act No. 045, art. 23.

⁴ Act No. 045, art. 21.

⁵ Act No. 045, art. 12.

production. Furthermore, the regional curricula serve as a basis for drawing up diversified curricula which meet the demands and expectations of each local and specific context.

12. *Decision 001/2013*: this governs the management of the education system and covers all matters connected with the eradication of racism and discrimination in educational establishments and fulfilment of the educational rights of all Bolivians of school age.⁶

13. Furthermore, the intersectoral plans and programmes that ensure coordination in the sphere of education, and which are priorities for the Plurinational State, are to be implemented via the Plurinational Education System by means of joint and coordinated plans of action to ensure they are systematically incorporated into the system's distinct components. The following priorities have been set: non-violent education, human rights education, education in civic security, education in the rights of Mother Earth, education against racism and education in civic and ethical values.⁷

Administration of Justice

Supreme Court of Justice

14. In this connection, the Secretary-General of the Supreme Court of Justice, Dr. René Yvan Espada Navarra has provided the following information: "With regard to the independence of judges and in application of the principle of protection provided for by article 2, paragraph (d) of the Act on the Elimination of Racism and all Forms of Discrimination, it has been suggested that circulars and notes should be addressed to the Presidents of the departmental courts of justice to draw their attention to the obligation of those handing down justice expeditiously to deal with criminal cases relating to offences of racism and all forms of discrimination. This suggestion is to be examined and adopted in a plenary session."⁸

15. In the same connection, the Secretary-General adds that "it has been decided that the rules of procedure of the Supreme Court of Justice are to be brought into line with the provisions of the Act on the Elimination of Racism and All Forms of Discrimination".⁹

16. He goes on to note that "In view of the need to train judicial officials in respect of the means of preventing, punishing and eliminating all forms of racism and discrimination and in order to bring to the attention of the State Judicial Academy the recommendations of the Committee on the Elimination of Racial Discrimination (CERD), priority has been assigned to training judicial officials in respect of Act No. 045 on the Elimination of Racism and all Forms of Discrimination so as to familiarize them with its objectives and principles and ensure they apply penalties to contribute to its comprehensive implementation. The Academy has also been requested to develop and implement a human rights training programme as part of basic and further training."¹⁰

17. He further states that "it has been decided to disseminate the contents of Act No. 045 on the Elimination of Racism and all Forms of Discrimination, [...] and the national and international instruments to combat racism and all forms of discrimination. In the sphere of communication, the public relations department has been charged with drawing up educational and media policies together with policies for intercultural dialogue that address

⁶ Note NE/DGP/UIIP No. 0004/2013 of 18 January 2013 (Ministry of Education).

⁷ Act No. 70, Avelino Siñani-Elizardo Pérez, of 20 December 2010, 12th transitional provision.

⁸ DESP.PRES. No. 538/202, of 25 July 2012 (Supreme Court of Justice).

⁹ Ibid.

¹⁰ Ibid.

the root causes of racism and all forms of discrimination and which recognize and show respect for diversity and plurinationality. This is a far-reaching project that will need to be supported by funding from the budget to ensure it is taken into consideration and incorporated in the annual operating programme.”¹¹

Public Prosecution Service

18. The Attorney-General of the State has implemented measures designed to “strengthen the provision of the services for which the Public Prosecution Service is responsible, whereby it has established the National Coordinating Office for Human Rights (CNDH) through decision 221/2011 of 14 September 2011; the Office answers directly to the Attorney-General”.¹²

19. “The power to impart justice emanates from the Bolivian people and is based on the principles of independence, impartiality, juridical security, publicity, probity, promptness, provision free of charge, legal pluralism, interculturality, equity, service to society, citizens’ participation, social harmony and respect for rights.”¹³

Cases before the courts

*24 May*¹⁴

20. On 12 May 2010, the Public Prosecution Service in the town of Sucre brought criminal charges against Luis Jaime Barrón Poveda and others; on 1 June 2010, Mr. Ángel Ballejos Ramos, the victim of the acts, brought a private prosecution against the accused for sedition and other offences. Since 12 September 2012, the so-called 24 May case has been before the Padilla trial court in oral proceedings.

21. The case is currently considering preliminary presentations by the parties, in conformity with article 345 of the Code of Criminal Procedure. The hearings are held twice weekly.

*Pando*¹⁵

22. This case has been before the sixth trial court in La Paz since 27 October 2009. The criminal proceedings have been brought by the Public Prosecution Service and individual charges filed against Leopoldo Fernández and others, who are accused of the alleged offences of terrorism and other offences.

23. On 20 March 2010, the formal trial proceedings were begun, citizen-judges were selected by lot and the court was convened. Statements by the accused without any form of restriction were taken; subsequently, on 19 June 2010, the hearing for the opening of the oral public trial was held. Since then, hearings for the oral, public and adversarial proceedings have been held on Thursdays and Fridays.

¹¹ Ibid.

¹² Information taken from report No. DGFSE/JMGV/001/2012, of 5 September 2012 (Office of the Attorney-General).

¹³ Constitution, art. 178, para. I.

¹⁴ Information taken from the note, dated 17 January 2013, from judge Offman Alfredo Padilla Blacut, of the sixth trial court in the town of Padilla, Chuquisaca department.

¹⁵ Information taken from the report, dated 17 January 2013, by Dr. César Daniel Lampara Laura, legal secretary to the sixth trial court in La Paz.

24. Statements by witnesses for the prosecution called by the Public Prosecution Service and the private plaintiff have been taken; the number of witnesses is limited to 48 on account of the large number of witnesses who have come forward.

25. At present, the court is considering the evidence from witnesses for the defence submitted by the accused, Leopoldo Fernández Ferreira, for whom 11 witnesses have testified, together with evidence for the prosecution.

Observation No. 21

Observation

26. “The Committee is concerned at reports of discrimination and hostility against migrants in the State party and the particular vulnerability of asylum-seekers, unaccompanied foreign children and trafficked women. The Committee is also concerned about asylum-seekers’ lack of identity documents, cases of arbitrary refoulement of refugees and the lack of national legislation consistent with international standards of protection of refugees.”

Recommendation

27. “The Committee encourages the State party to develop legislation establishing the rights of refugees and providing that identity documents are to be issued free of charge and to furnish appropriate ongoing training for public officials, including border agents, to ensure that they do not make use of procedures that violate human rights. The Committee recommends that the State party continue to cooperate with the Office of the United Nations High Commissioner for Refugees and urges it to ensure that no refugees are forcibly returned to a country where there are substantial grounds for believing that they may suffer serious human rights violations. The Committee calls on the State party to step up its efforts to develop and implement educational campaigns to change the public’s perceptions and attitudes so as to combat racial discrimination in all sectors of society.”

Reply

National Directorate for Migration (DIGEMIG)¹⁶

28. DIGEMIG has introduced the necessary safeguards in respect of the departure of Bolivian and foreign children and adolescents who are temporary or permanent residents, in the form of an exit permit issued by the competent authority in order to guarantee and protect the exercise of their rights, on the grounds of State security as a protected legal asset.

29. Within the framework of the comprehensive act against trafficking in persons — the purpose of which is to establish mechanisms to prevent the offences of trafficking in persons and related offences and to implement and consolidate government policies to provide protection and care — DIGEMIG, acting through the Department of Inspections and Settlement, has drafted a training paper for public officials assigned to land-based border posts and airports which trains them to identify and apply protocols for the victims

¹⁶ Information taken from the DTEP report No. 005/2013, dated 18 January 2013, by María Eugenia Schmidt Vacaflores, National Director a.i. for Aliens and Passports.

of trafficking; the document defines criteria, factors to be taken into consideration and indicators to help identify victims of trafficking together with the appropriate procedure.

30. In addition, DIGEMIG is currently introducing and implementing a handbook on action to be taken for the early detection of cases of trafficking in persons at border posts of MERCOSUR and associate member States.

31. Furthermore, several government and outside agencies have participated in the drafting and revision of a bill on migration, the aim of which is to safeguard the rights of Bolivian and alien migrants in accordance with the Constitution, the international human rights instruments ratified by Bolivia and the standards currently in force, with non-discrimination as one of its underlying principles.

32. DIGEMIG carries out the following intersectoral activities:

- Interconnection between systems monitoring migration flows (whereby it will be possible to connect all the district and regional offices with border control points);
- Implementation of the migrant flow control system involving machine-readable passports which will help to prevent the offences of trafficking in persons thanks to accurate and immediate detection of false identity;
- Greater coverage of border control (Laja-La Paz, Chalanas-Tarija, Uyuni-Potosí, Challapata-Oruro);
- Collection of statistics on migration management;
- Access to information via the following web page: www.migración.gob.bo and the social networks;
- Regular nationwide migration-control operations.

National Commission for Refugees (CONARE)

33. “Aliens shall have the right to request and receive asylum or refuge on grounds of political or ideological persecution, in conformity with international laws and treaties. Moreover, any person who has been granted asylum or refuge in Bolivia may not be expelled or handed over to another country in which his or her life, integrity, safety or liberty are in jeopardy.”¹⁷

34. Accordingly, in the light of the norms that determine the rights of refugees and the issue of identity documents free of charge, CONARE set up a round table on refugees in order to draft a law whose fundamental purpose will be to determine the regime of protection for refugees and applicants for refugee status, within the framework of the Mechanisms for Inter-Agency Coordination on Migrations (MCIM). Following arduous discussions and consultations, on 20 June 2012 Act No. 251 on the protection of refugees was promulgated and published. Article 13 of the Act covers the rights and duties recognized under domestic law and the international human rights instruments afforded recognition, such as the 1951 Convention relating to the Status of Refugees.

35. As far as the cost-free issue of identity documents is concerned, article 11, paragraphs I, II and III of Act No. 251 provides that formalities relating to the granting of permanent migrant status, the issue of identity documents to foreigners, stamps and fees and any costs arising from such formalities shall be borne by the budget of the Ministry of Foreign Affairs and the Ministry of the Interior, via the Directorate-General for Migration

¹⁷ Constitution, art. 29.

and the Personal Identity Service, as appropriate.¹⁸ In this connection “in its ministerial decision No. 260/2012, the Ministry of the Interior authorized the creation of the stamp authorizing ‘indefinite leave of stay’ for refugees, which is issued wholly free of charge”.¹⁹

36. As regards the non-return of refugees to their country of origin when there are substantiated grounds to believe their rights may be under threat, CONARE reports that during the last 10 years no person awarded refugee status has been returned to their country of origin.²⁰

37. The plurinational State of Bolivia accepts its international commitment to protect refugees and applicants for refugee status in accordance with the following norms:

- The 1951 Convention relating to the Status of Refugees;
- The 1967 Protocol relating to the Status of Refugees;
- The 1984 Cartagena Declaration on Refugees;
- The Bolivian Constitution, article 29;
- Act No. 2043 of 21 December 1999;
- Act No. 2071 of 14 April 2000;
- Act No. 251 of 20 June 2012 on the protection of refugees;
- Supreme Decree No. 1440 of 19 December 2012;
- Ministerial Decision No. 731/2008, of 26 November 2008.²¹

38. The same note by CONARE also indicates that following the promulgation and publication of Act No. 251 of 20 June 2012, on the protection of refugees, 500 copies of the Act were distributed for information purposes to government agencies, legislative bodies, the judiciary, the Attorney-General of the Plurinational State of Bolivia, the prosecution service in each district, the autonomous departmental government of La Paz and all its agencies, the autonomous municipal government of La Paz and its departments, the Ombudsman’s Office, the Bolivian police force, the Crime Squad, INTERPOL, the departmental traffic department, the social welfare service in each department, the National Occupational Health Institute (INSO), the Institute for the Treatment and Investigation of the Sequelae of Torture and State Violence, Training and Civil Rights (CDC), the Bolivian Human Rights, Democracy and Development Chapter, the Human Rights Assembly, all the branches of the Human Mobility Pastoral Care Service operating in Bolivia and the overseas Embassies of the Plurinational State of Bolivia.

39. During the first quarter of the year it is planned to print and publish Supreme Decree No. 1440 of 19 December 2012, which will also be disseminated on a large scale. During the same period a workshop, to be attended by all the competent agencies, will be held to publicize both instruments and to focus on local integration policies.

40. Plans have also been made to hold training workshops on the same topics in Bolivia’s main towns and border areas.²²

¹⁸ Note MJ-DGAJ-UAJI 1920-12 of 1 August 2012 (Ministry of Foreign Affairs).

¹⁹ See note 16, above.

²⁰ Information taken from note MJ-DGAJ-UAJI 1920-12 of 1 August 2012 (Ministry of Foreign Affairs).

²¹ Information taken from note CONARE-000982/2013, of 18 January 2013 (CONARE).

²² Information taken from note CONARE-000982/2013, of 18 January 2013, signed by César Siles, Chair of CONARE.

41. The note also indicates that where training and skills-development for public officials is concerned, CONARE has organized successive workshops and seminars for public officials via its operational branch, the Human Mobility Pastoral Care Service and its secretariat; in March 2012, a training workshop on care for persons on the move was held to provide training for public officials and members of civil society. The purpose of the workshop was to improve protection for the human rights of vulnerable persons in connection with what is known as International Mobility. The workshop, which was held in La Paz, was attended by officials from the district migration department, the Crime Squad (FELCC), Interpol and the Ombudsman's Office.

42. As regards educational campaigns to improve society's perception of efforts to combat racial discrimination and political attitudes, since 2009 CONARE has given support to educational and cultural activities designed to foster awareness among citizens and to promote a culture based on respect, tolerance, non-discrimination and acceptance of the refugee population in Bolivia. In addition, in cooperation with the Training and Human Rights NGO, it has organized workshops and training sessions in different educational establishments in La Paz.²³

43. Finally, the Directorate-General for Migration has set as a target for its operational managerial planning for 2013 the organization of comprehensive, systematic and system-wide training sessions for all of its officials at the national level (district directorates, regional head offices and border points). One of the main topics will be the salient points of Act No. 045 on the Elimination of Racism and all Forms of Discrimination, with the aim of preventing racist acts and all forms of discrimination in accordance with the provisions of the Bolivian Constitution and the international human rights treaties.²⁴

44. By way of conclusion, we should draw attention to the preventive policies that are being implemented in the sphere of education in order to reduce the incidence of racism and all forms of discrimination. In this connection, the National Committee against Racism and all Forms of Discrimination is the cornerstone for action by the Plurinational State of Bolivia to combat racism and all forms of discrimination and to build a country that ensures respect for the principles of equity, equality and dignity in order to do away with racist behaviour and all forms of discrimination, thereby consolidating government policies for protection and prevention.

45. The above constitutes the information which the Plurinational State of Bolivia wishes to provide to the Committee.

²³ Information taken from note MJ-DGAJ-UAJI 1920-12 of 1 August 2012, signed by César Siles, Director-General for Legal Affairs of the Ministry of Foreign Affairs.

²⁴ Information taken from the DTEP report No. 005/2013, dated 18 January 2013 (Directorate-General for Migration).