Организация Объединенных Наций A/HRC/13/26/Add.2

# Генеральная Ассамблея

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**Совет по правам человека**
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**Ежегодный доклад Верховного комиссара Организации Объединенных Наций по правам человека и доклады Управления Верховного комиссара и Генерального секретаря**

**Добавление**

## Доклад Верховного комиссара Организации Объединенных Наций по правам человека о деятельности ее отделения в Многонациональном Государстве Боливия* **

*Резюме*

В соответствии с мандатом, сформулированным в соглашении, которое было подписано в 2007 году между Управлением Верховного комиссара Организации Объединенных Наций по правам человека (УВКПЧ) и правительством Многонационального Государства Боливия, в настоящем докладе содержится обзор положения в области соблюдения прав человека в Боливии и описание деятельности УВКПЧ в этой стране в 2009 году. В конце доклада приводится ряд рекомендаций.

К числу важных событий 2009 года относятся принятие 25 января новой Конституции и проведение 6 декабря всеобщих выборов. В целом оба мероприятия были проведены в мирной и доброжелательной обстановке при высоком участии избирателей. Президент Моралес был переизбран на второй срок 64% голосов, а партия "Движение к социализму" получила две трети мест в новой Многонациональной законодательной ассамблее.

* Настоящий документ представляется после установленного срока, с тем чтобы отразить в нем новую информацию.

** Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к настоящему документу, распространяется только на английском и испанском языках.



Просьба отправить на вторичную переработку

С принятием новой Конституции права коренных народов достигли более высокого уровня признания. Экономические, социальные и культурные права нашли широкое отражение в новой Конституции, при этом правительство принимает дополнительные меры в данном отношении, например меры, направленные на снижение материнской и младенческой смертности. Тем не менее, несмотря на усилия, предпринятые правительством, коренные народы в своей жизни продолжают сталкиваться с неблагоприятными социальными и экономическими условиями, а некоторые из них становятся жертвами рабского и принудительного труда. Проведение Конференции по обзору Дурбанского процесса способствовало усилиям по борьбе с расизмом и дискриминацией, содействуя включению этого вопроса в национальную повестку дня. Тем не менее до сих пор ощущается острая потребность в разработке законодательства и укреплении институциональных основ.

Что касается борьбы с безнаказанностью, то здесь следует отметить значительные сдвиги, например в решении таких вопросов, как поиск останков лиц, исчезнувших во время военных диктатур, начало судебного процесса над бывшим президентом Санчесом де Лосадой и другими лицами и первые выплаты компенсации потерпевшим по этому делу. Еще предстоит обеспечить выплату достаточной компенсации жертвам других нарушений прав человека. Также следует указать на прогресс в расследовании кровавой расправы в Пандо в сентябре 2008 года и инцидентов на почве расизма в Сукре в мае 2008 года. Наряду с этим судебная система по-прежнему переживает глубокий институциональный кризис в силу наличия политических разногласий между правительством и оппозицией, в то время как невозможность заполнить старшие судебные должности продолжает парализовывать работу Конституционного суда.

Отделение УВКПЧ в Многонациональном Государстве Боливия (УВКПЧ-Боливия) наблюдало за положением в области прав человека в ряде департаментов страны. Особое внимание уделялось судебному производству по крупным делам о нарушениях прав человека, нападкам на свободу слова и на правозащитников, а также вопросам соблюдения прав человека во время национального референдума и всеобщих выборов.

Определенный прогресс был достигнут в деле осуществления Национального плана действий в области прав человека, принятого в 2008 году, включая создание Национального совета по правам человека и усилия по борьбе с расизмом и дискриминацией. Правительство и гражданское общество активно участвовали в различных консультациях по подготовке к универсальному периодическому обзору, который Боливии предстоит пройти в феврале 2010 года. Этот процесс носил всеобъемлющий характер, и соответствующие заинтересованные стороны представили свои доклады.

# Annex

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

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# I. Introduction

1. The Office of the United Nations High Commissioner for Human Rights in the Plurinational State of Bolivia (OHCHR-Bolivia) was established by an agreement signed in February 2007 between the High Commissioner and the Government of Bolivia. The agreement, which was approved by Congress on 13 July 2007, provides OHCHR-Bolivia with a broad mandate that comprises, inter alia, the provision of technical assistance to public institutions and civil society organizations; the promotion of human rights; and the monitoring and reporting on the status of human rights in the country.

2. In accordance with the mandate of OHCHR-Bolivia, the present report gives an overview of the human rights situation in Bolivia, highlighting main achievements and issues of concern in 2009. It also details the main activities of the office during this period and makes several recommendations.

# II. National context

3. On 25 January 2009, for the first time in Bolivian history, a referendum was held for the adoption of a new constitution, and to decide on the maximum extension of land that anyone may constitutionally own. The Constitution was approved by 61.43 per cent of voters, whilst 80.65 per cent voted for a limit to land ownership of 5,000 hectares. Overall voting took place in a peaceful and respectful atmosphere, with high voter participation.

4. Promulgated on 7 February, the Constitution represents a major step forward, as it includes a vast range of rights, formally recognizing almost all those listed in the International Bill of Human Rights and fully incorporating the collective rights of indigenous peoples, including those of the United Nations Declaration on the Rights of Indigenous Peoples. It confers supra-constitutional status to international human rights treaties and incorporates additional protection mechanisms. The rights of women are recognized across several articles in the Constitution and the non-discrimination clause contains a great number of grounds. Although it recognizes all due process of law guarantees, the main concern of OHCHR-Bolivia with regard to the Constitution refers to the retroactive application of criminal law in cases of corruption.

5. Shortly after the adoption of the Constitution, a number of incidents led to differing interpretations of some of its provisions. In one case, the Regional Workers Union of El Alto, misapplying the Constitution's social control provisions, requested financial reports from non-governmental organizations (NGOs) so as to understand the provenance of their funding. In another case, an act of appropriation by community members took place at a former vice-president's property. Problems of this nature highlighted the need for prompt complementary legislation to the Constitution.

6. The approval in April 2009 of Electoral Transition Law 4021 convening general elections for 6 December 2009 was preceded by intense negotiations between Government and opposition. President Morales went on a hunger strike to try to secure the Law's rapid adoption. The Law provided for the creation of a new electoral roll incorporating voters' biometric data and allowing only a limited number of Bolivians residing in four other countries to vote. It also recognized seven indigenous electoral districts, which indigenous organizations regarded as insufficient.

7. Over 5,100,000 persons in Bolivia and abroad were registered in the new electoral roll. President Morales was re-elected with 64 per cent of the vote and his party, the Movimiento al Socialismo, obtained two thirds of the seats in the new Plurinational Legislative Assembly.

8. Parallel to the December elections, referendums were also held on departmental, regional and indigenous autonomies. Departmental autonomy was approved in all of the five departments consulted (Cochabamba, Chuquisaca, La Paz, Oruro and Potosí). The Gran Chaco region also voted for its autonomy, and 11 out of 12 municipalities voted in favour of indigenous autonomy. This represented a step forward in the construction of the new model of autonomies envisaged in the new Constitution.

9. There was no recurrence of the previous year's scenes of violence or activity of the *grupos de choque* ("clash groups"), but the marked political division between the Government and the opposition persisted.

10. After bombings in Santa Cruz, a police raid was conducted in a Santa Cruz hotel in April with the aim of dismantling an alleged terrorist group, in which three people were killed and two arrested. Other bombings in La Paz also caused a great deal of alarm in the population.

11. Finally, amid the continued political division between the Government and opposition groups, the already weakened and politicized justice system has been more vulnerable to the political factor, impacting on the progress of proceedings and putting into question the independence and impartiality of certain justice officials. The number of vacancies in higher levels of the judiciary continued to increase, seriously undermining its work, particularly that of the Constitutional Court.

# III. Human rights situation

## A. Human rights of indigenous peoples[1]

12. The new Constitution provides better guarantees for the protection of the rights of indigenous peoples (referred to as "*pueblos indígena originario campesinos*") and for finding new ways to reconcile individual and collective demands of Bolivians. A number of political, economic, social and cultural measures have been taken to overcome the historical exclusion suffered by indigenous peoples. Important provisions in the new Constitution relate to the right to consultation, distribution and ownership of land, indigenous autonomy and an indigenous justice system. Their application will be a significant challenge.

13. The right of indigenous peoples to be consulted was first contemplated in the Hydrocarbons Law 3058 (2005) and in subsequent Supreme Decrees 29033 (2007) and 29574 (2008), which established consultation procedures as regards oil and natural gas extraction in community lands including native community lands. These laws will be more effective now that the right to consultation is constitutionally guaranteed. On the other hand, no specific regulations have been established regarding mining and major construction projects. Nevertheless, no extraction project can start without a prior social and environmental impact study. Various indigenous groups have complained however that there is no systematic implementation on consultation, and that decisions have been made on energy development and road projects without consultation and the consent of indigenous peoples.

14. Legal recognition of both the individual and collective rights of indigenous peoples over land and territory is essential to ensure their subsistence and traditional forms of development. The new Constitution specifically recognizes, protects and guarantees the individual and community ownership of land, as serving an economic and social function

[1] According to the 2000 census, 62 per cent of the Bolivian population over the age of 15 self-identify as belonging to one of the 36 indigenous peoples that exist in the country.

(art. 393). The National Institute of Agrarian Reform and the Vice-Ministry of Land reported that titles for nearly 26 million hectares have been granted since 2006 (4,476,115 in 2009).

15. The constitutional recognition of indigenous justice systems (which are accorded the same status as the ordinary justice system) has marked a new step in ensuring the right of access to justice and the rights of indigenous peoples. At the same time, it has opened a debate on how to develop both justice systems, setting their respective scope of application in accordance with international human rights norms. Most indigenous organizations have stated their intention to develop their systems of justice using international human rights law as their reference. However, a debate on indigenous justice intensified following a notorious case in May 2009, in which indigenous authorities in the Isiboro Sécure National Park and Indigenous Territory applied corporal punishment to a former indigenous leader in application of indigenous justice. The Minister of Justice condemned the incident.

16. The Electoral Transition Law created seven special indigenous electoral districts and, for the first time, indigenous peoples have direct representation in the Plurinational Legislative Assembly, which has replaced the National Congress. Twelve municipalities in 5 departments were given permission to hold referendums on indigenous autonomies on 6 December; 11 voted in favour of autonomy. Indigenous leaders believe nonetheless that the current number of electoral districts does not give indigenous peoples enough voice in the Assembly and hope that the new electoral law, to be adopted in 2010, will propose a fairer representation system.

17. Located in the Chaco region, the Guaraní people have been seeking to reconstitute their territorial organizations, as well as their authority systems and cultural identity. But this initiative is being hampered by the fact that many families and communities are still subjected to servitude and forced labour. This situation was put in evidence by the United Nations Permanent Forum on Indigenous Issues during its visit to Bolivia from 30 April to 6 May. The Permanent Forum concluded that the direct participation of those affected and also the involvement of relevant authorities at the national, departmental and municipal levels is required to overcome this serious problem.

18. The freedom of association of the Guaraní has also been compromised as certain local landowners and authorities have threatened and prevented Guaraní communities and leaders from holding meetings. Teachers have also been prevented from carrying out educational activities with Guaraní children. Also of serious concern are accounts before the Permanent Forum on Indigenous Issues of sexual abuse by landowners and their staff of Guaraní girls who have allegedly been taken from their families to work as servants in urban areas.

19. Although the Guaraní people have been preparing an integral development plan, the support of the Government should continue through to the plan's final elaboration and implementation. Earlier attempts to move in the direction of such a plan have not yet yielded results.

## B. Racism, discrimination and intolerance

20. Racism, discrimination and intolerance persist and are often expressed openly. Although expressions of racism were less violent than in 2008, racial discrimination against Bolivians of indigenous and African descent continues to be one of the most common forms of discrimination. Of particular concern is the situation of invisibility and social exclusion in which the Afro-Bolivian communities live.

21. The authorities took concrete steps towards eliminating prevailing discriminatory ideologies and practices by the creation, in February 2009, of a Vice-Ministry of

Decolonization within the Ministry of Cultures and of a General Directorate for Combating Racism. In addition to several awareness-raising activities, the Vice-Ministry and the General Directorate have worked on drafting new legislation to combat racial discrimination (currently under the consideration of Parliament).

22. The Durban Review Conference helped put the fight against racism and discrimination in Bolivia on the national agenda. The Minister of Justice pledged to follow up on the Conference's recommendations and to hold various seminars on the issue. Civil society groups involved in combating racism also organized awareness-raising activities.

23. Attempts were made to provide the victims of the serious racial violence in Sucre on 24 May 2008[2] redress. For example, Supreme Decree 131 declared 24 May as the National Day of Struggle against Racism and Discrimination, whilst the Human Rights Commission of the Chamber of Deputies issued a report with its findings on the incidents.[3]

24. Despite some governmental initiatives, Bolivia has yet to adopt legislation that criminalizes racial discrimination, as suggested by the Committee on the Elimination of Racial Discrimination on several occasions since 1972.

25. With regard to other forms of discrimination, violence against women continues to be widespread, although laws have been enacted against domestic violence (Law 1674 of 1995) and for the protection of victims of sexual violence (Law 2033 of 1999). Women's rights organizations have pointed out, for example, that only 11 per cent of cases of violence are dealt with in family courts and that 70 per cent of complaints are abandoned before they are judged.

26. Anti-discrimination laws and policies adopted in 2009 include, inter alia, Supreme Decree 213 against discrimination in recruitment processes; Supreme Decree 264 declaring the Day of Dignity of the Elderly and extending legally established discounts and privileges for the elderly; and Supreme Decree 189 declaring 28 June as the Day of the Rights of People of Different Sexual Orientation.

27. Bolivia has ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol, however, the situation of people with disabilities continues to be challenging. In August, the Government issued Supreme Decree 256 provisionally regulating the use of over US$ 5 million for 10 programmes for people with disabilities, to be implemented in 2009. Several organizations staged demonstrations objecting to this measure on the grounds that they had not been properly consulted on the design of the programmes and that the decree had come too late in the year to make its implementation effective.

## C. Rule of law: administration of justice and the fight against impunity

28. OHCHR-Bolivia monitored the administration of justice, which continues to suffer from a profound, long-lasting structural crisis. It also followed the progress of key human rights cases. As a result of regional, political and financial pressures, the justice system continues to suffer from interference, corruption and lack of independence, which altogether undermine access to justice, the rule of law and foster impunity.

29. Significant progress was observed in the fight against impunity, although the weaknesses that plague the justice system continue to have considerable impact.

[2] See A/HRC/10/31/Add.2, paras. 18–20.

[3] For judicial developments in the case, see section C below.

### 1. Unfilled judicial posts and independence of lawyers

30. The fact that the Constitutional Court has not been functioning for the past two years is of grave concern. Its last remaining judge resigned in May 2009, leaving a backlog of 5,397 cases affecting 34,096 litigants.

31. The Supreme Court of Justice, which should consist of 12 judges, was reduced to 6 after its president was suspended on charges of delaying justice and another member was suspended on charges of breach of trust. The trials against these judges had not started by the end of 2009. Regarding the case against the Court's President, the procedure before the Senate could not get under way for various reasons, including objections by both sides against members of the Senate court and a series of procedural incidents. Both accused allege that their fundamental rights are being violated, in particular, the right to due process of law.

32. The Judiciary Council meanwhile failed to fill its three vacancies, which left it to operate with just one member. As a result, vacant positions for judges throughout the country could not be filled.

33. President Morales convened a summit among representatives of the three branches of the State in July 2009 to tackle, inter alia, the appointment of senior judicial officials. No solution has been found thus far. Except that initiative, OHCHR-Bolivia has observed no great will on the part of any of the country's political parties to reach a consensus on how to fill the vacant positions.

34. On 29 April 2009, Supreme Decree 100 created a Public Register of Lawyers under the responsibility of the Ministry of Justice, enabling it to discipline lawyers for professional misconduct. One of the decree's justifications was the fact that bar associations charge high emolument fees, whereas registering with the Ministry of Justice would be free, thus facilitating access to the profession. Bar associations objected, alleging that the decree was an inappropriate interference by the Government that could undermine the associations institutionally and financially. Despite its positive aspects, the decree could have negative implications for the independence of lawyers, as relevant international standards indicate.[4]

### 2. Investigation of the Pando massacre

35. In March 2009, OHCHR-Bolivia published a report on the violent events of 11 September 2008 in Pando, in which at least 11 people were killed and 50 wounded; most of the casualties were persons of indigenous origin. The office concluded that this massacre was a grave human rights violation, allegedly committed by officials from the Pando prefecture and the Highway Service Department (SEDCAM), by members of the Pando Civic Committee, and supporters of the prefecture. OHCHR-Bolivia recommended that the investigation and prosecution of these events be conducted without undue delay and with strict respect for procedural principles.

36. The central problem in these proceedings was the determination of jurisdictional competence. The Supreme Court of Justice ruling of 10 September resolved the dispute in favour of the ordinary jurisdiction.

37. On 1 October, the Chamber of Deputies approved the report of its Special Legislative Commission mandated to investigate the Pando massacre. On 12 October, the Public Prosecutor's Office brought charges of terrorism, murder, homicide, criminal association and injury against the former prefect of Pando, Leopoldo Fernández, and 26

[4] See concluding observations of the Human Rights Committee – Belarus (CCPR/C/79/Add.86), para. 14.

other people. The composition of the court for the trial in La Paz was chosen by a draw on 27 October but was objected to by the accused. The trial had not begun by the end of 2009.

38. The proceedings have been held up unnecessarily as a result of the presentation by all parties of numerous procedural appeals, objections and criminal or disciplinary actions against judges, magistrates or prosecutors. The right of victims and their families to know the truth and obtain justice and reparation has consequently been delayed. The right of some of the accused in pre-trial detention to prepare their defence in due time was also affected.

39. Despite these delays, OHCHR-Bolivia believes that the Special Legislative Commission's report and the presentation of charges by the Public Prosecutor's Office constitute progress in this case. Nonetheless, the dispute over jurisdiction continues between the district court of Pando and La Paz. Moreover, the lawyers of Mr. Fernández are still challenging jurisdictional competence.

40. Another positive aspect was the decision by a court in El Porvenir in June 2009 to dismiss the case against 16 peasants who were attacked and tortured by supporters of the Pando prefecture on 11 September 2008 and who were then unjustly declared under criminal investigation for the deaths that happened that day.

### 3. Investigation of the racist incidents of 24 May 2008 in Sucre

41. On 24 May 2008 in Sucre, around 60 indigenous persons were subjected to racist abuse and physical violence.[5] Investigation continues in most of the cases related to these incidents, and the Chuquisaca District Public Prosecutor's Office reopened three of the cases that had previously been closed and brought charges in two other cases. However, none of the charges includes the crime of torture and other cruel, inhuman or degrading treatment. The lack of criminalization of racial discrimination has prevented prosecution on these grounds.

42. On 23 September, the Human Rights Commission of the Chamber of Deputies approved the final report of the investigation into the Sucre incidents, concluding that the racist actions were planned, organized and executed by 45 people, including the current prefect of Chuquisaca, the former mayor of Sucre, various opposition parliamentarians and members of the "Inter-Institutional Committee". The Commission said they had committed crimes and human rights violations and should be charged or at least investigated by the Public Prosecutor. It also called for a criminal investigation of various Sucre news media, the Santa Cruz Youth Union (Unión Juvenil Cruceñista) and two Sucre hospitals.

43. After the publication of the Commission's report, the Chuquisaca District Public Prosecutor's Office broadened the scope of the investigation and included the above-mentioned local authorities as suspects of various crimes. It opened new cases against local news media for publicly inciting criminal activity and apology of crime; against the staff of two hospitals for breaching the duty of care and against the Santa Cruz Youth Union for sedition, public disorder, criminal association and various other crimes. The challenge will now be to pursue the investigation with appropriate speed and impartiality.

44. To date there have not been administrative investigations into the role played or lack of action by security forces during these incidents.

[5] For more information see A/HRC/10/31/Add.2, paras. 18–20.

### 4. Case of former President Gonzalo Sánchez de Lozada

45. In September and October 2003, mass protests were violently repressed by security forces, leaving 67 dead and over 400 wounded, the highest death toll due to political violence registered during a democratic regime in Bolivia.

46. On 18 May 2009, after more than five years of legal procedures, the Supreme Court began the trial against former President Gonzalo Sánchez de Lozada, 11 members of his cabinet and 5 members of his military command. They were charged with nine crimes including massacre, homicide and torture in relation to the 2003 incidents.

47. The proceedings could continue only against 2 former ministers and 5 members of the 2003 military high command, as 10 defendants left the country and were declared in default.[6] Mr. Sánchez de Lozada and some of his cabinet members fled to the United States of America in 2003. Others left Bolivia in 2009 and some obtained political asylum in Peru. Despite the groundwork undertaken by the Government, no progress was made with extradition proceedings with the United States in 2009, while the proceedings to extradite those in Peru were only initiated late in the year. The trial was still ongoing by year's end, though not without some procedural incidents that have threatened its continuity.

48. This trial is seen by many as an opportunity for the justice system to demonstrate that trials for serious human rights violations are conducted free from procedural obstacles and political influence.

### 5. Past enforced disappearances and declassification of military archives

49. The Inter-Institutional Council for Clarifying Enforced Disappearances found some of those who had disappeared between 1964 and 1982. In July, the Argentine Forensic Anthropology Team began looking for the remains of guerrillas reportedly killed by the army in Teoponte in 1970. Thus far, the remains of nine people have been found, out of which four were identified and returned to their families.

50. On 20 May, the Ministry of Defence approved Ministerial Resolution 316 which would authorize victims of past dictatorships and their families to access documents from the armed forces from that period. Relatives of some victims said the initiative was insufficient and bureaucratic. OHCHR-Bolivia considers this norm as an important step in the fight against impunity, although the procedure established for accessing military archives and classified information will determine its effectiveness.

51. On 12 May, the Inter-American Commission on Human Rights filed a case against Bolivia[7] before the Inter-American Court of Human Rights concerning the enforced disappearances of Rainer Ibsen and his father José Luis Ibsen in 1971 and 1973 respectively.[8]

52. With regard to the case of Renato Ticona Estrada's enforced disappearance in 1980, the State of Bolivia began to comply with the reparation measures ordered by the Inter-American Court of Human Rights,[9] paying compensation to the victim's relatives in

[6] Under Bolivian law, default suspends the countdown of the period during which a crime can be prosecuted.

[7] This is the third case of enforced disappearance in Bolivia to reach the Inter-American Court of Human Rights. A judgement has already been rendered by the Court in the other cases (see footnotes 9 and 10, below).

[8] See Inter-American Commission on Human Rights, Report No. 46/05, Petition 786/03 (admissibility).

[9] See Inter-American Court of Human Rights, *Ticona-Estrada et al. v. Bolivia* (merits,

September 2009. At the same time, the sentence imposed on the accused of the disappearance by a Bolivian court was upheld and two of them were jailed. The State must yet locate Mr. Ticona Estrada's remains and return them to his family.

53. Despite the ruling of the Inter-American Court of Human Rights in the case of José Carlos Trujillo Oroza,[10] on 28 September, the Santa Cruz Higher Court of Justice upheld the sentence that a lower court had passed on three people in December 2008 in connection with Mr. Trujillo Oroza's disappearance. The ruling confirmed the sentence of two years and eight months in prison on a charge of deprivation of freedom, even though serious human rights violations, such as enforced disappearance and torture, had been involved.

### 6. Reparation for victims of political violence

54. There have been continued delays in the compensation of victims of the 1964–1982 unconstitutional regimes as envisaged by Law 2640 of 2004. The National Commission for the Compensation of Victims of Political Violence (CONREVIP) did not finish vetting cases by mid-2009, despite repeated demands by victims. Law 4069, approved on 27 July, replaced the CONREVIP by a Technical Certification Commission under the Ministry of Justice and set as a deadline 31 December 2009 to decide on pending cases. By year's end, more than 1,500 applications[11] were pending first instance resolution. The Commission had not begun to evaluate any of the requests for review submitted by the petitioners.

55. Law 4069 did not, however, correct major problems carried over from Law 2640, such as the requirement that 80 per cent of funds for the compensation be obtained from the private sector or international donors. It also failed to address the lack of provision for early payment to victims whose cases had already been approved. These omissions have been criticized by victims' organizations.

56. Although the new Commission seems to be working with greater speed and flexibility as regards procedural requirements at the review level, there is concern about the very low proportion of applications approved. According to estimates, it is no more than 3 per cent of the caseload. OHCHR-Bolivia expressed its concern to the relevant authorities on several occasions about the failure to resolve these cases.

57. In December 2009, the Government began to make one-time payments, as envisaged in Supreme Decree 29884, to some of the victims of political violence of February, September and October 2003.[12]

reparations and costs), Judgement of 27 November 2008, Series C No. 191.

[10] In 2000, the Inter-American Court of Human Rights condemned Bolivia for the illegal detention, torture and enforced disappearance in 1972 of José Carlos Trujillo Oroza. See Inter-American Court of Human Rights, *Trujillo-Oroza v. Bolivia* (merits), Judgement of 26 January 2000, Series C No. 64.

[11] Out of 6,221 admissible applications.

[12] Supreme Decree 29884 regulates Law 3955 of 2008 which guarantees reparation to victims and relatives of those killed and wounded in the 2003 events. Reparations are to be funded with resources from the taxes on hydrocarbons. According to information gathered by OHCHR-Bolivia, payments had been determined for those who perished and those who suffered minor injuries. Discussions over payments for persons who were seriously injured are ongoing.

## D. Security and human rights

### 1. Police operation to dismantle a presumed terrorist group

58. A police raid on the Hotel Las Américas in Santa Cruz in the early hours of 16 April 2009 resulted in the deaths of three foreigners and the arrest of two others. According to authorities, all five were members of an alleged terrorist group. The operation aimed to dismantle the group, which had been implicated in the bombing the previous day of the home of the Archbishop of Santa Cruz, Cardinal Terrazas. It was also alleged that the group had planned to assassinate President Morales and other Government officials, as well as actions in favour of Santa Cruz's secession from Bolivia. The two detainees were taken to La Paz and accused of terrorism and other crimes. Six others were subsequently arrested on suspicion of being part of the same group, while others were charged of funding the group. No charges have been brought to date.

59. On 18 November, the Chamber of Deputies approved the final report of the Special Multiparty Commission that was established to investigate the presumed terrorist group. The report concluded that Eduardo Rózsa (one of the three killed in the raid), his associates and financial backers had planned to create a paramilitary group that aimed to divide the territory of Bolivia. The report recommended, inter alia, that the Public Prosecutor's Office investigate the group's financial connections and people with links to the group, including those who might have fled the country.

60. Based on police and forensic reports, the Public Prosecutor's office said the three deaths occurred in the course of a shootout with the security forces. Certain opposition members, however, questioned the actions of the special police unit during the raid and the investigation of the Public Prosecutor's Office. In particular, they claimed that the three deaths were extrajudicial executions. If it is confirmed that undue force was used during the raid, those allegedly responsible should be subjected to an administrative and, if necessary, criminal investigation.

61. The issue of whether Santa Cruz or La Paz had territorial jurisdiction over the judicial investigation was disputed intensely by all concerned parties. The Government issued Supreme Decree 138, giving La Paz jurisdiction over cases of terrorism, sedition and armed uprisings against state security and sovereignty. This decree was much criticized. OHCHR-Bolivia considers that the decree would violate the principle of legal reserve by regulating matters of criminal procedure.

62. On 29 April the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination called on the Government of Bolivia and the Governments of the countries whose nationals were involved in the alleged plot to fully investigate the incident and ensure accountability for any crimes committed.

### 2. Use of excessive force

63. OHCHR-Bolivia took particular note of three cases of alleged excessive use of force by security forces. The first concerned a police operation in connection with the Pando investigations, which was carried out in the early hours of 18 February and that led to the arrest and transfer to La Paz of seven people. Varying degrees of violence were reportedly used during the arrests, which were allegedly carried out without proper notification and exhibition of the respective arrest warrants.

64. The other two cases are related to arrests made on 16 and 28 April in connection to the raid on the Hotel Las Américas. The detainees reported to OHCHR-Bolivia that they were mistreated at the time of their arrest and during their transfer to La Paz.

### 3. Human rights defenders

65. In comparison to 2008, there were few reports of physical attacks and threats on human rights defenders. Certain cases were reported in the departments of Beni, Pando and Santa Cruz. Of particular concern was a firearm attack in February on an employee of the Centre for Legal Studies and Social Investigation (CEJIS) in Trinidad. It is worth highlighting that the Inter-American Commission on Human Rights had granted precautionary measures for the protection of CEJIS staff members in 2008 which were extended through 2009. CEJIS nonetheless reported that authorities had not yet implemented any measures for their protection.

66. OHCHR-Bolivia is concerned by the fact that past attacks on human rights defenders have not been extensively and effectively investigated.

### 4. Lynching

67. At least 71 cases of lynching or attempted lynching were reported in the press, mostly of people suspected of having committed common crimes. At least 15 of the victims died. Most of these cases were reported in remote parts of El Alto, La Paz, where police presence is limited or non-existent. Some victims were burned alive or beaten, tied to stones and thrown into Lake Titicaca. OHCHR-Bolivia is concerned by the violence employed and the fact that the number of lynchings has tripled since 2008.[13]

68. Police forces intervened in some cases to prevent the victims from being killed. For the most part however, there have not been investigations and those responsible have not been brought to justice. OHCHR-Bolivia believes that the lack of judicial investigations and the apparent public tolerance for this type of practice have contributed to the increase of lynchings. There is no justification for the permissiveness shown to such criminal behaviour, which violates the most basic principles of human rights.

## E. Political rights

69. In 2009, Bolivians exercised their right to vote during the constitutional referendum of 25 January and the general elections of 6 December. During these processes, OHCHR-Bolivia monitored respect for freedom of expression and opinion, the right to personal integrity and security, and the right to vote. Other international organizations monitored the technical aspects of the elections.

70. OHCHR-Bolivia observed that despite a few isolated incidents the electoral processes took place without disturbances, in a peaceful and orderly manner. There was high citizen participation and general respect for civil and political rights.

71. During the constitutional referendum process, OHCHR-Bolivia noted that certain groups were prevented by opposing groups from demonstrating in public spaces. Most worrisome were acts of violence and racist insults committed in Sucre against partisans of the “Yes” vote by members of the “No” camp.

72. During the general election campaign, OHCHR-Bolivia observed at least 14 incidents of violence and political intolerance. Of particular concern were the acts of violence committed on 12 November in the city of Santa Cruz that left at least 10 people injured, mainly supporters of the Movimiento al Socialismo, and caused damages to the Gabriel René Moreno University. Also of concern was the assault in Sucre of the senatorial candidate for the Plan Progreso Bolivia-Convergencia Nacional party.

[13] See A/HRC/10/31/Add.2, para. 45.

## F. Freedom of expression and opinion

73. Relations between the Government and journalists improved in 2009. President Morales adopted several measures to reach out to the media, such as lifting a ban which prevented journalists from national media outlets from attending Government press conferences. The President also extended an invitation to the Inter-American Press Association to observe the situation of freedom of expression in the country. There were, nonetheless, some incidents involving the Government and journalists from privately owned media.

74. The National Observatory of News Media reported 64 cases of verbal and physical attacks on journalists and media from 1 January to 31 October. Most of those took place in the departments of La Paz and Santa Cruz. Of particular concern to OHCHR-Bolivia were the repeated threats and insults against journalists by the mayor of Santa Cruz, including publicly wishing their death.

75. OHCHR-Bolivia issued a press release condemning the fact that two Santa Cruz television journalists covering a police operation on 3 September were attacked by policemen using lethal weapons. Abuses by the special police unit (Unidad Táctica de Resolución de Crisis) that took part in the operation were reportedly the reason for the Government's decision to disband it. OHCHR-Bolivia hails this decision and the starting of administrative and criminal investigations.

76. Still to be solved are also several cases of violence in Potosí, for example an attack with explosives on a television station on 8 June and attacks against four journalists between 26 and 31 August, which have not been solved.

77. In 2008, OHCHR-Bolivia had voiced concern over the failure of justice officials to investigate and clarify the May 2008 murder of a Radio Municipal de Pucarani journalist.[14] This situation has remained unchanged. It is important that the relevant authorities investigate seriously this and other cases that took place in 2008.

78. In March 2009, President Morales filed a lawsuit alleging contempt for legally constituted authorities against the editor of the newspaper *La Prensa* over articles published in December 2008. There was an outcry from media organizations about the nature of the charges and the fact that the prosecution was brought under criminal law rather than the 1925 Print Law (*Ley de Imprenta*). The President's representatives subsequently asked the Public Prosecutor to change the charges to defamation and personal injury and to bring the prosecution before a Print Tribunal. The trial had not begun by year's end.

79. At least five other cases of contempt for legally constituted authorities were initiated by public authorities at different levels. It should be noted that the Inter-American Commission on Human Rights recommended more than a decade ago that members of the Organization of American States repeal all contempt laws and all other judicial provisions for criminal prosecutions for disrespect for legally constituted authorities on the grounds that they restrict freedom of expression. OHCHR-Bolivia is of the opinion that Bolivia needs to abandon such prosecutions as they affect the full realization of freedom of expression and the press.

## G. Economic, social and cultural rights

80. The new Constitution recognizes all of the rights contained in the International Covenant on Economic, Social and Cultural Rights and in the Additional Protocol to the

[14] Ibid., para. 66.

American Convention in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). Although Bolivia has a National Development Plan and despite the fact that the levels of poverty have fallen significantly in recent years, they are still the highest in the region, with 37.7 per cent of the population living in extreme poverty in 2006.[15]

81. The country continues to suffer from major long-term structural inequality in access to and use of basic services. This affects primarily women and indigenous peoples in rural areas. However, there was legislative progress in place and the Government was implementing new social programmes aimed at specific groups such as infants, mothers, students and the elderly.

82. The Government has in particular taken measures to improve the enjoyment of the rights to food, health and education. To combat maternal and infant mortality, for example, it issued in 2009 Supreme Decree 115 promoting breastfeeding and Supreme Decree 66 introducing the "Juana Azurduy" subsidy for pregnant women and mothers of children up to the age of two. The Ministry of Health launched on 12 May its National Strategic Plan (2009–2015) to improve maternal, prenatal and neonatal health. Also positive was the continuation of the Zero Malnutrition Programme for children up to the age of two, which involves multisectoral governmental interventions with the support of the United Nations system.

83. All these measures constitute important steps towards better standards of nutrition and health in both infants and mothers. Whilst progress has been made, Bolivia's rates of child and neonatal mortality are still among the highest in Latin America.[16]

84. The new Constitution establishes free mandatory primary and secondary education and requires the Government to guarantee education for children with differing learning abilities. Progress made includes the continuation of the "Juancito Pinto" cash transfer programme aimed at encouraging school attendance and reducing dropout rates; and the creation of the "Yes I can go on" National Post-Literacy Programme in February to follow up on the previous "Yes I can" National Literacy Programme.

85. Despite these measures, there is a need to continue improving access to and the quality of education further, especially in rural areas. Efforts are also needed to adopt a new education law. A draft education law has been under consideration of the Parliament for the past three years.

86. With regard to labour rights, positive measures taken by the Government include the continuation of the Dignity Pension Programme for people over the age of 60, and the adoption of decrees raising minimum wages in the private sector, setting compensation requirements for employees who have been laid off after working more than 90 days, and making it more difficult to fire working mothers and fathers in both the private and public sector.

87. The existence of various forms of child labour is particularly worrisome. Although Bolivia has a National Plan for the Elimination of Child Labour, little progress has been made in eradicating the worst forms of child exploitation. According to a report by the

[15] See *Quinto informe de progreso de los Objetivos de Desarrollo del Milenio en Bolivia* (Fifth progress report on the Millennium Development Goals in Bolivia), (La Paz, Unidad de Análisis de Políticas Sociales y Económicas (UDAPE), 2008), p. 27. According to the latest UNDAPE estimates, as cited in E/2009/96, figure 1, this level had been reduced to 31.8 per cent by 2008.

[16] *Quinto informe de progreso*.

United Nations Children's Fund (UNICEF), about 116,000 children between the ages of 7 and 13 work in sectors such as mining, sugar-cane and chestnut harvesting.[17]

## H. National Human Rights Action Plan

88. The mechanism in support of the 2009–2013 National Human Rights Action Plan[18] completed its internal organization during its first year. The National Human Rights Council, responsible for implementing and supervising the Plan, adopted a set of internal regulations in May regarding its structure, powers and operating methods. On 10 December, the Council was officially inaugurated by the Vice-President in a public ceremony. It consists of representatives of State entities, NGOs, civil society and indigenous organizations. OHCHR-Bolivia participates as an observer.

89. The Vice-Ministry of Justice and Fundamental Rights promoted the Plan throughout the country. Initial progress was made in some areas covered, such as the promotion of economic, social and cultural rights, and the fight against discrimination, through the adoption of legislative and administrative measures (see sections B and G above).

90. Nonetheless, implementing the Plan and ensuring its sustainability represent a major challenge that will require appropriate budgetary allocation and real coordination between the different branches of the State, as well as effective participation of the Ombudsman's Office and civil society.

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

91. OHCHR-Bolivia monitored the human rights situation in Bolivia and followed up on emblematic human rights cases. Particular attention was paid to the human rights situation during the January referendum and the December elections and press releases were issued about various matters observed in the course of the year.

92. OHCHR-Bolivia disseminated the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in various parts of the country, particularly to indigenous communities and organizations. Relevant authorities and organizations were also given advice and training on how to follow up on the recommendations. OHCHR-Bolivia also accompanied and advised the Permanent Forum on Indigenous Issues on its mission to the Chaco region.

93. Workshops were organized on the right to consultation with the United Nations system in Bolivia and Government authorities, and an international seminar on indigenous autonomies with the participation of international experts and indigenous leaders was organized with the Ministry of Autonomies. OHCHR-Bolivia also held a conference on legal pluralism and international human rights law with the participation of Government officials, members of the judiciary, civil society representatives and national and international experts, as well as a conference aimed at disseminating good legal practices on the right to conscientious objection to military service. Together with the Ombudsman's Office and the Human Rights Community,[19] OHCHR-Bolivia organized a seminar on

[17] UNICEF, "Progress for children: An assessment of the protection of children", Information Summary, Number 8, (UNICEF, New York, 2009), p. 2.

[18] The Plan was adopted by Supreme Decree 29851 on 10 December 2008. For more information, see A/HRC/10/31/Add.2, paras. 62 and 63.

[19] A coordinating committee formed by various non-governmental organizations working in the field of human rights and State organizations.

mechanisms and tools for mainstreaming human rights in the implementation of the new constitution.

94. Technical advice was provided to the Ministry of Justice on the drafting of Bolivia's report to the Durban Review Conference. Logistical support was also given to the Ombudsman's Office and civil society for their participation in the conference; the Durban Declaration and Programme of Action was disseminated widely. OHCHR-Bolivia also participated in follow-up meetings with the Government and civil society; held press conferences and published a selection of United Nations texts on combating racism, racial discrimination, xenophobia and related forms of intolerance. Advice was also given to the Government on the preparation of its report to the Committee on the Elimination of Racial Discrimination.

95. OHCHR-Bolivia participated in seminars organized by the Ministry of Justice, the Ombudsman's Office and civil society which enabled the creation of a technical committee to evaluate draft laws for combating discrimination and criminalizing racial discrimination. Together with the Vice-Ministry of Decolonization, OHCHR-Bolivia organized an international seminar on public policies against racism and discrimination. Training on the United Nations framework for combating racism was provided to staff of the Vice-Ministry, and advice was given on the preparation of an assessment on racism and discrimination in Bolivia.

96. OHCHR-Bolivia began implementing a project funded by the Swiss Agency for Development and Cooperation for capacity-building and the promotion of Afro-Bolivian organizations and communities.

97. Advice was provided to the Government, the Ombudsman's Office and civil society on the drafting of their respective reports for the universal periodic review. OHCHR-Bolivia also participated in the countrywide consultative workshops organized by the Vice-Ministry of Justice and Fundamental Rights on the universal periodic review and, in collaboration with leading human rights organizations, held workshops in Cochabamba, La Paz, Santa Cruz and Tarija related to the mechanism.

98. Regarding the National Human Rights Action Plan, OHCHR-Bolivia regularly participated in the meetings of the National Human Rights Council. Together with the Vice-Ministry of Justice and Fundamental Rights, it organized a national workshop on implementation of the Plan and published a booklet on it.

99. OHCHR-Bolivia published and disseminated the report of the Special Rapporteur on the right to food, as well as the concluding observations formulated for Bolivia in 2008 by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

100. OHCHR-Bolivia expressed observations and concerns to Ministry of Justice officials about Supreme Decree 138 on jurisdictional rules and the adoption of precautionary measures in terrorism cases.

101. OHCHR-Bolivia provided training on international and regional human rights protection mechanisms addressed to human rights defenders, journalists, social and indigenous organizations, and provided advice to human rights NGOs and petitioners in La Paz, Cochabamba, Santa Cruz, Tarija and Beni.

102. Within the United Nations Country Team, OHCHR-Bolivia held workshops on the human rights-based approach to development programming and the universal periodic review, regularly participated in the activities of the Gender Technical Group and, together with UNICEF, drafted a publication about human rights and children's rights for the sixty-

first anniversary of the Universal Declaration of Human Rights and the twentieth anniversary of the Convention on the Rights of the Child.

# V. Conclusions and recommendations

103. **Compared with 2008, there was an overall improvement in the human rights situation in 2009, especially as regards the decrease in the activities of "clash groups", which had affected the right to life and physical integrity in 2008. There was less political violence, although political division between the Government of the Plurinational State of Bolivia and the opposition continued throughout the year, with consequences on the human rights situation. Problems affecting the rule of law and the judicial system became more acute this year.**

### Recommendations

104. **The High Commissioner reiterates her previous recommendations[20] and those of her Office.[21] In particular, she calls on relevant judicial authorities to investigate and prosecute all cases of human rights violations reported in 2008, ensuring that victims have access to independent, impartial and timely justice, and that they are guaranteed adequate reparation, in particular with regard to the May incidents in Sucre and the September massacre in Pando. She reiterates her recommendation to investigate whether the actions taken by the police on 11 September in Pando were the most appropriate to avoid the escalation of violence, prevent human rights violations and protect victims. The High Commissioner makes the following further recommendations.**

### Legislation

105. **The High Commissioner urges the development of complementary legislation to the new Constitution strengthening recognition of human rights, in particular of indigenous peoples, in accordance with international standards.**

### Indigenous peoples

106. **The High Commissioner recommends stepping up efforts to implement the right to consultation in accordance with the new Constitution and to carry out consultations and environmental impact analyses of extraction and development projects in the lands and territories of indigenous peoples and communities.**

107. **The High Commissioner encourages the Government to pursue and to reinforce measures aimed at eradicating contemporary forms of slavery, in particular those conditions to which Guaraní families and communities are subjected. This should be done with the full participation of traditional indigenous leaders. The Government should also follow up on the recommendations of the United Nations Permanent Forum on Indigenous Issues.**

[20] A/HRC/10/31/Add.2, paras. 89-102.

[21] *Informe público de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en Bolivia sobre los hechos de violencia ocurridos en Pando en Septiembre de 2008* [Report of OHCHR on the violent events in Pando in September 2008], March 2009, paras. 110–112.

**Racism, discrimination and intolerance**

108. **The High Commissioner encourages the Government to broaden its efforts aimed at overcoming the manifestations and root causes of racism and discrimination, including conducting an adequate assessment of the situation and criminalizing racism and discrimination.**

**Rule of law**

109. **The High Commissioner urges the competent bodies to guarantee transparent procedures for the appointment and election of new judicial authorities in accordance with the new Constitution. Until these procedures can be established and completed, a political consensus should be reached to provisionally fill the vacant judicial positions, especially in the Constitutional Court.**

110. **The High Commissioner recommends strengthening the progress achieved in combating impunity by respecting the due process and guaranteeing the right to truth and appropriate reparation for all victims of past and present human rights violations. The compensations envisaged by Law 2640 should be paid without delay to the victims of the political violence of the 1964–1982 unconstitutional regimes.**

111. **The High Commissioner calls on the Public Prosecutor to also investigate and bring to justice those responsible for the human rights violations reported, including the incidents that occurred during the electoral campaigns.**

**Enforced disappearances**

112. **The High Commissioner urges the Ministry of Justice to continue its efforts to locate the remains of those who disappeared during the military dictatorships and return them to their families, and to ensure that the State's confidential military archives from the time of the dictatorships be effectively declassified.**

**Security and human rights**

113. **The High Commissioner urges Bolivian authorities to impartially investigate the activities and links of those charged in relation to the alleged terrorist group in Santa Cruz, and to ensure to those arrested their right to a fair trial. She also requests that the allegations of excessive use of force by security officials, mentioned in the present report, be fully investigated by means of administrative and, if necessary, criminal investigations so as to determine whether the force employed was necessary, reasonable and proportionate.**

114. **The High Commissioner recommends that the Government adopt a plan to prevent and sanction lynching and to take the necessary measures to ensure that cases of lynching are investigated promptly and those responsible sanctioned.**

**Human rights defenders**

115. **The High Commissioner reiterates her call upon law enforcement authorities, including the judiciary, to ensure that human rights defenders enjoy full protection and that violations committed against them are promptly and duly investigated.**

**Freedom of expression**

116. **The High Commissioner urges the competent authorities to investigate physical attacks on journalists and media operators and premises, so that they do not go unpunished, and to adopt adequate measures to effectively prevent further attacks,**

**and calls on the Government as well as departmental and municipal authorities to respect and guarantee freedom of expression at all times.**

117. **The High Commissioner recommends that the Plurinational Legislative Assembly eliminate the crime of contempt for legally constituted authorities from Bolivia's criminal legislation.**

**Economic, social and cultural rights**

118. **The High Commissioner encourages the Government to continue promoting social programmes aimed at improving the population's access to health and education, particularly in rural areas.**

119. **The High Commissioner calls on the authorities, as a matter of urgency, to put an end to the forced labour of children.**

**National Human Rights Action Plan**

120. **The High Commissioner welcomes the measures undertaken in the first year of implementation of the National Human Rights Action Plan and calls on the State to approve an adequate budgetary provision for the implementation of the Plan and for a greater coordination and cooperation of State entities within the National Development Plan framework.**