

ORGANIZATION OF AMERICAN STATES  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS



OEA/Ser.L/V/II.  
Doc. 34  
28 June 2007  
Original: Spanish

**ACCESS TO JUSTICE AND SOCIAL INCLUSION:  
THE ROAD TOWARDS STRENGTHENING  
DEMOCRACY IN BOLIVIA**

**GENERAL SECRETARIAT  
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2007  
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iachr

OAS Cataloging-in-Publication Data

Inter-American Commission on Human Rights.

Acceso a la justicia e inclusión social : el camino hacia el fortalecimiento de la democracia en Bolivia = Access to justice and social inclusion : the road towards strengthening democracy in Bolivia / Inter-American Commission on Human Rights.

p. ; cm. (OEA Documentos Oficiales. OEA/Ser.L/V/II) (OAS Official Records Series. OEA/Ser.L/V/II)

**ISBN 0-8270-5109-3**

1. Justice, Administration of--Bolivia. 2. Prisoners' rights--Bolivia. 3. Women's rights--Bolivia. 4. Rights of children--Bolivia. 5. Indigenous peoples--Civil rights--Bolivia. 6. Human rights--Bolivia. I. Title. II Series.

OEA/Ser.L/V/II Doc. 34

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## EXECUTIVE SUMMARY

1. At the invitation of the Government, the Inter-American Commission on Human Rights (hereafter "the Commission" or "the Inter-American Commission") visited the Republic of Bolivia between November 12 and 17, 2006, to observe the human rights situation in that country, as part of its primary mission to promote the observance and defense of human rights in the American States, and the powers granted to the Commission under Article 41 of the American Convention on Human Rights (hereafter "the Convention" or "the American Convention").<sup>1</sup>

2. The Commission met with authorities and officials of the Executive Branch, the Legislative Branch and the Judiciary, as well as the Prosecutors' Office ("*Ministerio Público*") and the Ombudsman's Office ("*Defensoría del Pueblo*"). It also held meetings with various organizations of civil society. A delegation of the Commission visited the Chonchocorro Penitentiary in El Alto and the San Pedro Prison and the Women's Prison ("*Centro de Orientación Femenina Obrajes*"), both in the city of La Paz. Working meetings were also held on various cases and precautionary measures before the Commission, and a lecture was given on the human rights protection mechanisms of the inter-American system.

3. During its visit, the Commission observed different issues related to respect of human rights in Bolivia, as well as the political and social context of recent years, which has been characterized by institutional fragility and persistent social conflicts. That situation has hampered the design and implementation of measures aimed to overcoming those problems, principally the lack of access to justice and the social exclusion.

4. The Commission acknowledges that the issues observed about the human rights situation in Bolivia represent the legacy of previous eras. It also considers that the current political and social context represent the beginning of an important democratization and social inclusion process which may help the traditionally excluded majority of the population to participate actively in decision-making on political, economic, and social questions that affect them directly.

5. While the Commission learned of several important reforms proposed by the current government, however, social and political conflicts continue, demonstrating the deep polarization amount of the different sectors

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<sup>1</sup> The delegation consisted of Commission members Evelio Fernández Arévalos, President; Florentín Meléndez, Second Vice-President and Rapporteur for Bolivia; Commissioner Víctor Abramovich; and Santiago Canton, Executive Secretary. The delegation also included the specialists Débora Benchoam, Leonardo Hidaka, and Silvia Serrano; and Gloria Hansen provided administrative support.

of Bolivian society, and the need to find channels of dialogue for consensus building and negotiation.

6. For example, the Commission found that, during 2006 and thus far in 2007, demonstrations, strikes and blockades continued to be the principal means of pressure and protest, leading in some cases to acts of violence. This was the case with the mining conflict in Huanuni on October 5 and 6, 2006, between salaried mine workers and cooperative miners, which led to 16 deaths and dozens of injured.

7. On the other hand, after the enactment of the Special Law 3364 calling for the Constituent Assembly on March 6, 2006, two important democratic mechanisms started to have place in Bolivia: i) the creation and constitution of the Constituent Assembly; and ii) the referendum on autonomy for regions. Nonetheless, in the context of these processes the deep polarization has continued.

8. For example, the strong discussion regarding the voting system lead to some members of the Constituent Assembly to adopt extreme measures as a hunger strike in November 2006, followed by some acts of violence during demonstrations of groups close to both groups of Assemblers in dispute. The Commission is also concerned about the acts of violence that took place on December 14, 15 and 16 in the municipality of San Julián, department of Santa Cruz, and on January 11 and 16, 2007, in the city of Cochabamba resulting in two deaths and dozens injured, regarding the results of the regions' autonomy referendum.

9. The Commission regrets the continuation of events such as those described which, by their violent nature, disrupt the normal democratic mechanisms of participation and demonstration, and it urges the Bolivian State to take all measures necessary to prevent the repetition of such acts, and to investigate the events seriously and thoroughly, with full respect for human rights.

10. Nevertheless, the Commission welcomes the channels of dialogue that have recently permitted the negotiations over the voting system in the Constituent Assembly. It hopes that the process will no longer be blocked by persistent antagonisms, and that consensus-building mechanisms will be pursued to ensure political representation by all sectors of Bolivian society in this important forum.

11. Together with deepening the channels for dialogue, negotiation and consensus building, it must be stressed that the process of social inclusion championed by the current government must be accompanied by institutional strengthening in all areas, and in particular the guarantee of an impartial judiciary, access to justice, the enforceability of rights recognized under the Constitution and international law, strict compliance with due process without discrimination, policies for coordination between the community and formal



justice systems, and, most especially, fighting the severe problem of impunity for those responsible for human rights violations.

12. During its visit the IACHR gave special attention to these aspects and observed closely the general circumstances and the access to justice of some groups of society that require special attention given their particular situation; persons deprived of liberty, indigenous peoples and peasant communities, women, children and asylum seekers. The following are the topics that the Commission considers that require priority attention by the government in the context of the reforms that it is proposing. The specific considerations regarding those aspects are indicated in the text of the report with specific indication of the international law applicable, the relevant international standards and the respective recommendations.

### **Administration of justice**

13. The Commission noted the legal and institutional changes that have been made in recent years. However, it found that most of these reforms and legal provisions have not been properly implemented, for their promulgation and entry into force have not been accompanied by the necessary budgetary and human resources to ensure their effective application.

14. With respect to the coverage of justice services, the Commission was deeply concerned at the widespread absence, nationwide, of officials of the Judiciary, the Prosecutor's Office and the Public Defender's Office. For example, only 180, or 55%, of Bolivia's 327 municipalities have a judge; only 76, or 23%, have a prosecutor; and only 11, or 3%, have a Public Defender.

15. With respect to guarantees of independence, impartiality, suitability and transparency in the Judiciary, the Commission received information about the persistence of vacancies in the highest judicial authorities, and the widespread use of interim personnel to make up for the lack of constitutionally appointed officials. As well, it received complaints about irregularities in the system of appointment and promotion of judges, and shortcomings in the development of a professional career for prosecutors. This situation has been aggravated by gaps in the law and irregularities in the systems for disciplining judges and prosecutors.

16. The Commission also learned of problems in implementing the accusatorial criminal prosecution procedure, reflecting the lack of training, technical support, infrastructure, institutional coordination, and clearly defined responsibilities for the equitable distribution of cases and the failure to take steps to resolve the serious backlog of cases. It also noted that the National Public Defenders System has not been fully implemented: its coverage remains minimal, and the quality of service is poor.

17. The Commission identified some factors that lead to impunity for serious violations of human rights, such as the forced disappearances that occurred during times of military dictatorship, and the deaths and injuries caused during suppression of social protests by the police and the military. These factors point to the lack of institutional coordination, shortcomings in the collection of evidence, the absence of adequate investigation protocols, obstruction by institutions to which the alleged perpetrators belonged, and in general, procedural delays.

18. In the following paragraphs the Commission will indicate the general problems affecting the groups identified (para. 12), highlighting for some of them the aspects observed by the Commission regarding their particular situation on access to justice.

#### **Conditions in prisons and penitentiaries and the rights of persons deprived of liberty**

19. The Commission identified a number of problems of special concern with respect to rights of persons deprived of liberty in Bolivia, in the course of its visits to some penitentiaries. In the first place, it noticed that the prisons are severely overcrowded, to the extent of 400% in San Pedro prison, a situation that is the direct result of excessive resort to preventive arrest. On this point, the Commission learned that 74% of persons in prison are awaiting sentence. The Commission was also informed of certain preventive detention criteria such as "danger to others" or "danger to relapse" that may be contrary to international standards.

20. There are still inadequate criteria for separating and distinguishing the prison population by categories. The Commission noted in particular that there is no distinction between convicted and accused persons, or between juveniles and adult convicts and accused. In terms of security, the Commission also found that prison police personnel do not meet the training standards, and that internal security is generally in the hands of the inmates themselves.

21. The Commission noted that living conditions are so precarious and may constitute inhumane and degrading treatment under international law. The penitentiaries have no study and work programs for the social readaptation of convicts. Given the circumstances, the Commission is concerned that in some penitentiaries, persons deprived of liberty have their families living with them.

#### **Indigenous peoples and peasant communities**

22. On the rights of indigenous peoples and peasant communities ("*comunidades campesinas*") the Commission notes the institutional framework constituted by ministries and vice ministries in this area, and the legal framework introduced through ratification of Convention 169 of the

International Labour Organization (therefore "Convention 169 of the ILO"), as well as the proclamation in the Constitution that Bolivia is a "multiethnic and pluricultural" country. Nevertheless, these rights are still not effectively exercised. An example of this is the continued discrimination that these communities suffer in the accessibility and quality of health and education services.

23. On access to land, the Commission received information about corruption, institutional weaknesses, irregular practices, and the failure to recognize legal status, among other factors that have obstructed the regularization and distribution of lands. The Commission noted approval and promulgation of Law 3545 of November 28, 2006, renewing the agrarian reform, and hopes that this will serve to eliminate the problems observed.

24. The Commission also learned of projects for the exploitation of natural resources that were designed and executed without proper participation by the indigenous people affected, and in particular without any prior consultation to obtain their free and informed consent. As well, the Commission was concerned at the continuation of mining projects that are contaminating the environment and posing a risk to the life and health of many indigenous and peasant families.

25. The Commission was deeply concerned at the persistence of various forms of debt bondage analogous to slavery, including some elements of forced labor, despite the absolute prohibitions in the international legal framework to which Bolivia is a party. This situation has been worsened by the lack of government response, through either administrative or judicial channels, and by the absence of comprehensive policies for resolving this complex problem.

26. Finally, the Commission observed that indigenous peoples and peasant communities have problems of access to justice which, in the few rural areas to which the system's coverage extends, continues to be meted out in a discriminatory manner that takes no account of the particular features of these groups and their special situation. The Commission also learned of the glaring gap in the law with respect to guidelines for coordinating official justice with community justice, and the serious confusion this has generated, whereby important groups continue to interpret lynchings as a reflection of indigenous justice, or as an alternative or fallback mechanism of dispute settlement.

### **Rights of women**

27. On women's rights, the Commission observed that an important legal framework has been established with ratification of the international instruments in this area, and a number of internal laws to guarantee women's political participation, their access to land, and to prevent and punish family violence, among other aspects. Nevertheless, there are still laws on labor, family and even criminal matters that contain highly discriminatory language

and that continue to exclude women from various spheres of national life and from exercise of their rights to education, health, work, etc.

28. With respect to women's participation in the conduct of public affairs, the Commission received information that legislation calling for fixed percentages has yet to be effectively implemented, and is not being strictly enforced. The Commission also learned of "political harassment" against women who win elections to public office.

29. The Commission learned of alarming statistics relating to cases of violence against women, involving both "femicide"<sup>2</sup> and family or domestic violence and sexual violence, including physical and psychological violence. The situation is compounded by the lack of comprehensive and consistent policies for preventing and punishing conduct of this kind. As well, there are few complaints laid, there are no official records, and disparities in the statistics suggest that many cases go unreported.

30. There is a high degree of impunity attached to such offenses as well. Some of the factors identified as the cause of this situation are the institution of conciliation proceedings for premature termination of legal proceedings; the interpretation regarding the fact that sexual crimes are public that need private denounce in the sense that the victim must provide the required evidence; the inadequate treatment of victims by officials before whom they must lay their complaints, and who in many cases arrange for them to be withdrawn; and in general misinformation about the available legal remedies, and social pressure that continues to discourage women from reporting crimes of this kind.

### **Rights of children**

31. The Commission observed that, despite the current legal framework protecting the rights of children in Bolivia, the lack of information and discrepancies in the statistics tend to conceal the issue in the face of persistent practices that are of profound concern to the Commission.

32. The Commission learned of many children who are not recorded in the civil registry, especially in rural areas even though the legal framework establishes the gratuity of the service. The Commission also received some alarming figures on the number of children working under conditions that ignore international standards. As well, it learned of many cases of sexual trafficking

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<sup>2</sup> The international community uses the term "femicide" to cover the murder of women "because they are women." Femicide is often accompanied by sexual abuse and other signs of physical aggression. For more information, see United Nations, Report of the Secretary-General, In-depth Study on All Forms of Violence in Women, A/61/122/Add 1, July 6, 2006, para. 84. Available at: <http://www.un.org/womenwatch/daw/>.

and exploitation as well as physical and psychological violence against children in many areas.

33. The Commission was also informed of some disturbing aspects of the criminal system for dealing with juvenile delinquents, especially procedural delays, the lack of specialized authorities for hearing such cases, the widespread use of imprisonment as punishment, and preventive detention under the excuse of "public threat."

#### **Rights of asylum seekers**

34. The Commission also received complaints about the situation of refugee applicants in Bolivia, particularly relating to guarantees of due process in administrative procedures. Specifically, it learned of irregularities in the make-up of the National Refugees Commission, problems with the presentation of evidence, inadequate justification for decisions rejecting or revoking refugee status, shortcomings in the notification of decisions, and obstacles to the presentation of appeals.

35. The Commission also received information on decisions taken in the course of deportation or extradition procedures that run counter to the duty not to return persons with recognized refugee status.

#### **Recommendations**

36. In consideration of the observations made throughout the report and highlighted in this executive summary and in order to contribute to strengthening the defense and protection of human rights in a democratic context in Bolivia, the IACHR presented specific recommendations to the State, which will be the subject of close follow-up.

37. Regarding the administration of justice, the Commission's recommendations are related to the need to increase the coverage of judicial authorities, prosecutors and public defenders throughout the national territory; to increase budgetary resources in order to solve the serious institutional problems of the Judiciary; to strengthen mechanisms for publicizing and disseminating the rights of citizens and the judicial actions available to make them effective; to consolidate and regulate the professional careers of judges and prosecutors; to guarantee transparency in the appointment of senior judiciary officials; to strengthen the disciplinary system for judges and prosecutors; to adopt measures for guaranteeing effective implementation of the accusatorial criminal prosecution procedure; to strengthen the National Public Defender System; and to promote investigations of gross human rights violations.

38. With respect to the situation of persons deprived of liberty, the Commission included recommendations to correct the excessive use of preventive detention; decrease persistent procedural delays in criminal

proceedings; decrease overcrowding in prisons; improve prison infrastructure conditions; guarantee adequate training of personnel in charge of administration, supervision, operations and security inside prisons; ensure the appropriate separation of convicted and accused persons, and of juveniles and adults; guarantee access to adequate medical care; guarantee opportunities for education and work; take into account the best interests of children when they are living in prison with one of their parents; guarantee the adequate control of detention conditions by criminal judges; and create adequate and effective remedies of individual and collective nature in order to facilitate a judicial control of detention conditions.

39. Regarding the situation of indigenous peoples and peasant communities, the Commission deemed it appropriate to make recommendations on the effective implementation of ILO Convention 169; the adoption of necessary measures to eradicate all kinds of discrimination against persons within the State's jurisdiction on the basis of their indigenous or peasant status; the compatibility of the measures adopted in favor of these groups with their particular features and cultural identity; effective implementation of the new legal framework for agrarian reform in order to overcome the obstacles identified; the effective participation of indigenous peoples and communities affected by development projects; the search for a solution to the serious environmental problems caused by some of those projects when environmental standards are not adhered to; and the eradication of bondage and forced labor situations.

40. With respect to the status of women, the Commission made recommendations on application of the existing legal framework and public policies to protect women from violence and discrimination; the design of integrated, coordinated government policies to ensure that victims of violence have access to judicial protection; the launching of public awareness campaigns on the obligation to respect women's rights in all spheres; training of civil servants in addressing holistically the right of women to live free from violence and discrimination; ensuring compliance with the legal framework for the participation of women in public affairs; the creation and improvement of data collection systems on violence against women; strengthening of the institutional capacity of respective bodies to fight impunity; and guaranteeing adequate treatment of victims by officials in charge of investigations.

41. Regarding the situation of children, the Commission included recommendations on the execution of comprehensive public policies to prevent human rights violations; free and effective access to civil registration; the adoption of measures to expand as much as possible access to and the quality of public education; coverage of Ombudsman for Children offices and similar institutions; the eradication of child labor (children under 14 years of age) in both urban and rural areas; the prevention, investigation and punishment of all kinds of sexual exploitation of children; the exceptional application of both deprivation of liberty as a sanction and preventive detention; compliance with special due process guarantees in favor of children; derogation of the articles of

the Juvenile Code that establish a "threat to others" as a criterion for preventive detention.

42. With respect to asylum seekers, the Commission made recommendations to eliminate the procedural obstacles faced by these persons; to facilitate the issuance of identity documents; to guarantee full compliance with due process; to prevent the return to their country of persons with valid refugee status, and to guarantee that, before the adoption of any decision regarding deportation or extradition, actual risks are evaluated and determined in the framework of a procedure with full defense and access to effective remedies.

**ACCESS TO JUSTICE AND SOCIAL INCLUSION:  
THE ROAD TOWARDS STRENGTHENING DEMOCRACY IN BOLIVIA**

**CHAPTER I**

**INTRODUCTION**

**A. Scope and legal framework of the report**

1. The Inter-American Commission on Human Rights, in exercise of its primary function of promoting the observance and defense of human rights in the American States, and the powers granted by Article 41 of the American Convention on Human Rights, publishes this report containing its considerations and recommendations based on observations during the visit to Bolivia from November 12 to 17, 2006, and the information provided by government authorities and various representatives of civil society.

2. While recognizing the political context in Bolivia of recent years, and stressing that the human rights situation described herein has its origins in previous decades and has been inherited by the current government, the Commission placed special emphasis on the administration of justice in Bolivia and on the access to justice for the sectors of society under a special vulnerability situation. It considers that special attention must be given to these issues in order to strengthen democratic institutions and pave the way for the social inclusion that the government seeks to achieve in the country.

3. The Commission will first present its observations on the institutional weaknesses in the administration of justice, the problems in implementing several laws, and the impunity that surrounds serious human rights violations that occurred in the past. In the following sections of the report, the Commission will outline the main problems afflicting the most vulnerable sectors and the special risk of being object of human rights violations: persons deprived of liberty; indigenous peoples and peasant communities; women; children; and asylum seekers. In each of those sections the Commission will stress the obstacles that these groups face in accessing justice and obtaining effective responses to their complaints.

4. At the end of each section the Commission will list its recommendations on each issue, as a contribution to ensuring that the situation of human rights in Bolivia and the government initiatives to improve it will comply with international standards on human rights, consistent with the obligations that the State has assumed. In this respect, the frame of reference for the Commission's observations and recommendations will be the inter-



American human rights instruments that Bolivia has ratified,<sup>3</sup> with certain references to the provisions of other international instruments, as well as to the Bolivian Constitution and relevant domestic legislation.

## **B. The IACHR visit**

5. At the invitation of the Government, the Commission conducted a visit to the Republic of Bolivia from November 12 to 17, 2006, to observe the overall human rights situation. The delegation consisted of Commission members Evelio Fernández Arévalos, President; Florentín Meléndez, Second Vice-President and Rapporteur for Bolivia; Commissioner Victor Abramovich; and Santiago Canton, Executive Secretary. The delegation also included the specialists Débora Benchoam, Silvia Serrano and Leonardo Hidaka; and Gloria Hansen provided administrative support.

6. In the course of its stay in Bolivia, the Commission met with the following government authorities: the Minister of the Presidency, the Minister of Foreign Relations and Cult, the Minister of Justice, the Minister of National Defense, the Vice Minister of Foreign Relations and Cult, the Vice Minister for Intergovernmental Coordination, the Vice Minister for Community Justice, the Vice Minister of Human Rights, a Representative of the Vice Ministry of Gender and Generational Affairs, the Vice Minister of the Interior and Police, the General Director of the Penitentiary System, the President of the Chamber of Deputies, the President of the Constitutional Commission of the Chamber of Deputies, a Representative of the Congressional Commission on Human Rights, the President and the Dean of the Supreme Court of Justice, the President of the Constitutional Tribunal, the President and certain members of the Superior Court of the District of La Paz, the Attorney General of the Republic ("*Fiscal General de la República*") and the Ombudsman.

7. The Commission also held meetings with several representatives of civil society, including organizations promoting the rights of indigenous peoples, the rights of women, the rights of children, and the rights of persons deprived of liberty, as well as peasant farmers' representatives organizations, and organizations devoted to strengthening the administration of justice, journalists and labor union leaders.

8. As well, a delegation on the Commission visited the Chonchocorro Penitentiary in El Alto and the San Pedro Prison and the

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<sup>3</sup> Following are the dates on which Bolivia ratified the inter-American human rights instruments: American Convention on Human Rights, July 19, 1979; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the "Protocol of San Salvador", October 5, 2006; Inter-American Convention on Forced Disappearance of Persons, May 5, 1999; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, "Convention of Belém do Pará", December 5, 1994; and the Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities, May 30, 2003.

Women's Prison ("*Centro de Orientación Femenina Obrajes*"), both in the city of La Paz, to observe the human rights situation of persons deprived of liberty.

9. During the visit, working meetings were also held on various cases and precautionary measures under consideration by the Commission, with participation of representatives of the State, petitioners and victims. At the end of its visit, the Commission presented a public lecture on the human rights protection mechanisms of the inter-American system and the role of its principal organs, the Inter-American Commission and Court.

10. The Commission emphasizes that it was entirely at liberty to meet with any person of its choosing. The authorities of the Bolivian State extended their full assistance and cooperation to the Commission so that it could carry out its agenda. The Commission thanks the Government of President Evo Morales Ayma for this assistance. It also thanks the various civil society organizations and representatives for their cooperation and the information provided.

#### **C. Preparation and approval of the report**

11. This report was approved by the Commission on March 8, 2007. Pursuant to Article 58 of the Commission's rules of procedure, the report was transmitted to the Government of Bolivia on that date, asking it to present any observations within one month.

12. On April 27, 2007, the Bolivian State requested an extension until May 20, 2007 to present its observations. The Commission did not receive the observations of the State within that lapse of the extension. On June 28, 2007 the Commission approved the publication of the report.

#### **D. The context: mass protests, social conflicts and institutional fragility**

13. In recent years, the Commission has been following closely the political and social situation in Bolivia, which has been characterized by: (i) the fragility of State institutions; (ii) the recurrence of mass demonstrations as a means of participation, protest and pressing demands of several kinds; (iii) the conflict generated by the lack of channels for dialogue between sectors of society that have differing and even antagonistic interests; and (iv) the lack of an adequate government response to these circumstances. The combination of these elements has produced acts of violence that have resulted in serious violations of human rights by State security agents and by individuals involved in those conflicts.

14. The following paragraphs detail some of the most significant events of recent years: these are a source of concern to the Commission because they not only reflect the above situation but have deepened the gulf

between the State and civil society or between sectors of civil society, and have paved the way for new conflicts, as the Commission continues to verify.

### **1. The water dispute in Cochabamba in 2000**

15. The dispute began in 1999, when the State granted a 40-year concession to the International Consortium "Aguas de Tunari" to manage the water system.

16. One action taken by the consortium was to raise the price of drinking water by 300%. At the same time, the Government attempted to pass a law privatizing all water services and watercourses such as rivers, streams and lakes. An organization known as Water and Life Coordinator ("*Coordinadora del Agua y la Vida*") organized protests against those measures. During negotiations, the dialogue broke down, and in the first days of April 2000, a mass protest was put down by the police and military, resulting in a great number of illegal arrests, about 100 personal injuries, and the death of a 17-year-old boy. In the wake of these events, the Government cancelled the contract and expelled the company.

### **2. The events in February 2003 related to the income tax**

17. On February 12 and 13, 2003, after the enforcement of a decree by the former President of the Republic, Gonzalo Sánchez de Lozada, establishing a tax on wages, many people protested in the streets to put pressure on the former President to withdraw the measure. Those events were also put down by the police and military, with approximately 30 persons killed and more than 200 injured, including civilians, police and military, by firearms of the caliber used by the Armed Forces and the National Police.

18. As detailed below (paragraphs 158-173), these events have still not been clarified by the Prosecutors' Office, and given the persistent difficulties and obstructions in the investigation, no one has been judged or punished.

### **3. The gas dispute in September and October 2003**

19. The background to the hydrocarbons conflict dates from 1996, when Laws 1689 and 1731 were issued, at Government initiative, to regulate hydrocarbons exploitation through joint-venture contracts with private firms. In 1997, Supreme Decree 24.806 was issued, approving the mentioned model contract for various exploitation areas.

20. Protests over the privatization of gas wells intensified in September and October 2003, following the decision of the government to export Bolivian gas to the United States and to transport it to the seaport through Chilean territory. Demonstrators demanded the resignation of President Gonzalo Sánchez de Lozada. As a result of the action taken by the

security forces during September and October, dozens of demonstrators were killed: the figure varies between 67 and 80 deaths, and more than 400 injured. As detailed below (paragraphs 158-173), these events have not been adequately investigated or punished.

21. On October 17, 2003 President Gonzalo Sánchez de Lozada resigned.

**4. Political instability and presidential successions (October 2003-December 2005)**

22. According to the Constitution, the Vice President of the Republic, Carlos Mesa Gisbert, replaced Gonzalo Sanchez de Lozada as President.

23. In 2005 public protests against the measures adopted by the new President of the Republic were intensified. One example occurred in January 2005, when the Federation of Neighborhood Councils of the City of El Alto ("*Federación de Juntas Vecinales de la ciudad de El Alto*") called an indefinite strike due to the award of a water management contract to a French company. These complaints were generated by the hike in water prices, the inadequate quality of the water, the lack of service in large areas, and the lack of investment by the Company. After the city of El Alto had been paralyzed for three days running, former President Carlos Mesa Gisbert cancelled the concession.

24. Nevertheless, protests as an instrument of social pressure continued with the demand for nationalization of hydrocarbons, led by the Movement to Socialism ("*Movimiento al Socialismo*"). President Carlos Mesa Gisbert resigned in June 2005.

25. Following his resignation, the President of the Supreme Court of Justice, Eduardo Rodríguez Veltzé, was appointed President of the Republic on an interim basis until elections could be called in accordance with the Constitution. Finally, on December 18, 2005, the current President, Evo Morales Ayma, was elected by a wide majority.

**5. Continued protests and social conflicts**

26. The Commission noted that, during 2006 and thus far in 2007, strikes, blockades and mass demonstrations have continued as the principal mean of protest by groups that disagree with Government policies and that on some occasions they degenerated into social conflicts and new acts of violence.

27. Among some examples that may cite are: the strike and suspension of flights at Lloyd Aéreo Boliviano in February 2006, when the company's workers asserted their claims to ownership of the airline. The

situation led to the dismissal of the Minister of Transport and the resignation of the Transport Superintendent; the highway blockade by the so-called "Landless Movement" in March 2006, demanding the release of some of its members; the march and blockade by taxi drivers in La Paz in April 2006, over the issuance of receipts; and the teachers' strike in August 2006; the civic march for the return of powers to Sucre in March 2007; the blockade of roads between La Paz and Oruro by community activists, and demonstrations in March 2007 by the retired-worker sector as well as by parents over school supplies for their children; the violent clashes in the Villamontes and Yacuiba regions in April 2007 over the borders of Chaco; the violent attacks by miners on the headquarters of the Constitutional Tribunal, in April 2007; and demonstrations by various groups such as disabled persons, and teachers in April 2007.

28. The event that produced the greatest social upheaval took place in October 2006, after international mineral prices rose, generating concern among both the mining cooperatives and the salaried mine workers. The confrontations on October 5 and 6 over control of a government-owned mine in the municipality of Huanuni, Department of Oruro, caused at least 16 deaths and more than 80 injured. The situation was stabilized after State security agents intervened to control violence.<sup>4</sup>

29. On October 31, 2006, President Evo Morales approved Supreme Decree 28.901 introducing the New National Metals Mining Policy that included specific measures such as the incorporation of more than 4000 cooperative miners into the Huanuni mining company. Subsequent to the dispute, the cooperativists, the salaried mine workers and the national government have been working within a tripartite commission to achieve consensus on implementing the new policy.

## **6. Constituent Assembly and referendum on autonomy**

30. The promulgation of Special Law 3364 convening the Constituent Assembly on March 6, 2006 sparked two democratic events of great importance for Bolivia at the current time: (i) the creation and

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<sup>4</sup> The following details emerge from press reports on this event: on the morning of October 5, cooperativist miners assembled in Huanuni, 60 km from Oruro, and decided to take over the mining company located in the town, after considering the response of COMIBOL denying them access to the mineral resources of Cerro Posokoni. During the takeover, the cooperativists destroyed the facilities of the Huanuni firm, shut down the radio station, and cut off electricity service to the public. In the wake of these events, the cooperativists were confronted by salaried miners and State security officers who were present in the town in order to protect the mining company. This produced a sharp confrontation between the two groups, involving dynamite, the results of which affected the population and caused the death of several cooperativists, salaried miners, and local townsfolk. The leaders of the COB workers' confederation announced publicly, at the end of October 2006, that they would file legal proceedings against President Evo Morales "over the tin war." As well, they announced that they would sue the Ministers of the Presidency; of Government; and the former Minister of Mines, for aiding and abetting the actions of the cooperativist miners.

establishment of the Constituent Assembly, and (ii) the referendum on autonomy. As indicated below, these processes have been influenced by the persistent polarization and lack of dialogue and negotiation that in some cases have resulted in new acts of violence.

31. On July 2, 2006, members of the constituent assembly were elected. That body is now drawing up a new constitution for the country. The Movement to Socialism, the political party of the current President, won 137 of the 255 seats in the assembly. The other seats were won by various opposition parties. The Commission observed that the constituent process was delayed by disputes among the political factions involved over the very nature of the assembly, and over the voting mechanism.

32. On the first aspect, the assembly members of the Movement to Socialism have insisted that the constituent assembly has original and full powers, while the opposition considers that its powers are limited, and that it must therefore respect the constituted powers. A constitutional appeal was lodged against the assembly's rules of procedure, which characterize the body as plenipotentiary and original, and the Constitutional Tribunal refused to rule on the appeal, arguing that the constitutional reform was not yet in place, and therefore not subject to constitutional control.<sup>5</sup>

33. With respect to the voting system, the Commission noted that approval of the assembly's internal rules of procedure became a focal point of dispute between a mixed formula for approving decisions, requiring both a simple majority and two-thirds of voters, proposed by the Movement to Socialism, and the formula proposed by the opposition, according to which constitutional provisions must be approved by two-thirds of voters. The sharp debate over this issue led some members of the assembly to take extreme measures, including a hunger strike during November 2006 by certain opposition members, which was followed by violent demonstrations by supporters of both sides.

34. The Commission welcomes the channels of dialogue that have recently been opened in the Constituent Assembly for negotiating this point. It hopes that the process will no longer be blocked by persistent antagonisms, and that consensus-building mechanisms will be pursued to ensure political representation by all sectors of Bolivian society in this important forum.

35. The Commission considers it pertinent to remind the Bolivian State of the contents of Article 2 of the American Convention, which provides that "the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms." The Inter-American Court has established the scope of this

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<sup>5</sup> Constitutional Tribunal. Constitutional Judgment 568 of November 17, 2006.

provision as calling for the adoption of measures in two directions: (i) elimination of rules and practices of any kind that violate the guarantees contained in the Convention or that ignore the rights recognized therein or obstruct their exercise, and (ii) the issuance of rules and the development of practices conducive to the effective observance of those guarantees.<sup>6</sup>

36. Consistent with the foregoing, the Commission highlights the need to ensure that the provisions of the new constitution are compatible with the international human rights instruments ratified by Bolivia. In particular, for purposes of facilitating implementation of international human rights standards to which Bolivia has subscribed, the Commission recommends that the constitution should enshrine those treaties with constitutional rank, as other countries have done, thereby substantially increasing the effectiveness of judicial mechanisms for the protection of human rights.

37. With respect to the autonomy referendum, recent years have seen the development of a so-called "autonomy movement" intended to strengthen the country's regions in their ability to administer and allocate resources, and to elect their own authorities.

38. In February 2005, leaders of the Civic Committee of Santa Cruz, the Parliamentary Brigade of Santa Cruz, and two business organizations (the Eastern Chamber of Agriculture and the Chamber of Industry and Commerce) delivered the signatures to the National Electoral Court, launching a popular initiative to hold a referendum on autonomy.

39. On March 6, 2006 the National Congress unanimously approved the following referendum question: "Do you agree, within the framework of national unity, with giving the Constituent Assembly the binding mandate to establish a regime of departmental autonomy, applicable immediately after the promulgation of the new Political Constitution of the State in the Departments where this Referendum has a majority, so that their authorities are chosen directly by the citizens and receive from the National Government executive authority, administrative power and financial resources that the Political Constitution of the State and the Laws grant them?"

40. Voting was held on July 2, 2006, with the following results: in the departments of Pando, Beni, Santa Cruz and Tarija, the YES side won, while in the five remaining departments victory went to the NO side. Nationwide, 57.58% of voters said NO to autonomy and 42.41% opted for YES. According to the law convening the constituent assembly ("*Ley de*

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<sup>6</sup> I/A Court H. R., *Case of La Cantuta*. Judgment on merits, reparations and costs. Judgment of 29 November 2006 Series C No. 162, para. 172; I/A Court H. R., *Case of Almonacid Arellano et al.* Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 118; I/A Court H. R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, para. 83.

*Convocatoria de la Asamblea Constituyente*”) the results of the national referendum will be adopted by a simple majority of valid votes. The departments that so approved will achieve departmental autonomy once the new constitution is promulgated.

41. Notwithstanding the foregoing, between December 14 and 15, 2006 there were organized several mass demonstrations in the regions that voted YES for regional autonomy, and in the Department of Cochabamba, where the NO side won. This occurred at the time of greatest tension and polarization within the Constituent Assembly over the voting system, as a protest against possible application of the simple majority. There were even calls to declare the autonomy as *de facto*. At the same time as these demonstrations were announced and held, the opponents of autonomy conducted their own demonstrations in favor of national unity. In this situation, there were new outbreaks of violence involving road blockades, particularly around the municipality of San Julián in the Department of Santa Cruz.<sup>7</sup>

42. Subsequently, more violence broke out in Cochabamba in the first days of January 2007. The conflict began on January 8, when groups of peasants burned a portion of the prefecture offices. The protesters were demanding the resignation of the prefect Manfred Reyes Villa, for his attempt to call for a new referendum on autonomy in his district. Due to those attacks, many people demonstrated rejecting the violence. Although it was supposed to be a peaceful march, the media reported that persons on both sides were armed with sticks and other weapons. As a result of the confrontations, on January 11, 2007, it was reported that two persons had been killed and approximately 200 injured.

43. As the Commission has said on prior occasions, that the right of assembly and freedom of association have been widely recognized as substantive civil rights that offer protection from arbitrary interference by the state when persons decide to associate with others, and that are fundamental for the existence and functioning of a democratic society. In that regard, the protection of those rights not only entails the obligation of the state not to interfere with the exercise of the right of assembly or association, but also requires, in certain circumstances, positive measures by the state to ensure the effective exercise of that right, for example, by protecting the participants in a demonstration from the physical violence of those who might hold contrary views.<sup>8</sup>

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<sup>7</sup> See. Press Article. *Los Tiempos*. December 16, 2006. Available on February 15, at [http://www.lostiempos.com/noticias/16-12-06/16\\_12\\_06\\_nac1.php](http://www.lostiempos.com/noticias/16-12-06/16_12_06_nac1.php).

<sup>8</sup> IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, para 50; IACHR, *Report on Terrorism and Human Rights*, para 359.



44. The Commission reiterates that States may impose reasonable restraints on demonstrators to ensure their peaceful development as well as to disperse those demonstrations that might become violent or obstructive<sup>9</sup>, having in mind that those restraints must be bounded by legality, necessity and proportionality. The IACHR considers that the requirement of previous notification should not be transformed into a demand for the prior issuance of a permit by an agent with unlimited discretionary powers.<sup>10</sup> On the other hand, the actions of State's agents should protect, rather than discourage, the right to assembly and therefore, the rationale for dispersing demonstrations must be justified on the duty to protect the people demonstrating. The law enforcement officer in charge of such dispersing must contemplate the use of the safest methods that cause the least harm to the demonstrators.<sup>11</sup>

45. The Commission regrets the persistence of the violent occurrences described in this section which impede the normal development of citizen participation. The Commission exhorts the Bolivian State to adopt the necessary measures to guarantee the right of assembly and peaceful demonstration, to create channels of dialogue with demonstrators and to develop the necessary mechanisms for prevention of acts of violence in the context of public demonstrations, including regulation of the use of force by State agents, with strict respect for human rights. It also reiterates the need to have the events which have resulted in the death or injury of people investigated and punished by the appropriate authorities whether such acts were committed by State agents or by private individuals, so as to prevent impunity of the kind that has surrounded similar deeds in the past. The Commission reiterates that States should establish administrative controls to ensure only exceptional use of force in public demonstrations, in cases where it is necessary, through measures for planning, prevention, and for the investigation of cases in which an abuse of force may have occurred. In particular, the Commission recommends measures such as the following: a) implementation of mechanisms to prohibit, in an effective manner, the use of lethal force as a recourse in public demonstrations; b) implementation of an ammunition registration and control system; c) implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out; d) promotion of visible means of personal identification for police agents participating in public law enforcement operations; e) promotion of opportunities for communication and dialogue prior to demonstrations and of the activities of liaison officers to coordinate with demonstrators concerning demonstration and protest activities and law enforcement operations, in order to avoid conflict situations; f) the

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<sup>9</sup> IACHR. *Report on the situation of Human Rights Defenders in the Americas*, para. 63. Quoting: United States Court of Appeals, *Washington Mobilization Committee v. Cullinane*, Judgment of April 12, 1977, 566 F.2d 107, 184 U.S.App.D.C. 215, p. 119.

<sup>10</sup> IACHR. *Report on the situation of Human Rights Defenders in the Americas*, para. 58.

<sup>11</sup> IACHR. *Report on the situation of Human Rights Defenders in the Americas*, para. 63.

identification of political officials responsible for law enforcement operations during marches, particularly in the case of scheduled marches or prolonged social conflicts or circumstances in which potential risks to the rights of the demonstrators or others are anticipated, so that such officials are tasked with supervising the field operation and ensuring strict compliance with norms governing the use of force and police conduct; g) the establishment of an administrative sanctions regime for the law enforcement personnel involving independent investigators and the participation of victims of abuses or acts of violence; h) the adoption of measures to ensure that police or judicial officials (judges or prosecutors) directly involved in operations are not responsible for investigating irregularities or abuses committed during the course of those operations.<sup>12</sup>

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<sup>12</sup> IACHR. *Report on the situation of Human Rights Defenders in the Americas*, para. 68.



## CHAPTER II

### ADMINISTRATION OF JUSTICE

#### A. Introduction

46. The Commission has been following closely the situation with the administration of justice in Bolivia, and during the visit it paid special attention to this issue, and to the persistent problems that have historically obstructed access to justice for all Bolivians. The attention given to this issue reflects the fact that, as indicated in the press release at the end of the visit, it is "essential to any social inclusiveness process" to ensure "full independence of the branches of government, particularly the guarantee of an impartial judiciary, access to justice, the enforceability of rights recognized under the Constitution and international law, strict compliance with due process without discrimination, policies for coordination between the community and formal justice systems, and, most especially, fighting the severe problem of impunity for those responsible for human rights violations."<sup>13</sup>

47. In recent years, the Commission has identified several reforms marking important structural changes in the organization and operation of the Bolivian judiciary.

48. The constitutional reform of April 13, 1994, created such bodies as the Constitutional Tribunal and the Ombudsman's Office, which principal function is to guarantee the fundamental rights expressly enshrined in the Constitution and those recognized by the State through the ratification of international human rights instruments. The Commission also notes that, with the creation of an exclusive Tribunal for protection of the Constitution, and the Judiciary Council ("*Consejo de la Judicatura*") and the Institute of the Judiciary ("*Instituto de la Judicatura*") as the bodies responsible for the administration and disciplinary control of judicial personnel, a step was taken towards decentralizing the functions of the Supreme Court of Justice, which workload was and continues to be a concern, as detailed in this chapter.

49. Other noteworthy legal and institutional changes are: the decision granting independence to the Prosecutors' Office, which until 1993 came under the Ministry of the Interior and Justice; the creation of a national system of Public Defenders; the amendment of rules for electing judges, and regulating the judicial career; the legal establishment of a professional career of prosecutors; and the implementation of a new system of criminal prosecution with greater guarantees, at least in theory.

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<sup>13</sup> IACHR. Press release 46/06. Available at: <http://www.cidh.org/comunicados/english/2006/46.06eng.htm>.

50. The Commission observed that these aspects have given Bolivian citizens the sense that they can participate more effectively in the administration of justice, with a better understanding of legal language and knowledge of the personalities in the judicial system, so that there is now less skepticism about that system than in the past.<sup>14</sup> Yet despite this slight improvement in public perception of the Judiciary, government authorities and civil society alike continue to insist that, despite legislative or institutional changes, the administration of justice in Bolivia is marred by procedural delays and corruption.<sup>15</sup>

51. Important steps have been taken on behalf of the most vulnerable sectors of society or those at special risk, with the creation of "agrarian courts" for the settlement of land disputes. Progress has also been made through special legal amendments such as Law 2620 of 1999, the Juveniles Code, and Law 1674 of 1995 on family violence.<sup>16</sup> Nevertheless, as discussed below, the Commission received information to the effect that none of these measures has gone beyond the legislative stage because they are not functioning adequately or with the necessary mechanisms to make them effective.

52. Civil society, and human rights defenders in particular, believe that the institutional crisis in the administration of justice is the main obstacle to their work.

53. Following is the analysis of the issues relating to the administration of justice, identified by the Commission during its visit. Some recommendations will be included at the end of this section.

## **B. Access to justice**

### **1. General aspects**

54. The State as well as various sectors of civil society agree that the main problem with Bolivian justice is that it is not accessible to all citizens, and that even if people can overcome the barriers to access it is not always possible to obtain judicial responses to disputes and, in general, to the demands of society.

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<sup>14</sup> Discussion Guide. Coalition: The Justice We Want. Participation and Justice Network. Bolivia. 2006, p. 2.

<sup>15</sup> Discussion Guide. Coalition: The Justice We Want. Participation and Justice Network. Bolivia. 2006; Diagnostic study on the situation of justice in Bolivia. Access to Justice. Justice and Participation Study Center. November 13, 2006.

<sup>16</sup> Discussion Guide. Coalition: The Justice We Want. Participation and Justice Network. Bolivia. 2006, p. 2.

55. In general terms, the problem of access to justice must be viewed from a dual perspective that includes both the physical possibility of taking action before the courts, and the real prospect of obtaining a prompt response, consistent with the specific legislation in question.

56. As detailed below, the coverage of justice services in Bolivia is minimal, and this is the main obstacle to access.

57. Another aspect that seems to impede effective judicial responses is the alleged corruption among judges in Bolivia, involving primarily political interference and influence peddling as the only way to obtain a decision.<sup>17</sup> The Commission was informed that in the eastern part of the country, justice officials are influenced by powerful economic groups, and people who do not have the means to influence decisions have no access to the system. It is important to mention that the NGO Transparency International indicated in its 2005 report that the judiciary is the fourth most corrupt institution in the country.<sup>18</sup>

58. Another aspect that impedes access to justice is that alternative dispute settlement services, both from the public sector and for civil society, are not adequately available in all parts of the country, and are distributed without any specific criteria.<sup>19</sup>

59. The Commission was also informed of the lack of training of justice officials in terms of the treatment of victims, taking into account the specific situations and the human rights violations they have suffered. As detailed below, there are practices that violate victims' rights, particularly those vulnerable or at-risk such as children, women, and the extremely poor. Generally speaking, this situation leads them to abandon judicial proceedings, and constitutes a factor for impunity.<sup>20</sup>

60. The Commission also noted some problems with the budgetary allocations for the administration of justice. It found that the lack of physical infrastructure, resources and funds in many rural areas is such that justice services are nonexistent or inadequate to meet people's needs.<sup>21</sup> According to information received, although there was a significant increase in budget

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<sup>17</sup> Reforms in Criminal Procedure: One Process, Several Visions, Citizens Working for Justice. USAID. Partners of the Americas. April 2004, p. 39.

<sup>18</sup> Report available at: [http://www.transparency.org/publications/gcr/download\\_gcr/download\\_gcr\\_2005#download](http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2005#download). Visited February 15, 2007.

<sup>19</sup> Discussion Guide. Coalition: The Justice We Want. Participation and Justice Network. Bolivia. 2006, p. 7.

<sup>20</sup> *Ibid.*, p. 8.

<sup>21</sup> Reforms in Criminal Procedure: One Process, Several Visions, Citizens Working for Justice. USAID. Partners of the Americas. April 2004, p. 39.

funding for criminal action in the Prosecutors' Office and the courts in 2003, this has not necessarily been reflected in any improvement in infrastructure, technical support, and institutional administration.<sup>22</sup> In other areas, the situation is much worse. Funding for the justice system in 2004 amounted to 0.84% of the national budget: 64.21% of the national budget is allocated to the central administration, which covers the three branches of government. Of that percentage, 62% is absorbed by the executive, while the judiciary receives less than 1%.<sup>23</sup>

61. The Commission is concerned at these figures, for they suggest that resolving the problems with the administration of justice in Bolivia is not a real priority that includes the respective budgetary allocations. The situation requires prompt measures, for its effects can be seen daily in the lack of prospects for justice in Bolivia.

## **2. Coverage and distribution of justice services**

62. The Commission is deeply concerned at the shortage of personnel of the Judiciary and the Prosecutors' Office around the country. It took note of the following figures on the physical presence of various institutions at the municipal level.

63. Only 180, or 55%, of Bolivia's 327 municipalities have a judge; only 76, or 23%, have a prosecutor; and only 11, or 3%, have a Public Defender<sup>24</sup>. Despite the creation of "agrarian courts" for resolving land disputes, they are operational in only 43 municipalities.<sup>25</sup>

64. These figures on justice personnel are reflected as follows at the departmental level: in Chuquisaca, 9 of the 28 municipalities have judicial authorities present; in La Paz, 56 out of 80; in Cochabamba, 22 out of 44; in Oruro, 21 out of 35; in Potosí, 17 out of 38; in Tarija, 3 out of 11; in Santa Cruz, 33 out of 56; in Beni, 10 out of 19; and in Pando, 12 out of 15.<sup>26</sup>

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<sup>22</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.1 a. Infrastructure and technical support. Section 2.1 b. Budgetary situation.

<sup>23</sup> Budgetary evaluation of the judicial system in the urban criminal area of the Superior Courts of the La Paz and Chuquisaca District. Citizens Working for Justice. USAID. Partners of the Americas. April 2004.

<sup>24</sup> Diagnostic study on the situation of justice in Bolivia. Access to Justice. Justice and Participation Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>25</sup> The judicial branch under the new Constitution. Proposal from the Supreme Court, District Courts, Judges and Magistrates to the Constituent Assembly. Sucre, Bolivia. 2006, p. 8.

<sup>26</sup> Map of Justice Services in Bolivia. USAID. Partners of the Americas. Justice and Participation Network, 2006, p. A-3.

65. The Commission notes that in the last two years the Judiciary Council has taken some steps, such as the creation of 54 new courts, 25 in capital cities and in El Alto, and 29 in provincial towns.<sup>27</sup> Nevertheless, while this implies a fairly significant increase in the number of courts, coverage remains very limited. For example, the density ratio of local justice officials to the population was 12,455 persons per court, in 2003.<sup>28</sup> A recent report on access to justice found that there are 10.5 judges for every 100,000 inhabitants in Bolivia, with wide geographic discrepancies: in El Alto there is one judge for every 30,000 people, and only two family judges for every million, while in Santa Cruz there is one judge for every 16,000 people.<sup>29</sup>

66. In addition to the glaring absence of judicial officials, the Commission noted that in areas in which there is such an authority, the citizens generally have very little information about the services offered.<sup>30</sup> It also found the inadequate distribution of officials for the most common types of disputes,<sup>31</sup> reflecting the fact that technical criteria are not used to determine the allocation of resources.<sup>32</sup>

67. These figures are alarming, because they reflect an endemic situation where coverage of the administration of justice is minimal, and this effectively excludes certain sectors of society from any possibility of access to justice, especially in extremely poor rural areas, inhabited for the most part by indigenous peoples and peasant communities.<sup>33</sup>

68. The Commission reminds the Bolivian State that, pursuant to Article 25 of the American Convention, one of the human rights that must be guaranteed is that of judicial protection, which implies that all persons must have the possibility of recourse to the courts, and must be able to obtain a response to their demand within the guarantees of due process established in Article 8 of the Convention. This right presupposes that there is a judicial system that covers as much as possible of the national territory, in accordance

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<sup>27</sup> *Ibid.*, p. A-2.

<sup>28</sup> Summary of document, Justice for All. Supreme Court of Justice. Available on the official Website: <http://suprema.poderjudicial.gov.bo/justicia.htm>. Visited on December 28, 2006.

<sup>29</sup> Press release: *La Razón* newspaper, January 20, 2007, "Judges in only 180 of 327 municipalities."

<sup>30</sup> Diagnostic study on the situation of justice in Bolivia. Justice and Participation Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>31</sup> Discussion Guide. Coalition: The Justice We Want. Participation and Justice Network. Bolivia. 2006, p. 7.

<sup>32</sup> Diagnostic study on the situation of justice in Bolivia. Access to Justice. Justice and Participation Study Center. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>33</sup> Discussion Guide. Coalition: The Justice We Want. Participation and Justice Network. Bolivia. 2006, p. 7.



with the population census. While the Commission recognizes that full judicial coverage is a complex task that requires a great budgetary effort, the State must take all measures within its power to achieve this. In light of the State's obligation to guarantee access to justice for all persons within its jurisdiction, it is unacceptable that there should be no judges in more than half of the municipalities.

69. In addition to these general problems regarding access to justice, the Commission learned of more specific situations affecting certain sectors of society, including women, children, indigenous peoples and peasant communities. These aspects are detailed in the sections on each of these groups, under the heading of access to justice.

**C. Guarantees of independence, impartiality, transparency and suitability**

**1. General aspects**

70. The Commission noted various elements that call into question the independence, impartiality and suitability of judges in Bolivia. In the first place, as detailed in this report, it found shortcomings in the process of appointing justice officials and those of the Prosecutors' Office, and weaknesses and gaps in the disciplinary system.

71. There is also a very strong perception that the executive and legislative branches do not respect the independence of the judiciary. The Commission received complaints about continuing interference by senior State authorities through public statements that directly challenged certain judicial decisions, or expressed positions on pending cases, particularly those of greatest sensitivity for public opinion.

72. With respect to the legislative branch, the Commission is concerned that the Attorney General and even the case prosecutors are occasionally hailed before congressional commissions to report on specific cases that in practice are the most controversial ones. The Commission was told that this situation reflects a mistaken interpretation of Article 125 of the Constitution, which provides that the Attorney General's functions are to be exercised by the legislative chambers, by the Attorney General, and by other officials. It was told that Law 2175 of 2001, constituting the Prosecutors' Office, is not clear as to the prosecutorial powers of the Legislature, for it gives that body certain powers over matters of national interest, in addition to the ability to hold senior officials accountable.<sup>34</sup>

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<sup>34</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 67.

73. On this point, the Commission welcomes the recent decision of the Constitutional Tribunal stressing the responsibility of the Attorney General, and establishing that in the trial of senior officials, the prosecution function may not be exercised by commissions of the Congress, because this is a function of the Attorney General and, in any case, criminal charges can be laid by an eminently political body such as the Congress.<sup>35</sup>

74. It is important to highlight that, during its visit, the Commission met with some Judiciary officials and prosecutors who expressed feelings of uncertainty and considered that their independence in solving cases was affected, given the social and political pressure generally exerted on them.

75. There are other procedures that raise further questions among members of society and among some State officials, who referred to them as "legal forms of immunity" such as procedural privileges and specialized criminal jurisdictions that remain in effect. The Commission received several complaints that there is no clear legislation or jurisprudence on this issue, and that in practice the excuse of protecting the public function has become a device underpinning an approach to the administration of justice that is excessively protectionist, formalistic and inquisitorial, procedurally inefficient, and open to political influence and social pressure.<sup>36</sup> As indicated below (paragraphs 169-171), political pressure and the lack of clarity about procedures when senior State officials are involved, has obstructed the pursuit of investigations into the repression of demonstrations cited in the introduction to the report.

## **2. Appointments and the professional career of judges and prosecutors**

76. The Bolivian Constitution provides that the 12 ministers of the Supreme Court of Justice, the five Magistrates of the Constitutional Tribunal, the four members of the Judiciary Council, the Attorney General and the Ombudsman are to be elected by a two-thirds vote of all members of the Congress, in the case of members of the Supreme Court, and by a two-thirds vote of members present in the case of the other authorities. The Ministers of the Supreme Court of Justice appoint the judges of the District Superior Tribunals (court acting with a panel of judges) and they in turn appoint other judges. All judges are appointed from lists provided by the Judiciary Council.<sup>37</sup>

77. When it comes to the selection of ministers and magistrates of the Supreme Court and the Constitutional Tribunal, and the Attorney General,

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<sup>35</sup> Constitutional Tribunal. Constitutional Judgment 0077 of 2006.

<sup>36</sup> Diagnostic study on the situation of justice in Bolivia. Access to Justice. Justice and Participation Study Center. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>37</sup> See Constitution of Bolivia. Articles 68.12, 117.4, 118.2, 119.2, 122.3, 126 and 128; Judiciary Council Act 1817 of 1997. Article 13.

the Commission was told that these appointments continue to be made through lack of transparency procedures, and that the constitutional reform of 1994, on the two-thirds vote, did not remedy this situation.<sup>38</sup>

78. In addition to complaints about the lack of transparency in this selection process, the Commission is concerned at the large number of positions that remain vacant for months at the highest levels of the State. For example, at the time of the Commission's visit, more than half of the full and alternate judgeships of the Constitutional Tribunal<sup>39</sup> and the Supreme Court were temporarily vacant. This situation, which constitutes a risk to the ongoing functioning of the senior bodies of the Judiciary, is aggravated by the lack of an effective system of alternates, especially in the Supreme Court.

79. The Commission learned that the President of the Republic recently issued Supreme Decree 28.993, appointing four members of the Supreme Court as interim judges until permanent judges could be appointed by a two-thirds vote of the Congress.<sup>40</sup> The Commission was also informed that recently the Constitutional Tribunal adopted a decision to cease the term of office of the members appointed on the basis of their provisional appointment and the need that Congress appoints the Ministers definitively. Apparently that decision originated a conflict between the Executive and the Judicial branches and the magistrates of the Constitutional Tribunal that adopted the decision are now under a "responsibilities trial" for adopting judicial decisions contrary to Constitution and law. Besides the discussion whether the decision is constitutional or not, the Commission considers that the mechanisms of provisional appointment could fail to guarantee the independence of the judiciary of the person appointed for the higher exposure of judges to external pressures affecting them and the beneficiaries of the service of justice.<sup>41</sup> This situation also reveals the institutional weakness of the Legislature to appoint important judicial authorities through constitutional procedures that ensure judicial independence and impartiality.

80. On the selection of other judges, Law 1817 of 1997, governing the Judiciary Council, created the judicial career system, which includes the

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<sup>38</sup> Diagnostic study on the situation of justice in Bolivia. Access to Justice. Justice and Participation Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations; Discussion Guide. Coalition: The Justice We Want. Participation and Justice Network. Bolivia. 2006.

<sup>39</sup> The Constitutional Tribunal is currently operating with five magistrates, two of them principals and three of them alternates.

<sup>40</sup> *Los Tiempos* newspaper. January 24, 2007: *Tribunal admitió dos recursos de inconstitucionalidad*. Available at: [http://www.lostiempos.com/noticias/24-01-7/24\\_01\\_07\\_nac11.php](http://www.lostiempos.com/noticias/24-01-7/24_01_07_nac11.php). Visited 15 February 2007.

<sup>41</sup> See the considerations of the IACHR regarding this matter on its *Report of Human Rights Situation in Venezuela, 2003*, paras. 159 and 160; and *Report of Human Rights Situation in Peru, 2000*.

following subsystems: i) entry; ii) evaluation and tenure; iii) qualifications and training; and iv) information.

81. Despite this regulation, the Commission received complaints that the judicial career has not been effectively implemented, and that traditional selection systems dominated by political interests are still used.

82. In general terms, it is denounced that the administration, implementation, monitoring and evaluation of career judges are still limited and inefficient, because of the centralized and bureaucratic structure responsible for these tasks; the lack of procedures for decentralizing careers at the District level; and the financial weakness of the Judiciary Institute. However, there is consensus that the Institute's work has produced good results and has reduced corruption, at least in the initial stages of entry to the judicial career.<sup>42</sup>

83. Criticism tends to focus on the selection stage, after the list of candidates has been sent by the Judiciary Council to the other bodies responsible for appointing judges, which may and often do use different criteria, in most cases ignoring the initial technical evaluation resulting from the entry competitions. As the Commission was informed, the regulation of the subsystems of the judicial career make no reference to the order of selection at the time the lists are presented, which means that, regardless of the results from the initial evaluations, the appointing bodies are free to select names from the list in accordance with their own criteria. The Commission also received information on the lack of tenure for judges.<sup>43</sup>

84. Bearing in mind the Basic Principles of the United Nations on the Independence of the Judiciary, the Commission believes there is a direct relationship between guarantees of independence and impartiality in the administration of justice, as a precondition for meeting the standards of due process, and the creation and strengthening of transparent mechanisms for the appointment and promotion of judges on the basis of their qualifications, and not for other, improper motives.<sup>44</sup>

85. The Commission was also concerned to note that the mechanisms established by the Regulations for the Judicial Career for controlling the suitability of candidates have not been implemented. That

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<sup>42</sup> Diagnostic study on the situation of justice in Bolivia. Justice and Participation Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>43</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 103; Reforms in Criminal Procedure: One Process, Several Visions, Citizens Working for Justice. USAID. Partners of the Americas. April 2004, p. 39.

<sup>44</sup> IACHR, *Report on the Situation of Human Rights in Venezuela, 2003*, para. 155, quoting Principles 10 and 13 of that international instrument.

regulation requires judges to be evaluated every two years and that, depending on their score, they may be automatically promoted or they may be challenged by the citizens. Nongovernmental organizations have reported that no such evaluation has been conducted since 1998.

86. In addition to the foregoing, the Judiciary Council has been criticized over delays in preparing lists for the appointment of judges, magistrates and support personnel, and in preparing the Regulations for the Judicial Career.<sup>45</sup>

87. An example of the effects of the failure to implement the judicial career and of all of these shortcomings is the recent challenge to more than 30 judges of the District Courts who are still serving although their appointments have expired because they entered the Judiciary during the transitional process and for a specific period. Because of the failure to appoint new judges using the judicial career procedures, these judges are unclear about their positions and persons who litigate before them are uncertain about the validity of the decisions issued by these judges after expiry of their appointments.<sup>46</sup>

88. Complaints about the shortcomings in the appointment of officials extend as well to the public prosecution offices at all levels. For example, the Commission is concerned for the institutional difficulties in the appointment of the Attorney General. This situation implied that the former District Prosecutor of Chuquisaca assumed the position on an interim basis since September, 2006 until now.<sup>47</sup>

89. The Commission also learned that the nine district prosecutors, who follow the Attorney General in the order of hierarchy, were functioning on an interim basis for more than 10 years.

90. In the face of this situation, President Carlos Mesa promulgated a decree on July 30, 2004, appointing the nine district prosecutors under supposedly constitutional powers. The President's intent was to resolve the problem of politicization of the positions and the lack of institutional guarantees. That decree was declared unconstitutional by the Constitutional

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<sup>45</sup> The judicial branch under the new Constitution. Proposal from the Supreme Court, District Courts, Judges and Magistrates to the Constituent Assembly. 2006, pp. 10-11.

<sup>46</sup> *Correo del Sur* newspaper, January 8, 2007: "More than 30 Judges Working Irregularly."

<sup>47</sup> It is worth noting that, with respect to appointment of the Attorney General, following the constitutional reform of 1994 which gave that power to the National Congress, such appointment was made only on 16 November 2004, i.e. 10 years later. This reflected the fact that the previous Attorney General had been appointed by the then-President of the Republic for a term of 10 years. The Attorney General appointed by the Congress was Mr. Pedro Gareca, who resigned his position in September 2006, and was succeeded on an interim basis by Mr. Mario Uribe.

Tribunal in December 2004, on the grounds that, under the Constitution, the President can only appoint positions that fall within the responsibility of other bodies if those bodies are in recess, and if the previous incumbent has died or resigned. These conditions were not fulfilled, and the decision was therefore ruled unconstitutional. Notwithstanding this, and in order to keep the basic political institutions operating without interruption, the Tribunal delimited the effects of its decision, ordering that the bodies legitimated by the Constitution should elect those authorities promptly.<sup>48</sup>

91. In effect, it was only in January 2005 that the nine district prosecutors were appointed by the National Congress, as required by the Constitution. The Commission recognizes that steps were taken to deal with the interim status of those authorities, but it notes that there have been continued complaints of irregularities in the appointment of district prosecutors, reflecting the direct influence of local political and economic pressures.

92. With respect to the system of entry and tenure for prosecutors, Law 2175 of 2001 created the professional career of prosecutors, but it has yet to be consolidated in the country.

93. The Commission recognizes the recent efforts to implement the career system in the Prosecutors' Office through the respective human resources department, and the public competitions that were held in May and October 2005 and in May 2006, designed to appoint approximately 300 public prosecutors. Nevertheless, this evaluation process ended with 35% of the selected candidates on stand by<sup>49</sup> and there is no information whether they actually took up their positions or not.

94. While the Commission is pleased that the Prosecutors' Office is open to allowing various sectors of civil society and NGOs, universities and the Bar Association ("*Colegio de Abogados*") to observe internal and external competitions for the selection of prosecutors,<sup>50</sup> it continues to receive complaints about corruption in their final appointment,<sup>51</sup> and their lack of stability in their professional status in practice.

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<sup>48</sup> Constitutional Tribunal. Constitutional Judgment 0129 of 2004, November 10, 2004, Decision on the Constitutionality of Presidential Decree 27650 of July 30, 2004.

<sup>49</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.2 a. Mechanisms for prosecutor appointments, career, and assessment.

<sup>50</sup> Diagnostic study on the situation of justice in Bolivia. Justice and Participation Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>51</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 107.

95. An example of the foregoing can be found in the provision of the Organic Law of the Prosecutors' Office, which requires it to use the means necessary to avoid interruption of service. This has meant that in practice, to avoid entry through the career system, district prosecutors abuse the mechanism of direct contracting for their prosecutors, in total disregard of legal procedures. This practice has been growing, and has reached alarming proportions. For example, the Commission was told that one-half of the prosecutors in the district of La Paz were recruited by this method.<sup>52</sup>

96. Shortcomings in establishing a professional career of prosecutors are an aspect of concern to the Commission, given the essential role that the Prosecutors' Office plays in promoting criminal investigations, a role that requires independence, impartiality and suitability on the part of the prosecutors to ensure that their work is effective and will contribute to eliminating the factors of impunity in human rights cases which, as indicated below (paragraphs 153, 154 and 163), frequently have to do with the action of the investigating officials.

### **3. Functional control and disciplinary system of the Judiciary and the Prosecutors' Office**

97. In addition to criticisms about corruption in the systems for appointing judicial officials and prosecutors, the Commission noted that the mistrust and lack of legitimacy of these institutions extends also to legally established disciplinary and control mechanisms.<sup>53</sup>

98. The Commission welcomes as a step forward the possibility of consulting judicial decisions at the official web sites of the Supreme Court and the Constitutional Tribunal as an important element in bringing publicity to proceedings.<sup>54</sup> However, it notes that in general the mechanisms of internal and external control have still not been implemented or are not working properly. In practice the performance in the administration of justice is not measured by any standards and indicators of quality, efficiency and effectiveness of the services provided, nor are there any mechanisms for making judges and prosecutors accountable to society for their performance.<sup>55</sup>

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<sup>52</sup> Information received at various meetings with civil society organizations.

<sup>53</sup> Discussion Guide. Coalition: The Justice We Want. Participation and Justice Network. Bolivia. 2006, p. 9.

<sup>54</sup> Diagnostic study on the situation of justice in Bolivia. Justice and Participation Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>55</sup> Discussion Guide. Coalition: The Justice We Want. Participation and Justice Network. Bolivia. 2006, p. 9; Diagnostic study on the situation of justice in Bolivia. Justice and Participation Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

99. There is a general perception of excessive bureaucracy within the Judiciary Council, which implies a waste of budgetary funds to the detriment of other judicial bodies. As well, the Council is criticized for being ineffective in meeting the salary and material needs of its officials and their offices, and in creating courts in a pattern that does not correspond to the workload in different areas.<sup>56</sup>

100. The Commission also observed that both the Prosecutors' Office and the various judicial bodies do not have adequate systems for keeping regular and unified statistics. Nor is there any standardized registry of criminal investigations, for the police assigned to each case keep disorganized files that make it difficult to update and provide information on the status of individual cases.<sup>57</sup>

101. The Commission also received information showing that disciplinary procedures for judges and prosecutors are ineffective. As to judicial officials, the Commission noted that the disciplinary powers of the Judiciary Council are challenged both by civil society and by various government bodies, including the judiciary itself.<sup>58</sup>

102. The Commission noted that the Constitutional Tribunal's ruling that dismissal for serious breach of discipline is unconstitutional has aroused sharp criticism. As interpreted by that tribunal, the power of dismissal violates the principle of tenure that the Constitution grants to judges. The Tribunal holds that judges may only be removed upon a confirmed criminal conviction, and not in the context of disciplinary proceedings.

103. The Commission noted some confusion in the way the Judiciary Council handles its disciplinary powers in the case of serious misconduct in the administration of justice that does not constitute a crime but that should be

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<sup>56</sup> Diagnostic study on the situation of justice in Bolivia. Justice and Participation Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations; Assessment report on the Functioning of the Judiciary Council in Bolivia; The judicial branch under the new Constitution. Proposal from the Supreme Court, District Courts, Judges and Magistrates to the Constituent Assembly. 2006, pp. 10-11.

<sup>57</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 61; Monitoring the quality of the administration of criminal justice. Citizens Working for Justice. USAID. Partners of the Americas. May 2005, p. 55; Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.1 a. Infrastructure and technical support.

<sup>58</sup> Diagnostic study on the situation of justice in Bolivia. Justice and Participation Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations; Assessment report on the Functioning of the Judiciary Council in Bolivia; The judicial branch under the new Constitution. Proposal from the Supreme Court, District Courts, Judges and Magistrates to the Constituent Assembly. 2006, pp. 10-11.



punished by dismissal according to existing laws.<sup>59</sup> In addition, the Commission is concerned that criminal action is the only mean of removing persons who have committed serious breaches or who do not meet the standards of suitability, in a context of complaints of inaction by the Prosecutors' Office in offenses relating to the administration of justice, particularly the delay of justice, which is one of the principal problems obstructing access to justice in Bolivia.<sup>60</sup>

104. The Commission observed that although the Prosecutors' Office had made some efforts, such as creating a National Council and an Inspector General for the Prosecutors' Office, and Internal Audit Offices, these have yet to be fully implemented, and so these bodies are functioning on an interim or *ad hoc* basis, depending on the circumstances.<sup>61</sup>

105. While Law 2175 of 2001 establishes a system of hierarchy according to which the case prosecutors are supervised by the district prosecutors and these in turn by the Attorney General, in practice such supervision amounts to requiring quarterly reports from those officials, and although the Commission was informed that false information has been submitted in some of those reports there is no record of any disciplinary proceedings against the officials concerned. The few disciplinary cases of which the Commission is aware are moving very slowly, because of institutional problems in the Prosecutors' Office, in particular the instability and turnover of its personnel over the years.<sup>62</sup>

106. The Commission considers that one of the fundamental aspects of effective access to justice is the guarantee of suitability of the officials involved, both those in the Prosecutors' Office in cases of a criminal nature, and those of the judicial authorities in all cases. To ensure such suitability demands clear rules for promotion within the professional prosecutor and judicial careers, and strengthening of a disciplinary system which, in strict compliance with the demands of due process, will exert control over the errors

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<sup>59</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 105.

<sup>60</sup> Diagnostic study on the situation of justice in Bolivia. Access to Justice. Participation and Justice Study Center. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>61</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 58; Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.2 a. Mechanisms of appointment, professional career and evaluation of prosecutors.

<sup>62</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, pp. 56-60.

committed by justice officials when these frustrate the legitimate expectations of users of the system.

#### **D. Implementation of the accusatorial criminal prosecution procedure**

##### **1. General aspects**

107. On March 25, 1999 the current Code of Criminal Procedure was promulgated, reforming the 1973 code, and it came into force for the entire national territory on May 31, 2001.<sup>63</sup> As noted above (paragraphs 48 and 60) this marked a substantial change in the Bolivian judicial system, for it incorporated the accusatorial criminal prosecution procedure into criminal procedures.

108. The principal guidelines governing the reform, at least in theory, from an inquisitorial to accusatorial criminal prosecution procedure were the following: (i) the Prosecutors' Office was to have independence and exclusive control and direction over the investigation, while the previous investigating magistrate ("*juez de instrucción*") was now to guarantee fundamental rights; (ii) trials were to be oral and public, and the judgment was to be issued in the courtroom; (iii) trial tribunals (*tribunales de sentencia*) were created, consisting of two professional judges and three lay jurors in cases of crimes for which the penalty exceeded four years; (iv) criminal action was to lapse if the preparatory stage exceeded six months, or if the entire process exceeded three years without a definitive sentence; (v) the process was to be simplified through various measures such as summary proceedings, dismissal of criminal action for restitution of damages, the scope of discretion of prosecutor to accuse ("*principio de oportunidad*") with judicial control, conciliation, and conditional suspension of proceedings; and (vi) there was to be judicial oversight of the sentence execution stage.<sup>64</sup>

109. One aspect confirmed to have been implemented relates to publishing the judgment of first instance, and having it read at the wrap-up of the oral and public trial. Most cases are handled in this way, and an extension of three days may be requested for drafting the text in exceptional cases.<sup>65</sup>

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<sup>63</sup> The Code established two stages for its entry into force. The first, on May 31, 2000, with respect to precautionary measures, alternatives to trial and the statute of limitations, which applied to cases under the old system. On May 31, 2004, those old cases were to be cleared, or dismissed. The Code came into full application for the country as a whole on May 31, 2001.

<sup>64</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, pp. 8-11; Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. Section 1. Basic parameters of the reform.

<sup>65</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 112.

110. The Commission also recognizes the efforts to create courts to facilitate implementation of the reform, as reflected in a 19% increase, to September 2004, in the number of criminal courts.<sup>66</sup>

111. The Code assigned the task of implementing the new system to two bodies: the National Commission for Implementation of the Criminal Procedures Reform, responsible for defining policies and overseeing their compliance; and the Executive Committee for Implementation, responsible for carrying out those policies. Those two bodies established the Technical Implementation Team, which focuses on four areas: regulatory adaptation, diffusion, training, and institutional adjustment.<sup>67</sup>

112. In these areas of work, the Commission noted that regulatory adaptation has produced significant results, such as the new Organic Law of the Prosecutors' Office; the Law on the Execution of Criminal Sentences and its regulations; the Law on the National Public Defender Service; the Regulations for the Administration of Confiscated Goods; Amendments to the Customs Law; Amendments to the Tax Code; a first draft of an organic law for the National Police; a draft law on procedures for the trial of senior government officials; and a draft law establishing the community justice system.<sup>68</sup>

113. The Commission also recognizes and welcomes the recent efforts to address problems in implementing the accusatorial criminal prosecution procedure. It was informed of initiatives such as creation of an organization for service to the public through the Case Registration and Analysis Units for receiving complaints, providing guidance to users, and preliminary screening of cases that are not of a criminal nature so that they can be sent to quick settlement units or to specialized investigation divisions.

114. The Commission also learned of the recent creation of Evidence Notification and Deposit Centers, and of the intent to adopt measures to increase protection for victims, witnesses, and also officials of the Prosecutors' Office responsible for pursuing complex cases that might put them at risk. The Commission hopes that the necessary budgetary and human resources will be provided so that these major initiatives can be implemented shortly.

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<sup>66</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.1. Tribunals, structure and organization.

<sup>67</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, pp. 32–33.

<sup>68</sup> *Ibid*, p. 33.

115. The Commission also welcomes the positive impact that the new Code of Criminal Procedure has had in reducing the number of arbitrary arrests and cases of police abuse during arrests.<sup>69</sup>

116. Nevertheless, most of the areas where the reform is to be implemented still have serious institutional and operational weaknesses that could well frustrate the expected outcomes and could exacerbate the long-standing problems of impunity and lack of access to justice in Bolivia.

## **2. Problems identified**

117. The Commission received general information about institutional weaknesses arising from lack of training, infrastructure, technical support and personnel stability, as well as the inequitable distribution of cases among courts and tribunals.<sup>70</sup>

118. The Commission found that one of the main weaknesses in the Prosecutors' Office is the disparity and lack of coordination with respect to criteria for criminal prosecution, and the lack of effective controls over the performance of the prosecutors. These situations leave too much autonomy to the district level and even to individual prosecutors, particularly when it comes to rejecting complaints, prioritizing cases for investigation, applying alternative solutions, applying scope of discretion, selecting cases for oral trial, and even the parameters for allocating prosecutors by type of crime.<sup>71</sup>

119. As mentioned above (paragraph 108), one of the structural reforms was to give the Prosecutors' Office exclusive responsibility for directing the investigation. Nevertheless, in practice this important change has not been effectively implemented.<sup>72</sup> In response to the situation, an Agreement on Institutional Cooperation was signed and a Manual of Actions to be taken by the prosecutor and the police during the investigative stage was prepared. There are complaints, however, that the police are acting as if they still had

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<sup>69</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 4.2. Control over the police performance in the criminal procedure.

<sup>70</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, pp. 34-35; Monitoring the quality of the administration of criminal justice. Citizens Working for Justice. USAID. Partners of the Americas. May 2005, p. 54; Reforms in Criminal Procedure: One Process, Several Visions, Citizens Working for Justice. USAID. Partners of the Americas. April 2004, p. 39.

<sup>71</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, pp. 48 and 60.

<sup>72</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.2 e. Relationship with the police and handling of cases.

control and direction over the investigation before submitting the case to the prosecutor, and in their investigation strategy they are following orders from their superiors in the police force, rather than those issued by the corresponding prosecutor, which in most cases consist of standard formats that do not reflect the particular circumstances of each case.<sup>73</sup>

120. Besides ignoring the spirit of the reform, this situation constitutes a factor for impunity, given the weaknesses of the so-called "police investigation", particularly when it comes to the custody and protection of evidence.<sup>74</sup>

121. With respect to mechanisms for early termination of proceedings, it is important to mention that there is no judicial control over dismissals and that the only way to challenge them is by appeal to a superior prosecutor. This aspect is of concern to the Commission, because one of the most frequent complaints over implementation of the accusatorial criminal prosecution procedure is that the investigations are not thorough, a fact reflected in the significant increase in the number of cases closed, rejected or dismissed without further justification, representing more than 70% of complaints received.<sup>75</sup>

122. The Commission is concerned by the fact that the prosecutor must screen all complaints, a duty that occupies most of his time and leaves him little opportunity to conduct and direct the investigations for which he is responsible. The Commission notes that most rejections are decided when the six-month investigation period has expired, even when the rationale for the rejection is that the acts are not of a criminal nature, and is based on patently obvious criteria that should not require further analysis.<sup>76</sup> In practice this results in long periods of inactivity for the prosecutors on the other cases under their responsibility.<sup>77</sup>

123. As to the trial stage, the Commission learned of various shortcomings that have a direct impact on complying with procedural deadlines and on the real possibilities of holding public hearings as legally required. These weaknesses include lack of coordination between the notification offices

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<sup>73</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, pp. 62-63.

<sup>74</sup> *Ibid*, p. 61.

<sup>75</sup> *Ibid*, pp. 55-56; Monitoring the quality of the administration of criminal justice. Citizens Working for Justice. USAID. Partners of the Americas. May 2005, p. 53.

<sup>76</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 4.3. The length of the criminal procedure.

<sup>77</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 55.

and the courts and tribunals. In practice, given the shortage of notification officers, summonses are issued between 24 and 48 hours before the hearing is to be held, and this creates difficulties of various kinds, especially for the notification of jurors, and can entail repeated suspensions of hearings.<sup>78</sup> Moreover, there are no uniform criteria among the various jurisdictional units within the same district for setting such hearings.<sup>79</sup>

124. In contrast to the trial tribunals, the trial courts (*juzgados de sentencia*, which hear cases of crimes for which the penalty is less than four years) do not have courtrooms and use their offices to hold hearings. Consequently, they have no recording system and records are kept by the secretary, who uses his own portable tape recorder.<sup>80</sup>

125. As well, while public opinion in general sees citizen participation as lay jurors in the mixed tribunals as a step towards democratizing justice, implementation of this measure has been obstructed because the voters' lists that are sent to the district tribunals for selecting such judges by law are generally out of date, and it may be difficult to locate the selected candidates.<sup>81</sup> These lay jurors are also dissatisfied with the information provided to them on the case.<sup>82</sup> The Commission notes that these matters need to be properly regulated to avoid infringing Article 8 of the American Convention with respect to due process.

126. When it comes to appeals level, the Commission was informed that the distribution of judges for hearing appeals is disproportionate. More progress has been made with the courts of first instance, since the system of

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<sup>78</sup> *Ibid*, p. 34; Diagnostic study on the situation of justice in Bolivia. Access to Justice. Justice and Participation Study Center. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations; Monitoring the quality of the administration of criminal justice. Citizens Working for Justice. USAID. Partners of the Americas. May 2005, p. 56; Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section: Conclusions. Tribunals.

<sup>79</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.1 e. The judicial agenda and the challenges of oral procedure: Preliminary hearings and trials.

<sup>80</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 41; Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.1 a. Infrastructure and technical support.

<sup>81</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 37; Diagnostic study on the situation of justice in Bolivia. Access to Justice. Justice and Participation Study Center. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations; Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.1 f. Lay jurors.

<sup>82</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.1 f. Lay jurors. Footnote 19.

appeals produces greater congestion in criminal proceedings. The general perception of appeals is that they are inaccessible: only wealthy people can challenge decisions, because the Public Defender's office does not have a system for handling cases before the Supreme Court.<sup>83</sup>

127. A point to note has to do with the length of the investigation and of the entire criminal process, which according to the reform is not to exceed six months and three years, respectively. Despite this rule, the Commission noted that after the Constitutional Tribunal's decisions regarding the statute of limitations to criminal action there was deep confusion on the part of litigants, lawyers, prosecutors and even lower-ranking justice officials, most of whom saw the decisions as creating gaps in the law on certain issues that in practice have been left entirely to the discretion of the judges in each case.<sup>84</sup>

128. This Tribunal interpreted the rule as meaning that the six-month term must start to run from the time the formal charge is notified, which means in practice the indefinite extension of the term in cases where there are several consecutive charges. This suggests a gap in the control over the time in which the prosecutor must evaluate preliminary actions and issue a formal charge.<sup>85</sup>

129. That same court also ruled that the three-year limit on criminal proceedings from the first act of investigation (defined as "the first accusation in judicial or administrative chambers")<sup>86</sup> does not apply automatically or absolutely, but must be determined case-by-case in light of the defendant's action.

130. The Commission is concerned with the interpretation of the Constitutional Tribunal that the right to conclusion of proceedings within a reasonable time is not violated "when as the consequence of use of the various means of defense and appeals that the legal system provides; if through excessive precaution, the defendant prolongs the process needlessly (the capacity for precaution being inherent to any human being) he must assume the consequences of his acts, and in this circumstance the statute of limitations

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<sup>83</sup> Diagnostic study on the situation of justice in Bolivia. Access to Justice. Justice and Participation Study Center. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>84</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section. 4.3. The length of the criminal procedure.

<sup>85</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 157; Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 4.3 The length of the criminal procedure.

<sup>86</sup> Constitutional Tribunal. Judgment 0033 of 2006.

does not apply."<sup>87</sup> In effect, this interpretation has led to the systematic rejection of applications to apply the statute of limitations, on the grounds that the filing of legal appeals by the defense is tantamount to a delaying tactic by the defendant.<sup>88</sup>

131. Regardless of whether three years constitutes a reasonable time limit for criminal proceedings in the terms of Article 8.1 of the American Convention (a situation that must be analyzed in each case, according to repeated rulings of the Inter-American Court),<sup>89</sup> it must be stressed that by virtue of Article 8.2.h) of the Convention, the right to challenge unfavorable decisions is one of the minimal judicial guarantees that States must respect, and under no circumstances may it be considered as an undue delaying tactic, with the legal consequence of preventing application of criminal procedure mechanisms to protect defendants from procedural delay.

132. The foregoing acquires special relevance in Bolivia because, as the Commission verified, this is a major problem in the administration of justice that extends even to the Supreme Court in cases held over from the previous system of criminal trial. The transition model from the previous system indicated that cases under that system must be concluded within five years, i.e. by May 2004. The Supreme Court issued a report in September 2003 indicating that it had 4,000 cases pending because it did not have the budgetary capacity to resolve them, and that in its opinion the accusatorial criminal prosecution procedure did not have the financial backing required. In any event, this portion of the reform was declared unconstitutional, and to date there has been no progress in settling cases from the previous system.<sup>90</sup>

133. On the other hand, the Commission is concerned that the most recent figures on the ratio of cases registered to cases resolved show that a great many cases fail to observe procedural time limits, both in the

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<sup>87</sup> Constitutional Tribunal. Constitutional Judgment 0079/2004-ECA. September 29, 2004.

<sup>88</sup> Diagnostic study on the situation of justice in Bolivia. Access to Justice. Justice and Participation Study Center. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>89</sup> The criteria that the Court has used to determine reasonable procedural times are these: the complexity of the matter, the action of the corresponding authorities and the action of the interested party, the relevance of which must be analyzed on a case-by-case basis. In this respect, see I/A Court H. R., *Case of La Cantuta*. Judgment on merits, reparations and costs. Judgment of November 29, 2006. Series C No. 162, para. 149; I/A Court H. R., *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, para. 102; I/A Court H. R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, para. 196.

<sup>90</sup> Constitutional Tribunal. Constitutional Judgment 101 of 2004. During meetings with members of the High Courts, the Commission found that the case backlog from the previous penal system is endemic and unlikely to change in the future, given the lack of budgetary resources and the constant filing of new cases.



investigation phase and that of the trial.<sup>91</sup> For example, between January 2003 and September 2004 there were 13,842 cases registered in the *juzgados cautelares* (courts that handle preliminary proceedings and seek possible alternative solutions to cases) and only 422 resolved; there were 2,339 cases registered in the trial courts and 125 were resolved; and there were 757 cases registered in the trial tribunals and 112 were resolved.<sup>92</sup>

134. The Commission also received information that with constitutional actions in criminal proceedings, such as *habeas corpus* and *amparo* (judicial remedy designed to provide rapid protection for fundamental rights), where the Constitutional Tribunal must be consulted after a decision is rendered, it takes more than nine months for that Tribunal to decide.<sup>93</sup>

135. With respect to due process, the Commission noted some irregularities at various stages of the process. On one hand, it noted the problems facing the Public Defenders in holding private interviews with defendants,<sup>94</sup> and on the other hand it noted that interrogations are conducted in the absence of the prosecutor and the public defender, who merely sign a form at the beginning of the procedure and a report at its end. The Commission also received information that, to make up for the staff shortages in the Public Defender's office, when the person handling the case is not present any available lawyer may be called to take over the defense of the accused, without having any prior knowledge of the case.<sup>95</sup>

136. In addition to these practices, the Commission was informed that interrogations continue to be clearly inquisitorial, with incriminating, suggestive and misleading questions. Despite these anomalies, which affect the exercise of the right to defense, the defendant's statement is still taken as fundamental evidence in the police investigation, especially in support of applications for precautionary measures such as preventive arrest.<sup>96</sup>

137. Another aspect noted by the Commission is that both the prosecutors and the police investigators continue to observe the concept of

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<sup>91</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section. 2.1 Tribunals: Structure and organization.

<sup>92</sup> *Ibid.*

<sup>93</sup> Diagnostic study on the situation of justice in Bolivia. Access to Justice. Justice and Participation Study Center. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>94</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.3 i. Relationship with the police, the right to a private interview and control of police abuse.

<sup>95</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 116.

<sup>96</sup> *Ibid.*, p. 117.

investigation secrecy ("*secreto sumarial*"), a situation that impedes access by the defense to the case files, under the excuse that the files contain the strategy for possible charges. In practice, the defense is usually able to ask the judge for access to the information only during the hearing on precautionary measures.<sup>97</sup>

138. Finally, the Commission recognizes that, with respect to victims, the new Code of Criminal Procedure and the Law on the Prosecutors' Office incorporate important changes such as the right of non-parties to be informed of progress in the proceedings; the power to exercise rights and to be represented by organizations in various circumstances; and the possibility of deciding between criminal or civil action to obtain reparations, under an expedited process in the first case.<sup>98</sup>

139. Nevertheless, the Commission observed no significant changes in practice. For example, there has been no action yet to implement the program for permanent protection of witnesses, victims and officials, as called for in the Prosecutors' Office Act.<sup>99</sup> This means that there has been no resolution of the historic problems affecting victims' rights, such as the excessive formality surrounding their participation, the failure of the prosecutor to hear their opinions and statements, and in general circumstances of revictimization in many instances. Another problem facing victims results from the high number of rejections during the preliminary investigation: because the prosecutors do not direct the investigation, the victims must initiate it and try to find evidence if they want to continue the process as plaintiffs.<sup>100</sup>

### 3. The Public Defender

140. The institution of the Public Defender was challenged by many sectors of the State, including State institutions that have to work with that office, as well as civil society. The Commission considers that Law 2496 of 2003, creating the National Public Defender Service as a decentralized institution of the executive branch, constitutes a first step in strengthening an entity that has a fundamental role in the State's duty to guarantee the technical defense of defendants who are unable to pay for it. Among the highlights of this initiative are: the creation of an administrative career to depoliticize the system; the establishment of greater disciplinary controls over the work of the

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<sup>97</sup> *Ibid*, p. 116.

<sup>98</sup> *Ibid*, p. 8.

<sup>99</sup> *Ibid*, p. 119.

<sup>100</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.2 i. The current situation.

public defenders; the possibility for the user to submit complaints about the service; and coverage of the service as of the initial police investigation.<sup>101</sup>

141. As the Commission was told, this system still coexists with the previous defense system, which was criticized for years as producing ineffective technical defense in which the lawyer merely rubber-stamped proceedings.<sup>102</sup>

142. The Commission was concerned at the persistence of serious institutional weaknesses in the Public Defender Service, most of them attributable to the entity's low budget. The Commission learned, for example, that in 2004 Bolivia had a total of 56 public defenders, i.e. an average of 0.8 for every 100,000 inhabitants, a situation that necessarily affects the possibility of effective defense, given the excessive workload on each defender.<sup>103</sup> Currently, the public defense system has 73 defenders throughout the country, and in 2005 the rural public defense service, covering approximately 30 localities, was suspended.<sup>104</sup>

143. In the Commission's view, this is reflected in the high number of complaints about the effectiveness of the service. The main complaints that the Commission received over the action of the public defenders had to do with the poor quality of the defense; the delay in presenting submissions; the lack of legal guidance for the defendant; and the fact that the defender systematically advises the defendant to make a confession, in order to be subjected to a summary proceeding.<sup>105</sup>

144. The future outlook is not promising. As the Commission was informed, the institution's own direction told that the budget was designed "to provide 25% coverage of courts in the most populous provinces, and that to

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<sup>101</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 115; Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.3 i. Relationship with the police, the right to a private interview and control of police abuse.

<sup>102</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Section 2.3 Public Defense: organization and institutional structure. Footnote 65.

<sup>103</sup> Justice Studies Center of the Americas. Justice Report. 2004 – 2005. Bolivian Chapter. Available at: <http://www.JSCAmericas.org/reporte/>. Visited on 11 March 2007.

<sup>104</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. Citing: Institutional Report of the National Public Defense Service, 2005, p. 21.

<sup>105</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, p. 119.

achieve 100% would be very difficult for the State alone."<sup>106</sup> In fact, according to the most recent figure, the Public Defender's office covers 126 courts out of a total of 343.<sup>107</sup>

145. The Commission reiterates that an effective Public Defender service is a necessary condition for improving access to justice,<sup>108</sup> and it hopes that measures will be taken in the short term to implement the service fully at the national level.

#### **E. Factors of impunity in cases of gross violations of human rights**

146. The Commission considers that the shortcomings described in this section of the report reveal endemic problems in Bolivia, in the lack of access to justice, and the absence of an efficient Prosecutors' Office and of a judiciary that offers guarantees of independence and impartiality. These are fundamental requisites for fighting impunity as one of the international obligations of the Bolivian State with respect to the persons under its jurisdiction who have been the victim of human rights violations.

147. Because impunity is such a serious problem for Bolivian society, the Commission has paid special attention to the way in which the State has approached the investigation of human rights violations, both the forced disappearances that occurred during the dictatorships from 1964 to 1982, and the excessively repressive police and military action against demonstrators under democratic governments. The irregularities apparent in these cases are emblematic of the obstacles facing victims and their relatives in determining the truth and in obtaining justice and reparations in Bolivia.

##### **1. Impunity in cases of forced disappearances**

148. The Commission has been following the measures taken by the State to fulfill its duty to investigate forced disappearances, to locate the remains of the victims and to punish those responsible. During its visit the Commission found that progress in this area is tenuous. It verified that, despite creation in 1982 of the National Commission to Investigate Forced Disappearances ("*Comisión Nacional de Investigación de Ciudadanos Desaparecidos Forzados*"), it was dissolved in 1984 with little to show for results.

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<sup>106</sup> Justice Studies Center of the Americas. Report: Follow-up on the Process of Criminal Procedure Reform in Bolivia. 2006. 2.3 Public Defense: institutional organization and structure. Citing interview with the then-Director of the National Public Defense Service National Public Defense Service.

<sup>107</sup> *Ibid.* Section 2.3 f. Volume of cases heard and territorial and coverage.

<sup>108</sup> IACHR. *Justice and Social Inclusion: the Challenges of Democracy in Guatemala*. 2003, para. 81. (Available in Spanish only).

149. The Interagency Council for the Clarification of Forced Disappearances (*"Consejo Interinstitucional para el Esclarecimiento de Desaparecidos Forzados"*) was created in 2003<sup>109</sup>, but as the Commission learned it only began formal operations in August 2005, and has yet to consolidate itself. By regulation, this Council includes representatives of the relatives of missing persons. According to the State the progress it has made can be summarized in terms of representation before the courts to demand prompt processing of cases; incorporation of the Attorney General as an active member of the council; and the allocation of a modest budget to search for remains.

150. Although several criminal actions were initiated as a result of the investigation by the first Investigation Commission, the Commission noted that, more than 20 years after its launch, the outlook for justice is very dim.

151. On the basis of information received from the Ministry of Justice, the Prosecutors' Office and civil society organizations involved in this issue, as well as relatives of victims, the Commission was able to identify the most common causes that have obstructed justice in these cases.

152. On one hand, there is the lack of interagency cooperation, particularly between the Prosecutors' Office and the Armed Forces. Government authorities themselves have the perception that the State security bodies cover up for their officers through mechanisms such as submitting incomplete or inaccurate information, excessive delays in responding to requests for information,<sup>110</sup> and failure to appear at investigation hearings.

153. The Commission also received complaints about the passive attitude of officials responsible for the investigation, and about irregularities committed by those officials in their minimal efforts to collect evidence, and in assessing possible lines of investigation and obtaining proof as suggested by the victims' relatives.

154. Another aspect of concern reported to the Commission by the Prosecutors' Office involves failures, including some recent ones, in measures taken to locate the remains of missing persons. That entity told the Commission that in a place where there were strong indications that human remains were to be found, a backhoe was used to inspect the area, operated by no specialized personnel following no specific protocol.

155. The Commission was concerned to note that cases were continuously passed between judges, because of impediments, recusals and

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<sup>109</sup> By Supreme Decree 27.089 of 2003.

<sup>110</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004, pp. 63-65.

inhibitions. An emblematic case was that of José Carlos Trujillo Oroza,<sup>111</sup> in which the investigating judge was changed nearly 40 times, and jurisdiction was finally lodged with a civil judge, because no more criminal judges were available in the respective jurisdiction.

156. All of these factors of impunity are exacerbated by the lack of a strong disciplinary system and the failure to implement mechanisms of control over the actions of prosecutors and justice officials in events that perpetuate impunity, such as those described in this section.

157. The Commission noted that forced disappearance was recently made a crime, by means of a law published on January 21, 2006. With respect to that text, the Commission reminds the Bolivian State that forced disappearance constitutes a multiple and continuing violation of human rights<sup>112</sup> and that failure to determine the whereabouts of the victims' remains, ignorance of the circumstances in which the disappearance took place, and failure to identify and punish those responsible will perpetuate the violation and extend its effect to relatives of the victims. In this respect, impunity constitutes a source of international responsibility for the State in light of its obligations under the Convention to guarantee human rights through investigation and punishment.

## **2. Impunity in cases of excessive police and military force in the repression of demonstrations**

158. The Commission has also followed closely the excessive acts of police and military repression against demonstrators, which have resulted in hundreds of persons killed and injured. The events that have most shocked public opinion are those that took place in the context of the "water conflict" protests in April 2000, the taxation protest of February 2003, and the "gas dispute" or "Black October" between September and October 2003, briefly described in paragraphs 15 to 21.

159. The excessive use of force by State security agents and the consequences in terms of loss of life and harm to personal integrity, constitute publicly actionable crimes that States must investigate *ex officio* in order to identify those responsible, impose criminal or other penalties as appropriate, and establish adequate reparations for the victims or their relatives.

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<sup>111</sup> Decided by the Inter-American Court of Human Rights in a judgment of January 26, 2000, after the Bolivian State acknowledged responsibility. This Tribunal is supervising compliance with the judgment, and in particular the obligation to find the mortal remains of the victim and to punish those responsible; it indicated in a resolution of September 12, 2005, that the State had not complied with the judgment and had not provided sufficient information.

<sup>112</sup> I/A Court H. R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109.; *Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70, paras. 128 and 129; *Blake*. Judgment of January 24, 1998. Series C No. 36, para. 65.

160. Among the factors of impunity for such violations of human rights we find, similar to those indicated with respect to forced disappearances, the lack of coordination and in particular obstruction on the part of the State security institutions and individual officials.

161. An example of this situation is the case of Ana Colque Quispe, who died during the disturbances of February 2003. A group of nongovernmental organizations formed a committee to monitor the case, in which her mother filed a criminal complaint that encountered a complete lack of cooperation, especially by the Army. As the complainant reported, that institution refused to provide copies of the reports supplied by the soldiers who took part in the events of February 13, 2003, under the argument that the documentation was under secrecy.<sup>113</sup>

162. This was confirmed by authorities of the Prosecutors' Office. The previous Attorney General declared that the obstacles impeding investigation of the violent acts of February and October 2003 included the fact that the military high command, although released from military secrecy, had refused to appear before the prosecutor to give statements that might have helped clarify the events.<sup>114</sup>

163. Failures and delays in gathering evidence obstructed progress of the investigations. For example, in March 2003, in interviews with Amnesty International, the prosecutors involved declared their concern over the lack of resources for carrying out their work, and problems with some of the autopsies and in collecting evidence, because the bodies had been moved from the scene.<sup>115</sup>

164. Another aspect that the Commission considers a factor for impunity is that the investigation of the April 2000 events was conducted by the military criminal justice system, in which the soldiers involved were absolved. The events of February 2003 were also handled for a time through the military justice system, because the defendants were four soldiers on active duty. The Commission welcomed the ruling of the Constitutional Tribunal allowing an appeal for *amparo* against military jurisdiction in these cases, on the grounds that the crimes committed by soldiers must be judged by the ordinary courts, for although soldiers are members of the Armed Forces this was not a

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<sup>113</sup> Amnesty International. Bolivia. Crisis and Justice: Days of Violence in February and October 2003. Published November 2004.

<sup>114</sup> Report of the Attorney General in office from December 2004 to October 2006, Pedro Gareca.

<sup>115</sup> Amnesty International. Bolivia. Crisis and Justice: Days of Violence in February and October 2003. Published in November 2004.

"crime of function" that affected military legal interests, but rather an ordinary crime that involved the violation of human rights.<sup>116</sup>

165. Nevertheless, the Commission is concerned that the previous decision was sharply rejected by the Armed Forces, which ordered troops confined to barracks. Although this order was lifted after a meeting between the military high command and former President Carlos Mesa Gisbert, other devices were used to protect officials from ordinary justice.

166. The Armed Forces presented a demand to amend the decision of the Constitutional Tribunal, which they rejected. They also prepared a draft law interpreting Article 209 of the Constitution<sup>117</sup> to mean that only the military courts could decide on questions of military jurisdiction or matters of military competence, and that the organs of military jurisdiction must be guaranteed independence.

167. The Commission reiterates the jurisprudence of the inter-American system in the sense that military criminal jurisdiction is restrictive in its scope and applies solely to personnel on active duty who commit crimes that affect juridical interests of a military nature, excluding absolutely the consideration of human rights violations and the judging of civilians.<sup>118</sup>

168. On this last point, while the Commission recognizes that progress has been made on this issue with the decision of the Constitutional Tribunal, there are still provisions from the Organic Law of the Armed Forces,<sup>119</sup>

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<sup>116</sup> Constitutional Tribunal. Constitutional Judgment 0664 – 2004 – R: The two bases of the Constitutional Tribunal decision were these: the first related to the limitation of military justice to crimes of function, which are defined as those in which the following elements concur: (i) the juridical interest is a military one; (ii) the crime is stipulated in military criminal legislation; and (iii) there is a connection of causality between the function and the crime, meaning that the action ordered constitutes in itself a legitimate extension of the mission of the Armed Forces. Second, with respect to the Constitutional limitation, there is an absolute prohibition on trying human rights violations in the military justice system.

<sup>117</sup> Political Constitution of Bolivia, Article 209: "The organization of the Armed Forces rests on hierarchy and discipline. It is essentially obedient, it does not deliberate, and it is subject to military laws and regulations. As an institutional organization it does not conduct political activity, but individually its members enjoy and exercise the rights of citizenship under the conditions established by law."

<sup>118</sup> I/A Court H. R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 126; *Las Palmeras Case*. Judgment of December 6, 2001. Series C No. 90, para. 51; *Cantoral Benavides*, Judgment of August 18, 2000. Series C No. 69, para. 113; and *Durand and Ugarte*, Judgment of August 16, 2002. Series C No. 68, para. 117; IACHR, *Report on the Situation of Human Rights in Peru* (OEA/Ser.L/V/II.106), June 2, 2000, among others.

<sup>119</sup> Article 26: "The administration of military justice is exercised in the name of the nation, by the authorities, tribunals and judges established in the military codes and in this law"; Article 21.1: "The military tribunals form part of the organic structure of the Armed Forces, they are independent and autonomous in the administration of justice. Their organization, functioning and procedures are permanent and are determined by their codes and military laws."



the Organic Law of Military Justice,<sup>120</sup> and the Military Criminal Code<sup>121</sup> according to which the military courts could conceivably judge civilians for "crimes of a military nature". Nor is the Constitution clear in this respect, since the guarantee of Article 34 is limited to indicating that "those who violate constitutional rights and guarantees shall be subject to ordinary jurisdiction." In this respect, the Commission reminds the State that in applying military criminal justice to these acts of social repression or to acts of any nature, international standards relating to independence, impartiality and the "natural judge" must be observed.

169. An issue of special importance in the investigation of these acts of political and military violence is the so-called "trial of responsibilities" for prosecuting senior State officials, including the President of the Republic and his ministers. The Commission noted that this has been an issue of special public interest, because former President Gonzalo Sanchez de Lozada and his then-cabinet ministers are being investigated under this provision for the events of October 2003.

170. The Commission notes that there are legal gaps in the procedures that must be followed in these trials. As it was informed, notwithstanding laws 2445 and 2623, there is a void as to which authorities of the executive may be tried under this procedure, and the mechanisms of notification.

171. Application of this provision to acts of police and military violence has not been uniform. Initiation of the procedure was not authorized for the events of February 2003, but it was authorized for the events of October 2003. With respect to the latter events, there has been no progress in the investigation, because it was not possible to notify former President Sanchez de Lozada and some of his ministers. The Commission noted obstacles facing the Bolivian authorities, despite legal and diplomatic efforts, to have this process continue, but the lack of notification and the recent declaration of some of the defendants as fugitives cannot be considered an excuse for paralyzing investigations against the other defendants, and for failing to identify all the other senior military officers responsible, and the actual perpetrators.

172. The Commission is concerned that the persons responsible for these events have not yet been identified, and because of the shortage of personnel assigned, proceedings have not moved beyond the investigation stage. The Commission urges the State to give impetus to the investigations

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<sup>120</sup> Article 10: "Bolivians and foreigners are subject to military jurisdiction by reason of crimes that affect military interests and the place in which they are committed, as determined and punished by the Military Criminal Code and special laws."

<sup>121</sup> Article 1: "This Code is applicable to: (...) 2."Crimes committed by nationals and foreigners, even if not members of the Armed Forces, that affect military interests and premises."

and the resulting trials in order to punish those responsible and obtain reparations for the victims and their relatives.

173. Finally, the Commission noted some legislative efforts to establish reparations for the victims and relatives of the events of October 2003. The Commission welcomes this initiative and urges the State to ensure that reparations are negotiated with the beneficiaries, and that they include moral and intangible damages, and do not exclude victims of other similar events.

#### **F. Recommendations**

174. By virtue of the above considerations, the Commission recommends that the Bolivian State:

1. Increase the mechanisms of publicity and dissemination for the rights of the citizens and the judicial actions established in the Constitution as an instrument for giving effect to them, as well as the procedures and requirements for accessing them.
2. Adopt the necessary measures to achieve the fullest possible coverage of judges, prosecutors and public defenders, using criteria based on a diagnosis of the real needs in the different areas of the country, both in terms of population and jurisdictions. These measures must include budgetary and human resources so that the respective authority will have not only a physical presence but also permanent and stable personnel.
3. Comply strictly with the procedures for appointing judges and prosecutors, established as a guarantee of independence and impartiality both in the Constitution, in the case of members of the high courts, the district Superior Tribunals, the Attorney General and the district prosecutors, and in the laws and regulations governing the judicial and prosecutorial careers in the case of other judicial authorities and the prosecutors.
4. Effectively implement the judicial and prosecutorial careers systems, and eliminate all provisions relating to hierarchy and promotion for these authorities that could increase levels of corruption in the judiciary and in the Prosecutors' Office. In particular, ensure that entry and promotion in those careers is done through public competitions and selection based on exclusively technical criteria.
5. Strengthen the disciplinary system for judges and create coordination mechanisms with the criminal jurisdiction to fill the gaps in the law that have so far prevented effective disciplinary

or criminal punishment of judicial authorities who commit acts of corruption, who contribute to procedural delay, who take decisions manifestly contrary to law, or who in general obstruct access to justice.

6. Take the necessary steps to implement the evaluations and other legal mechanisms of internal and external control, with respect both to the performance and the suitability of judicial authorities and the Prosecutors' Office.
7. Conduct a clear analysis of the shortcomings in implementation of the 1999 Code of Criminal Procedure and institute comprehensive measures that include, at least, adequate training; the distinction of investigative functions; decongestion and settlement of cases at the investigation stage; guidelines for cooperation between all authorities involved in all instances, whether police, prosecutors or judges; mechanisms to comply with procedural deadlines, notifications and the holding of public hearings within legal parameters; and implementation of measures for participation by victims and their relatives.
8. Take steps to eliminate the legal uncertainty surrounding the statute of limitations for criminal cases, and establish clearly, in accordance with international standards, that its applicability cannot be determined on the basis of whether the affected person availed himself of the remedies and mechanisms of defense that criminal procedural law provides.
9. Strengthen the National Public Defender System with particular attention to the coverage and quality of service, and to the mechanisms for the hiring and tenure of public defenders.
10. Step up investigations of forced disappearances, police and military repression of public demonstrations, and other violations of human rights, using all the means at its disposal to overcome the obstacles that have to date prevented the establishment of the truth, the identification of the material and intellectual authors of the events, imposition of the corresponding sanctions, and determination of reparations for victims and their relatives.

## CHAPTER III

### PRISON CONDITIONS AND THE HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY

#### A. Introduction

175. During its visit, a delegation of the Commission visited the Chonchocorro penitentiary in the city of El Alto, the San Pedro prison and the Obrajes prison for Women, both in the city of La Paz, to verify the situation of human rights situation of persons deprived of liberty.

176. Persons held in prisons inherently cope with necessary limitations due to their deprivation of liberty. Nevertheless, they maintain the right to exercise their fundamental rights as recognized in national and international law, regardless of their legal situation or the stage of the proceedings against them, and in particular they maintain the right to humane treatment and due respect for their dignity as human beings. On the other hand, the State, as guarantor of the rights enshrined in the American Convention, is responsible for observing the right to personal integrity of all persons in its custody.<sup>122</sup>

177. According to statistics from the General Direction of Prisons (hereinafter also the "DGRP"), which is part of the Ministry of Government, at the beginning of 2006 the prison population in Bolivia numbered 7,782 inmates, distributed among 54 penitentiary institutions.<sup>123</sup> There were 1,193 police officers responsible for the security of these persons.<sup>124</sup> The DGRP has an administrative staff of approximately 160 persons to run 54 prisons, and an annual budget of B. 58 million.<sup>125</sup> In October 2006, national statistics show that the prison population totaled 7,682 inmates, in facilities with a capacity to house 4,700 prisoners.<sup>126</sup>

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<sup>122</sup> See, *inter alia*, I/A Court H.R., *Case of Miguel Castro Castro*. Judgment of November 25, 2006. Series C No. 160, para. 273; I/A Court H. R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, para. 138; I/A Court H. R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, para. 120; and I/A Court H. R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, paras. 104-106.

<sup>123</sup> Ministry of Government – General Direction of Prisons, *Situation of Bolivia's Prisons*, p. 22.

<sup>124</sup> *Ibid.*, p. 22.

<sup>125</sup> IACHR interview with the General Director of Prisons, Mr. Ramiro Llanos, on November 12, 2006.

<sup>126</sup> Ministry of Government – General Direction of Prisons, *National Prison Population Statistics* (October 2006).

178. In terms of domestic legislation, the national Constitution recognizes the right to liberty and stipulates conditions that must be followed for detaining persons.<sup>127</sup> It also prohibits any form of torture, coercion, prison for debt or other form of physical or mental violence.<sup>128</sup> Those constitutional provisions are complemented by Law 2298 of 2001, on Execution and Supervision of Sentences. Article 5 of this law provides that "in prison establishments, there shall be respect for human dignity, for constitutional guarantees, and for human rights. Any form of cruel, inhuman or degrading treatment is prohibited."

179. As regards international human rights law, Article 5 of the American Convention establishes the right of every person "to have his physical, mental and moral integrity respected." Consequently, torture and cruel, inhuman or degrading punishment or treatment are prohibited, on the basis of the fundamental principle that "all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." This also requires that accused persons must be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

180. In addition, when minors are subject to criminal proceedings they must be separated from adults. The American Convention also requires that minors must be treated in accordance with their special condition, bearing in mind as well Article 19 of the Convention on the duty of States to take special measures of protection required by their condition, and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice,<sup>129</sup> and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,<sup>130</sup> among other instruments.<sup>131</sup>

181. All of the foregoing is consistent with the provision of the American Convention that "punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners." There are also instruments adopted under the auspices of the United Nations human rights system that relate to persons deprived of their liberty. Thus, the United Nations International Covenant on Civil and Political Rights, the Standard Minimum Rules for the Treatment of Prisoners,<sup>132</sup> the Body of

<sup>127</sup> See Articles 9 to 11 of the Constitution.

<sup>128</sup> See Article 12 of the Constitution.

<sup>129</sup> Adopted by the General Assembly in Resolution 40/33 of November 28, 1985, A/RES/40/33 (hereinafter "the Beijing Rules").

<sup>130</sup> Adopted by the General Assembly in Resolution 45/113 of December 14, 1990, A/RES/45/113 (hereinafter "Rules for Juveniles Deprived of their Liberty").

<sup>131</sup> On this point, see I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 194.

<sup>132</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council

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Principles for the Protection of All Persons under any Form of Detention or Imprisonment,<sup>133</sup> and the Basic Principles for the Treatment of Prisoners<sup>134</sup> establish standards and rules for the treatment of persons deprived of their liberty.

182. In addition, Article 7 of the American Convention includes provisions on the circumstances in which a person may be detained and held, and stipulates that no one shall be subject to arbitrary arrest or imprisonment.

183. Based on this normative framework, the Commission has identified several priority issues of concern related to the situation of persons deprived of their liberty, in light of information made available by the State and other reliable sources, as well as from its own observations. The Commission will specifically refer to each of these aspects in the following paragraphs.

#### **B. Use of pre-trial detention and prison overcrowding**

184. Similar to most countries of the Hemisphere, Bolivia has in recent years seen significant growth in its population deprived of liberty, with the subsequent overcrowding of prisons. Nevertheless, in this country more than in others, prison overcrowding results in large part from excessive use of preventive detention, as well as from procedural delays. The prisons are in effect populated by persons awaiting trial or without a final conviction, which contradicts the exceptional nature of this measure,<sup>135</sup> the purpose of which is precautionary and not punitive,<sup>136</sup> in accordance with Article 7.5 of the American Convention and the right to the presumption of innocence established in Article 8.2 of the same instrument.

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by its resolution 663C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977 (hereinafter "Minimum Rules").

<sup>133</sup> Adopted by the United Nations General Assembly in Resolution 43/173 of December 9, 1988, A/RES/43/173 (hereinafter "Body of Principles").

<sup>134</sup> Adopted and proclaimed by the General Assembly in Resolution 45/111 of December 14, 1999, A/RES/45/111 (hereinafter "Basic Principles").

<sup>135</sup> See I/A Court H. R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 67; I/A Court H. R., *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, para. 106; I/A Court H. R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 197; I/A Court H. R., *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 74; and I/A Court H. R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 106.

<sup>136</sup> See I/A Court H. R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 67; I/A Court H. R., *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, para. 106; I/A Court H. R., *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 75; I/A Court H. R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 180; and I/A Court H.R., *Suárez Rosero Case*. Judgment of November 12, 1997. Series C No. 35, para. 77.

185. The State has recognized this problem before international human rights bodies, indicating that the gaps, contradictions and inadequacies of the then in force Code of Criminal Procedure "have led in practice to serious abuse of detention pending trial," which resulted in approximately 85% unconvicted persons in Bolivia's prisons in 1996.<sup>137</sup>

186. In order to resolve the situation, the State has promoted legislative reforms to restrict the use of preventive detention and reduce prison overcrowding, for example through Law 1602 of December 15, 1994, Law 1685 of March 14, 1996, as well as Law 2098 of June 13, 2000 and Law 2133 of October 6, 2000.

187. Following the approval of Law 1685 in 1996, in particular, the number of persons in pre-trial detention in Bolivian prisons significantly decreased. In 1997, indeed, the United Nations Human Rights Committee recognized that upon approval of Law 1685, they had observed "a significant reduction in the number of persons in preventive detention".<sup>138</sup>

188. Nevertheless, this trend was reversed starting from 2003, upon approval of Law 2494 of August 4, 2003, which added a new criterion for application of preventive detention related to the "risk of recidivism."<sup>139</sup>

189. As a result, in October 2003, according to the General Director of Prisons, there were 5,587 prisoners (4,925 males and 662 females) in facilities with the capacity to house 4,700 persons deprived of liberty. Two years later, in October 2005, according to the same source there were 7,310 prisoners (6,361 males and 949 females). This increase from 5,587 persons (2003) to 7,310 persons (2005) deprived of liberty in Bolivian prisons possibly demonstrates the impact that Law 2494 had.

190. The Eighth Report of the Ombudsman (*Defensor del Pueblo*) to the National Congress – 2005, indicates that "74% of the total prison population have not been sentenced. This places Bolivia second among Latin American States in terms of unconvicted persons in the country's prisons, and highlights the limited degree to which the legal reforms on criminal law and on the justice system of the last decade have succeeded."<sup>140</sup> According to the

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<sup>137</sup> Second periodic report submitted by Bolivia on implementation of the International Covenant on Civil and Political Rights, UN Doc CCPR/C/63/Add.4 1996, para. 48.

<sup>138</sup> Concluding Observations of the Human Rights Committee: Bolivia, UN Doc CCPR/CE/79/Add.74, para. 12.

<sup>139</sup> See Articles 15 and 16 of the National Citizen Security Law, amending Articles 234, 235, 240, 247 and 251 of the Code of Criminal Procedure, expanding the grounds for application of precautionary measures such as preventive detention.

<sup>140</sup> Eighth Report of the Ombudsman to Congress – 2005, p. 166. See also: Permanent Assembly of Human Rights of Bolivia (APDHB). Analysis of the Human Rights Situation in Bolivia in 2005, pp. 5 and 15; U.S. Department of State. Country Reports on Human Rights Practices – 2005 – Bolivia, p. 4; and Swedish Ministry of Foreign Affairs. Human Rights in Bolivia, 2003, p. 7

DRGP's most recent statistics of 2006, "the penitentiary population consists for the most part of preventive detainees. The 5,080 preventive detainees account for 74% of the total."<sup>141</sup>

191. The excessive use of preventive detention has a direct impact on the severe overcrowding observed in Bolivia's prisons. That factor, together with procedural delays and the inadequacies and deficiencies of the prison infrastructure, further aggravates the overcrowding of prisons in Bolivia. In particular, the delegation of the Commission observed during its on-site visit that overcrowding reached unacceptable levels in the Obrajes prison for women and in the San Pedro prison. In the latter case, especially, the inmate population exceeded in more than 400% the capacity of the 1895-built facility.<sup>142</sup>

192. This situation violates Articles 83 and 84 of the Law on the Execution of Criminal Sentences, which requires that the number of persons deprived of liberty must never exceed the capacity of the prison, in order to guarantee adequate custody and treatment of inmates, and allows the Director to reject further admissions in accordance with international provisions on this matter.<sup>143</sup>

193. The Commission also notes that the high levels of prison overcrowding illustrated in official data and corroborated during the on-site visits to the San Pedro prison and the Obrajes prison for women have a negative impact on the social readaptation and rehabilitation of persons deprived of liberty, and also violate their fundamental rights, in particular their rights to health, to food, to education, to work, to security, and to minimum conditions compatible with their dignity. The combination of these factors, in turn, is incompatible with the right of every person to humane treatment and respect for their inherent dignity as human beings,<sup>144</sup> and contravenes the

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(citing data from Amnesty International and the Ombudsman's office in 2003, that approximately 80% of Bolivian prison inmates have not been convicted).

<sup>141</sup> Ministry of Government – General Direction of Prisons, *Situation of Bolivia's Prisons*, p. 22.

<sup>142</sup> According to the Director General of Penitentiaries, Mr. Ramiro Llanos, the degree of overcrowding at San Pedro is approximately 500%. According to the national statistics on the prison population, in October 2006 there were 1,564 men held in the San Pedro prison; to this number must be added approximately 40 wives and 250 children living in the prison with them, for a total population of approximately 1,854 people in the prison. According to the interview with the "Governor" of the San Pedro prison, Col. Manuel Guzman, the facility has the capacity to hold 350 prisoners.

<sup>143</sup> See Minimum Rules, Rules 9.1-14.

<sup>144</sup> Concluding Observations of the Human Rights Committee: Argentina, November 3, 2000 U.N. Doc. CCPR/CO/70/ARG, para. 11; and C.P.T., Report to the United Kingdom Government on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, November 26, 1991, CPT/Inf (91) 15, para. 229.



obligation of the State as guarantor, in terms of ensuring that all prisoners enjoy the minimum conditions compatible with their dignity while in State custody, in order to protect and ensure their life and personal integrity.<sup>145</sup>

### C. Separation of categories of persons deprived of liberty

194. As the State itself recognizes, the lack of criteria for separation and classification of the prison population "is a generalized problem in Bolivia,"<sup>146</sup> and has been so for at least a decade.<sup>147</sup>

195. During its visit, the Commission verified the complete lack of rules for separation and classification of the prison population. The Commission noted with great concern that accused persons were imprisoned together with convicts, in violation of Article 5.4 of the American Convention;<sup>148</sup> and even worse, juveniles under the age of 18 were held with adult convicts and accused persons, in violation of Article 5.5 of the Convention.<sup>149</sup> As detailed below (paragraph 389) the age of criminal responsibility in Bolivia is set at 16 years, which means that juveniles between 16 and 18 years are subject to the ordinary Criminal Code,<sup>150</sup> and are held in prisons for adults. While in prison, moreover, those juveniles are not given any differentiated treatment that could reflect their specific problems and needs.<sup>151</sup>

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<sup>145</sup> See Inter-American Court. *Prisoners in the "Dr. Sebastião Martins Silveira" penitentiary in Araraquara, São Paulo, vs. Brazil*. Resolution of September 30, 2006, considerandum 11; Inter-American Court. *Penitentiaries of Mendoza*. Resolution of March 30, 2006, considerandum 7; and Inter-American Court. *Instituto de Reeducación del Menor*. Judgment of September 2, 2004, Series C No. 112, para. 159.

<sup>146</sup> Ministry of Government – General Direction of Prisons, Situation of Bolivia's Prisons, p. 37.

<sup>147</sup> On this point, see *Second periodic report submitted by Bolivia on implementation of the International Covenant on Civil and Political Rights*, UN Doc CCPR/C/63/Add.4 1996, paras. 54, 56 and 88, in which the committee noted that "[o]wing to the unsuitable and defective prison infrastructure, the inmates of all Bolivia's prisons share the same quarters without any separation ... Persons accused of crimes are not kept separate from convicted prisoners," and observed "the housing of minors in prisons on a permanent basis." Five years later, in 2001, the Committee against Torture, in analyzing the initial report submitted by Bolivia on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, observed among its principal grounds for concern "[i]nformation it has received regarding the inhuman conditions under which prisoners are held in the facilities known as carceletas ... where juvenile and adult detainees are held together, as are prisoners awaiting trial and those already serving sentences." (Concluding Observations of the Committee against Torture: Bolivia, UN doc. A/56/44. para 95(5)).

<sup>148</sup> See also the Minimum Rules, Rule 8; and the Body of Principles, Principle 8.

<sup>149</sup> See Rules for Juveniles Deprived of their Liberty, Rule 29.

<sup>150</sup> See Beijing Rules, Rule 2.3.

<sup>151</sup> See Rules for Juveniles Deprived of their Liberty, Rule 12.

196. According to the Ombudsman, 703 out of the total prison population in 2005 were adolescents or youths under the age of 21, who were being held in prisons for adults, despite the fact that Law 2298 on the Execution of Criminal Sentences requires that there be special penitentiaries for these adolescents and youths in each judicial district with a view to fostering their reintegration into society.<sup>152</sup>

197. Notwithstanding the foregoing, the Commission observes with concern that in practice "no judicial district has any of these centers, although the time limit of three years for establishing them expired in December [2005]. The fact that adults are held together with juveniles exposes the latter to extortion, to physical, sexual and psychological abuse, to labor exploitation, and to insecurity of all kinds."<sup>153</sup> According to the 2005 Report of the Ombudsman, thanks to a cooperation agreement with the Latin American Lay Movement (MLAL), a Model Rehabilitation Center for Juveniles Deprived of Liberty was under construction in Viacha, Department of La Paz, and was scheduled for completion in 2006.<sup>154</sup> During its visit, the delegation of the Commission was informed that the model center for juveniles between 16 and 21 years in Viacha would be completed and opened in 2007. The Commission hopes that this project be completed in the short-term and that the model center can be implemented in conformity with the relevant international standards.

#### **D. Prison security and control**

198. External and internal security in Bolivian prisons is under the responsibility of the National Police. According to Article 58 of the Law on the Execution of Criminal Sentences, the Director of the prison must be a member of the National Police. According to the DGRP itself, this provision "amounts to validating police authority to the detriment of civil authority", and creates

a very negative situation for the interest of inmates, who are forced to live in a permanent state of exception. Their contact with the outside world and with the authorities to whom they must turn for the most frequent questions will always be the police. Thus, the prisons are more like police stations than establishments for social readaptation. The police do not know, and have no reason to know, about these other aspects.<sup>155</sup>

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<sup>152</sup> Report VIII of the Ombudsman to the National Congress, 2005, p. 170.

<sup>153</sup> *Ibid.*, p. 170.

<sup>154</sup> *Ibid.*, p. 170.

<sup>155</sup> Ministry of Government – General Direction of Prisons, Situation of Bolivia's Prisons, p. 41.

199. The Commission has previously adopted a position on the matter of prison control by State security forces.<sup>156</sup> The Commission has held, for example, that "international standards on detention contemplate that, as a general rule, the authority responsible for the investigation of a crime and arrest should not be the authority responsible for administering detention centers. This is a safeguard against abuse, and an essential basis for prompt judicial supervision of detention centers."<sup>157</sup>

200. With respect to what the Commission observed in Bolivia, it notes with concern that police personnel in the prisons do not meet the requisites established in the United Nations Standard Minimum Rules which require, for example, that "personnel shall be appointed on a full-time basis as professional prison officers."<sup>158</sup> The Minimum Rules also provide that "before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests,"<sup>159</sup> and that "after entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals."<sup>160</sup> In contradiction to the foregoing, the DGRP itself notes that "the administration has made no effort to see that members of the National Police responsible for penitentiary issues have specific preparation that would transmit to them a general idea that their functions within the prison have nothing to do with what they learned in their professional training in the police academy."<sup>161</sup>

201. In addition to the inadequate training of police personnel responsible for the prisons, another source of concern to the Commission during its visit was the fact that, in practice, internal security in the prisons is generally in the hands of the inmates themselves. In the San Pedro prison, for example, members of the National Police seldom venture within the walls, confining themselves for the most part to external security and inspections of visitors. Within the prison, the men deprived of liberty, their wives or partners and their children are left to their own fate. The prison authorities recognized, and the delegation of the Commission confirmed, that prisoners sell or rent individual cells. This means that an inmate does not have the right to a cell,

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<sup>156</sup> See for example, IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001, Chapter VIII, paras. 23 and 24; and IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, October 7, 1999, paras. 252-255.

<sup>157</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala, op. cit.*, para. 14

<sup>158</sup> Minimum Rules, Rule 46.3.

<sup>159</sup> *Ibid.*, Rules, Rule 47.2.

<sup>160</sup> *Ibid.*, Rule 47.3.

<sup>161</sup> Ministry of Government – General Direction of Prisons, *Situation of Bolivia's Prisons*, pp. 41-42. Nevertheless, during the Commission's on-site visit, the General Director of Prisons, Mr. Ramiro Llanos, declared his willingness to enhance the role of civilians in place of members of the National Police in the new penitentiaries that are to be inaugurated in 2007.

and that he has to pay to have a place to sleep; or else he will sleep in a corridor or out in the courtyard, exposed to the elements of the weather. In the Chonchocorro prison, the Commission was informed that the sports gymnasium belonged to an inmate, who charged a membership fee of B. 20 a month for its use.

202. The DGRP has prepared an analysis substantially similar to that of the Commission at the San Pedro prison:

... in many prisons, inmates have had to subdivide the cells into microcells in order to have a place to stay or sleep, and have also occupied spaces intended for use as workshops, dining facilities etc. This takeover of space has been accomplished by the prisoners themselves, without any assistance or even consent by the State, which has confined itself to noting that the space ceased to be government property and fell into the hands of private owners who had contributed to transforming the prisons. The prisons are usually divided into sections in response to economic criteria, and not the classification criteria established by Law 2298.

When a person deprived of liberty arrives at the prison, he is received at the front door by the Reception Committee, consisting of volunteer inmates from the different sections, and they protect the newcomer from abuse by other prisoners, and advise him of the rules he must respect within the prison, and the rights he will enjoy. The committee works with the newcomer to find him lodging.

Access to space in the prison, however, is not free (contrary to Article 22 of the law), but rather a privilege, and it is governed by the laws of the market. To secure a cell for sharing, in a safe area that is more or less occupied, will depend on the new inmate's economic capacity.<sup>162</sup>

203. With regard to this concerning information, the Commission deems it relevant to remind the Bolivian State that as it has been declared by the Inter-American Court, the State responsibility to adopt security measures to protect the people under its jurisdiction is more evident in the case of people confined in a detention center, in which case the State is the guarantor of the rights of persons under its custody.<sup>163</sup> In that sense and in keeping with the final recommendations, the Commission urges the State to adopt all the necessary measures to regain control over the internal area of the detention centers – in strict observance of human rights – in order to fulfill its international obligations.

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<sup>162</sup> Ministry of Government – General Direction of Prisons, *Situation of Bolivia's Prisons*, pp. 44-45.

<sup>163</sup> See Inter-American Court. *Children and Adolescents Deprived of Liberty in the "Complejo do Tatuapé" of FEBEM*. Judgment of the Inter-American Court of Human Rights of July 4, 2006, considerandum 8; and Inter-American Court. *"Urso Branco" Prison. Provisional Measures*. Judgment of the Inter-American Court of Human Rights of September 21, 2005, considerandum 6.

### E. Prison infrastructure and rehabilitation programs

204. According to information supplied to the Commission from various governmental and nongovernmental sources, including the Ombudsman and the DGRP, the conditions in many Bolivian prisons amount to cruel, inhuman and degrading treatment. The Ombudsman, in his Eighth Report to the National Congress of 2005, pointed out for example that "in successive inspections, we have observed deplorable conditions in the country's provincial prisons. These findings, together with others by the General Direction of Prisons, led to the closing of 30 such establishments that did not meet the minimal conditions for detention."<sup>164</sup>

205. Specifically with regard to the so-called "small jails" (*carceletas*), the Ombudsman examined the situation of jails in La Paz, and subsequently expanded the study in 2004 and 2005 to provinces in the other departments of the country, and verified "the grave conditions in which persons deprived of liberty live in those facilities."<sup>165</sup>

206. In a meeting with the Commission during its visit, the General Director of Prisons described the prisons as "human dumpsters,"<sup>166</sup> because of the poor condition of infrastructure and the neglect to which they have been subjected over the years. The precariousness of the facilities and budgetary shortages are also reflected in unacceptable conditions of health, hygiene and food in Bolivian prisons. At the San Pedro prison, for example, there is one doctor to care for more than 1,500 men deprived of liberty, and in the infirmary there are no medications, and only 10 beds.<sup>167</sup> The DGRP recognizes that "in most Bolivian prisons, the right to health is violated because rarely there are health services, and where they exist, they do not meet even the minimum health care standards."<sup>168</sup> The delegation of the Commission also confirmed that, in the San Pedro prison, food is not properly prepared, which might lead in many cases to epidemics and gastrointestinal infections, and that food is also insufficient, obliging many prisoners to pay for their own food, if they have the money to do so.<sup>169</sup>

207. The Commission hopes that the political will expressed by the General Director of Prisons during the meeting with the delegation of the Commission results in concrete actions with a view to improving living

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<sup>164</sup> Eighth Report of the Ombudsman to Congress – 2005, p. 29.

<sup>165</sup> *Ibid.*, p. 166.

<sup>166</sup> See also: Ministry of Government – General Direction of Prisons, Situation of Bolivia's Prisons, p. 13.

<sup>167</sup> See Minimum Rules, Rules 22-26.

<sup>168</sup> Ministry of Government – General Direction of Prisons, Situation of Bolivia's Prisons, p. 45.

<sup>169</sup> See Minimum Rules, Rules 20.1 and 20.2.

conditions and the respect for the rights of persons deprived of liberty in Bolivia.

208. During its visits to the Chonchocorro Penitentiary, the San Pedro Prison, and the Obrajes prison for women, the Commission heard complaints from inmates dissatisfied due to the lack of State support for programs of study, work and training designed to rehabilitate persons deprived of liberty and prepare them to reinsertion into society after they have served their sentence. The delegation of the Commission also found that, because of overcrowding, there is no space, equipment or means provided by the State for the rare programs that help persons deprived of liberty occupy their time usefully. In the few workshops observed, persons deprived of liberty and State officials alike confirmed that the former had to buy their own materials without any help from the State.<sup>170</sup>

209. On this point, the Commission emphasizes that reform and social readaptation are the essential purposes of punishments consisting of deprivation of liberty, according to Article 5.6 of the American Convention, thus those objectives must guide prison management. In addition, the rehabilitation and resocialization of those who have committed crimes is a guarantee of public security, and the State must consequently promote the conditions necessary to achieve these goals.<sup>171</sup>

#### **F. Family cohabitation**

210. Article 26 of the Law on the Execution of Criminal Sentences provides that inmates' children under the age of six may remain in the prison if the parent who has custody of the child is deprived of liberty. The law also allows the presence of spouses or partners. The delegation of the Commission observed the presence of children of persons deprived of liberty in the San Pedro prison and in the Obrajes prison for women.

211. The State itself has recognized the special vulnerability of inmates' children, given the conditions of detention that prevail in most of the country's penitentiaries. In the Third Periodic Report presented by Bolivia to the United Nations Committee on Rights of the Child, the State recognized that children institutionalized with their parents frequently find themselves "in conditions that are not the most suitable for their development."<sup>172</sup> The State also indicated that "the problem of children living with their mother or father in

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<sup>170</sup> *Ibid.*, Rules 71.1-78.

<sup>171</sup> *Ibid.*, Rules 58 and 59.

<sup>172</sup> Third periodic report presented by Bolivia on implementation of the Convention on the Rights of the Child, UN doc. CRC/C/125/Add. 2, para. 38.

prisons has been denounced by the Ombudsman and by the press. The efforts made have been few and the achievements insignificant."<sup>173</sup>

212. During its visit, the delegation of the Commission verified that children up to 16 years of age, of both sexes, were living in prisons with convicted and accused adult males. The Commission notes that family cohabitation in prisons could be a positive alternative from the viewpoint of rehabilitation and social readaptation of persons deprived of liberty, but only under circumstances and conditions of strict respect for human rights.

213. Consequently, given the precarious conditions of infrastructure, hygiene and safety indicated above, and the lack of internal control and security by the State, the Commission expresses its concern over the physical, mental and moral integrity of the children living with their parents in the prisons visited. In the San Pedro prison, for example, the delegation of the Commission heard reports from social workers and physicians about cases of violence and mistreatment of children, including sexual abuse and risk thereof in that prison, while no measures of any kind had been taken to address those problems.

#### **G. Recommendations**

214. The prison situation observed in Bolivia and the resulting problems are complex, and call for official responses developed through dialogue and coordination among the three branches of government, some of which should be implemented immediately while others could be carried out in the medium and long term. The Commission therefore urges the executive, judicial and legislative branches of Bolivia to encourage interagency dialogue and debate with a view to remedying the situation of human rights of persons deprived of liberty, taking a comprehensive view and applying solutions that carry the agreement of all sectors involved.

215. On the basis of the analysis and the priority issues identified above with respect to the Bolivian prison system, the Commission recommends that the State:

1. Ensure that the judicial authorities apply preventive detention reasonably and in conformity with the aforementioned international standards, and that all the accused have at their disposal access to a judicial remedy to question excessive time in preventive detention.

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<sup>173</sup> *Ibid.*, para. 39. In its concluding observations on the Third Report of Bolivia, of February 11, 2005, the Committee on the Rights of the Child reiterated "its concern about the situation of children living in prisons with one of their parents and about the living conditions of these children and the regulation of their care if they are separated from their parent in prison". (Concluding Observations of the Committee on the Rights of the Child: Bolivia, UN doc. CRC/C/15/Add.256, para. 39).

2. Take the necessary judicial, legislative and other measures to correct the excessive application of preventive detention and the procedural delays that persist in the administration of justice. Among other measures that the State may deem pertinent, these shall include the release of all detainees who have not been sentenced within a reasonable time without prejudice to the continuation of the proceedings against them.
3. Take judicial, legislative and other measures with a view to reducing overcrowding and improving living conditions in Bolivian prisons, while ensuring that prisoners are treated with the respect due to the inherent dignity of human beings.
4. Establish effective systems to ensure that accused persons are segregated from those who have been convicted, and create mechanisms for classifying persons deprived of liberty according to sex, age, reason for detention, special needs, and applicable treatment.
5. Put an immediate halt to the practice of keeping minors under the age of 18 years, accused or convicted, in prison together with accused or convicted adults, even temporarily.
6. Adopt the necessary measures to immediately regain control of internal areas of prisons in the country, and monitor – also through serious investigations – cases of corruption observed. Also, establish special recruitment and training programs for all personnel in charge of the administration, supervision, operation and security of prisons and other places of deprivation of liberty, which must include education on international human rights standards related to prison security, the proportionate use of force, and the humane treatment of persons deprived of liberty.
7. Adopt measures with a view to improving infrastructure in those prisons where conditions are precarious and do not meet the minimum requirements with respect to drinking water, sanitary facilities, personal hygiene, floor space, light and ventilation; sufficient and adequate food; and adequate bedding.
8. Take the necessary steps to ensure that persons deprived of liberty have access to adequate medical attention, which requires the presence of a medical team sufficient in relation to the number of inmates, with the capacity to respond to medical emergencies, and the availability of medications; in particular, for immediate attention to the elderly, the sick and children living in prisons.



9. Take steps to provide and facilitate educational and working opportunities for persons deprived of liberty with a view to assisting in their reform, social readaptation, and personal rehabilitation.
10. Take the necessary measures to ensure that when children are lodged in detention centers together with their father or mother deprived of liberty, the best interest of the child is taken into account upon establishing pertinent policies, and particularly that they have access to special protection, food, health and educational services necessary for their proper development. Also, take measures to guarantee, in the same terms, the best interest of children not living in prison with the parent deprived of liberty who has custody of the child. In this context, the State shall carry out serious and diligent investigations whenever there is a complaint of sexual abuse to the detriment of persons that live in prisons.
11. Guarantee detention conditions to be controlled effectively by criminal execution judges in the case of those condemned detainees, and by criminal judges in the case of persons under preventive detention.
12. Dispose adequate and effective remedies of individual and collective nature for judicial control of overcrowding and violence conditions inside penitentiaries. Those remedies must be accessible to persons deprived of liberty, their relatives, their private or public defenders, NGOs, the Ombudsman and other competent institutions.

## CHAPTER IV

### RIGHTS OF INDIGENOUS PEOPLES AND PEASANT COMMUNITIES

#### A. Introduction

216. At the outset, the Commission wishes to clarify that the title of this section, "Indigenous Peoples and Peasant Communities," does not imply any assimilation between these two categories which, both domestically and internationally, are differentiated. The Commission understands that the criterion of self-identification is the principal one for determining the condition of indigenous people,<sup>174</sup> both individually and collectively. The inclusion of both groups in this section is for purely methodological reasons, because the issues that the Commission considers important for the two groups are similar or closely related.

217. The Commission stresses the fact that the most recent population census, conducted in 2001, included the self-identification criterion to establish the percentages of indigenous people 15 years or older in Bolivia.<sup>175</sup> According to that census, more than 60% of the Bolivian population is indigenous, and of that group 55% live in rural areas,<sup>176</sup> where the situation of extreme poverty exceeds that in urban areas by 100%.<sup>177</sup> Indigenous peoples in Bolivia are for the most part Quechua, Aymara, Guaraní, Chiquitano and Mojeño, in descending order of numbers.<sup>178</sup>

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<sup>174</sup> In this respect, ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries provides (Article 1.2): "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply." As well, the proposed American Declaration on the Rights of Indigenous Peoples indicates (Article 1.2) that "[s]elf identification as indigenous shall be regarded as a fundamental criterion for determining the peoples to which the provisions of this Declaration apply. The States shall respect the right to such self-identification as indigenous, individually or collectively, in keeping with the practices and institutions of each indigenous people."

<sup>175</sup> Seminar: Community Justice: Challenges for the Future. USAID. Partners of the Americas. Participation and Justice Network. Simón Bolívar Andean University.

<sup>176</sup> Taken from the official Web page of the National Statistics Institute of Bolivia. 2001 Population Census. Bolivia: Total population by indigenous status and area of residence, by department. Link: <http://www.ine.gov.bo/cgi-bin/piwdie1xx.exe/TIPO>. Visited 15 February 2007.

<sup>177</sup> Taken from the official Web page of the National Statistics Institute of Bolivia. Bolivia: Extreme poverty indicators, by geographical area, 1999 – 2003. Link: <http://www.ine.gov.bo/cgi-bin/piwdie1xx.exe/TIPO>. Visited 15 February 2007.

<sup>178</sup> Taken from the official Web page of the National Statistics Institute of Bolivia. 2001 Official Population Census. Bolivia: Self-identification with first nations or indigenous peoples of the population aged 15 years and over, by sex, geographical area, and age group. Link: <http://www.ine.gov.bo/cgi-bin/piwdie1xx.exe/TIPO>. Visited 15 February 2007.

218. As to the legal framework, the Commission notes that Bolivia ratified Convention 169 of the International Labour Organization,<sup>179</sup> and that the constitutional reform of 1994 incorporated significant changes consistent with that instrument. In effect, as recognized in the Bolivian constitution, the Bolivian State proclaims itself "multiethnic" and "pluricultural."<sup>180</sup>

219. The scope of these terms is detailed in Article 171 of the Constitution, which recognizes the social, economic and cultural rights of indigenous peoples living in the national territory, in general terms as to their identity, values, languages, customs and institutions, with particular stress on community lands with respect to their use and sustainable exploitation of natural resources. As well, it recognizes their right to legal personality and the faculty to administer and apply their own standards for the alternative settlement of disputes using their own procedures, provided these do not contravene the Constitution and the powers of the State. These last two aspects include recognition of peasant communities.

220. Despite the importance of constitutional recognition, there are frequent complaints that these rights are not included at all levels of national life. There is a widespread perception that the situation will not move beyond declarations until collective rights are effectively exercised, so that they are transversely developed with that nature and its particular features, both in the Constitution and in the laws on various matters that may affect them directly or indirectly, and in their implementation.<sup>181</sup>

221. The Commission notes the efforts made in recent years to establish policies in favor of indigenous peoples and peasant communities through the creation of ministries, vice ministries, and specific entities focused directly on their needs.

222. This is the case with the Ministry of Peasant, Indigenous and Agricultural Affairs, currently called the Ministry of Rural Development and Agriculture, which has a number of vice ministries and bodies among which we may mention the Vice Ministries of Lands and Biodiversity, as well as the National Institute of Agrarian Reform (hereafter INRA), which are intended to include the specific features of these groups in the framework of the respective administrations. Similarly, the Commission welcomes the creation of the Vice Ministry of Community Justice under the Ministry of Justice, with the function

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<sup>179</sup> Bolivia ratified ILO Convention 169 on December 11, 1991.

<sup>180</sup> Political Constitution of Bolivia. Article 1: "I. Bolivia, free, independent, sovereign, multiethnic and pluricultural constituted as a unitary republic, adopts for its government the democratic representative and participatory form, founded on the union and solidarity of all Bolivians. II. It is a Social and Democratic State of Law that sustains as the highest values of its juridical order liberty, equality and justice".

<sup>181</sup> Seminar: Community Justice: Challenges for the Future. USAID. Partners of the Americas. Participation and Justice Network. Simón Bolívar Andean University.

to promote and implement guidelines for coordination between community justice and official justice within the framework established by law.

223. Despite these legal and institutional advances, the Commission found that indigenous peoples and peasant communities continue to suffer discrimination, while government institutions have provided no effective response for the exercise of their human rights, and in particular their economic, social and cultural rights, on equality.

224. The Commission received complaints of discrimination against indigenous peoples members or peasants in access to health, leading in many cases to deaths or disabilities through malpractice or negligence in the care provided, priority for which is decided according to the origin of the patient and not the severity of his health situation,<sup>182</sup> This is of particular concern in those places where the demand for health services is much greater as the result of severe environmental pollution, lack of access to drinking water, and exposure to toxic chemicals, all deriving from the exploitation of natural resources as detailed below (paragraphs 251-256).

225. Moreover, civil society complains that in rural areas public funds that are supposed to be earmarked for health are often doled out in a political way, especially in the run-up to elections, without any permanence in the provision of service and without recognizing such service as a human right that must be guaranteed by the State.

226. On the right to education, the Commission noted that there are severe problems with access to "official education", especially in rural areas. As with exercise of the right to health, access and attendance at education institutions is politicized, and depends on the beneficiary's relationship with the regional political powers, and communities that are identified with their traditional organization as maintain differences with the groups in power are excluded<sup>183</sup>. This has produced very high levels of illiteracy in municipalities where the majority are indigenous, with a particular gender bias. As was confirmed in the 2001 census, illiteracy rates for indigenous women in rural areas are much higher than those for men in all cases.<sup>184</sup>

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<sup>182</sup> Report on the situation of the human, economic, social, and cultural rights of the indigenous peoples of the Bolivian lowlands. Center for Legal Studies and Social Research (CEJIS). Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 299.

<sup>183</sup> *Ibid*, p. 300.

<sup>184</sup> Taken from the Web page of the National Statistics Institute of Bolivia. Gender indicators. <http://www.ine.gov.bo/cgi-bin/piwdie1xx.exe/TIPO?Grupo=0408&D2=6&D3=>. Visited 15 February 2007.

227. In addition, the Commission noted that, despite the launch in 1995 of an education reform, known as "Intercultural and Bilingual Education," with a view to restoring and recognizing indigenous languages, civil society remains critical of that campaign, because education data from the National Institute of Statistics show that there are structural problems in the sense that categories and parameters for measuring variables are determined on the basis of a monocultural concept of society.<sup>185</sup>

228. There are complaints that bilingual education has not been properly implemented, because of the shortage of trained personnel and persistence of the idea that strengthening the indigenous language has implications, in the context of a society with a history of profound exclusion and discrimination, for the exercise of rights, particularly in the case of children.<sup>186</sup>

229. The Commission found that the important process of change that the current government is promoting in Bolivia has, as one of its major focuses, the inclusion of indigenous people in society and in the various decision-making bodies of government. Nevertheless, there is still a shortage of specific measures based on a thorough diagnosis of the severe violations of human rights committed against these historically excluded groups, a situation that is exacerbated by lack of access to effective judicial protection.

230. In the following paragraphs, the Commission records its observations on the issues that it considers the State should address, as priorities, to give effect to social inclusion: access to land and territory; natural resources and participation in development projects; forced labor, debt bondage and slavery; and access to justice. At the end of this section the Commission will offer some recommendations.

## **B. Access to land and territory**

231. The Commission has been following the process of agrarian reform in Bolivia and has noted with concern the precarious situation of indigenous peoples and peasant communities with respect to access to land and territory that are theirs by right of their ancestral use or occupancy, in the case of indigenous peoples, or by virtue of their work on the land, in the case of the peasant communities, in accordance with domestic legislation.

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<sup>185</sup> Report on the situation of the human, economic, social, and cultural rights of the indigenous peoples of the Bolivian lowlands. Center for Legal Studies and Social Research (CEJIS). Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 300.

<sup>186</sup> Seminar: Community Justice: Challenges for the Future. USAID. Partners of the Americas. Participation and Justice Network. Simón Bolívar Andean University.

232. As a historical reference, in 1953 the agrarian reform process was initiated to redistribute lands from the large estates ("*latifundios*") under the slogan "the land belongs to the people who work it." This reform was implemented only in the Andean region of the country, where progressive subdivision by transmission from father to son generated smallholdings ("*minifundios*") and impeded assignments to large expanses of land.<sup>187</sup>

233. Meanwhile, in Eastern Bolivia there was a process of transforming traditional ranches into modern businesses which were declared *inafectables* (lands not subject to transfer) both as to their size and their labor rules.<sup>188</sup> This has exacerbated the concentration of economic, political and social power in a small regional elite that has so far been denying the right of indigenous peoples to ownership of their ancestral territories. With a few exceptions, these territories remain the property of ranchers and agro-industrial groups.<sup>189</sup>

234. In the wake of widespread social protests in rural parts of the country, Law 1750 was issued on October 8, 1996. This was the National Agrarian Reform Act, which established a process for regularizing and granting title to land in order to deconcentrate land ownership and redistribute land among those who had little or none, and to return ancestral territories to the indigenous peoples in the country's highlands and lowlands. The INRA was created for this purpose.

235. There is a general feeling of frustration in Bolivia over the implementation of this law. The Commission verified that, while 100% of lands were to be regularized by 2006, the actual figure stands at 13%.<sup>190</sup> Various representatives of civil society reported to the Commission that the following factors have influenced these results.

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<sup>187</sup> Report on the situation of the human, economic, social, and cultural rights of the indigenous peoples of the Bolivian lowlands. Center for Legal Studies and Social Research (CEJIS). Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 288. Citing: Almaraz Alejandro. "Originating Community Lands. Regularization and Registration. Guide for Legal Attestation." Cejis-Iwgia. Santa Cruz. 2002.

<sup>188</sup> An example of this, and its connection to the situation of forced labor, bondage and slavery prevalent in some parts of Bolivia, is that of the Guarani indigenous people, many members of which are subjected to such conditions in the Bolivian Chaco, as detailed below, paragraphs 254-273.

<sup>189</sup> Report on the situation of the human, economic, social, and cultural rights of the indigenous peoples of the Bolivian lowlands. Center for Legal Studies and Social Research (CEJIS). Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 288. Citing: Almaraz Alejandro. "Originating Community Lands. Regularization and Registration. Guide for Legal Attestation," Cejis-Iwgia. Santa Cruz. 2002

<sup>190</sup> *Ibid*, p. 288.

236. On one hand, there are repeated complaints of corruption among officials both of the INRA and of the National Agrarian Tribunal, who fail to carry out their administrative and judicial responsibilities, or who bend procedures to the prejudice of indigenous peoples and peasant communities. As an example of irregular practices, they mentioned the validation of fraudulent ownership documents; alteration of the expert report procedures established by law replacing them with false documents; lack of access to information for indigenous peoples and interested communities; and the excessive formalities required, such as the presentation of a brief signed by a lawyer, or payment for certain official procedures.<sup>191</sup>

237. Another obstacle has been the difficulty in issuing individual identity cards and legal recognition for peasant organizations or indigenous authorities, without which it is impossible to obtain ownership title and representation rights, both before administrative and judicial bodies, and this has impeded any real possibility to counter the allegations of landholders in the agrarian courts.<sup>192</sup> As the Commission was informed, there are no regulations on the recognition of legal personality, and in practice it is the municipal councils and the mayors who grant such recognition, without any uniform standards or rules.

238. The Commission also received complaints of indefinite delays in the identification of available lands and difficulties in enforcing the few decisions in favor of indigenous peoples and peasant communities, reflecting the lack of will on the part of the respective authorities. The Commission was informed about threats and violence against them and the organizations that support them. Given the failure to recognize their rights, peasant farmers and indigenous people have on occasion taken allegedly illegal possession of lands, and this has been a source of conflict with landholders, and the cause of many forced evictions.<sup>193</sup> The Commission also received information on cases of evictions ordered by resolutions of the INRA, before the processing of land claims had been completed.<sup>194</sup>

239. Another point to be noted is that government authorities are constantly promoting conciliation proceedings in which, given the precarious living conditions of indigenous peoples and peasant communities, those people are induced to be "flexible" and in the worst cases to cede their territorial rights.<sup>195</sup>

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<sup>191</sup> *Ibid*, p. 291.

<sup>192</sup> *Ibid*, p. 292.

<sup>193</sup> *Ibid*, p. 294.

<sup>194</sup> On this point, the Commission mentions the case of the so-called Landless Movement, which, as the Commission was told, suffered forced evictions through the use of violence for having taken possession of lands that were in the process of recognition.

<sup>195</sup> Report on the situation of the human, economic, social, and cultural rights of the indigenous peoples of the Bolivian lowlands. Center for Legal Studies and Social Research (CEJIS).

240. Subsequent to that law, a number of decrees were issued, without any consultation of the interested parties, under the guise of technical standards that, in practice, have obstructed and frustrated the process of agrarian reform, and have boosted the market for land.<sup>196</sup>

241. The Inter-American Court has established parameters that must be respected by States in the course of assigning ownership and returning ancestral lands and territories to indigenous peoples. It has held that "by refusing to recognize the ancestral right of members of indigenous communities to their territories, other basic rights could be affected, such as the right to cultural identity and survival of indigenous communities and their members."<sup>197</sup> It has also observed that "on the contrary, the restriction on the individual right of private property could be *necessary* to achieve the collective goal of preserving cultural identities in a democratic and pluralistic society, within the meaning of the American Convention, and it could be *proportionate*, if payment of fair compensation is made to those who suffer losses, in accordance with Article 21.2 of the Convention."<sup>198</sup> In any case, "when States are unable, for concrete and justified reasons, to take measures to return traditional territory and communal resources to indigenous peoples, the compensation granted must be based primarily on the importance that the land has for those peoples."<sup>199</sup>

242. The Commission also notes that the Inter-American Court has stressed the need to ensure that administrative procedures for handling land claims must take into account the specific aspects of indigenous peoples, in particular the special meaning that the land has for them.<sup>200</sup> The Court has also held that States must ensure that such proceedings are accessible and simple and that the agencies responsible for them have the technical and material conditions necessary to respond promptly to applications and requests submitted in the course of such proceedings.<sup>201</sup>

243. The Commission learned that on November 28, 2006, Law 3545 was approved, renewing the agrarian reform and amending the INRA Act.

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Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 294.

<sup>196</sup> *Ibid.*, pp. 292 and 293.

<sup>197</sup> I/A Court H. R., *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005. Series C No. 125, para. 147.

<sup>198</sup> *Ibid.*, para. 148.

<sup>199</sup> *Ibid.*, para. 149.

<sup>200</sup> I/A Court H. R., *Case of the Indigenous Community Sawhoyamaxa*. Judgment of March 29, 2006. Series C No. 146, para. 104

<sup>201</sup> *Ibid.*, para. 109



Although, as it noted, there are various positions on this new law, the majority of society sees it as holding out hope of real and effective access to land for historically excluded groups.

244. The Commission welcomes this initiative and hopes that in its implementation the necessary efforts will be made to overcome the institutional obstacles described above, and to make it a real instrument for recognizing and awarding title to and/or return of the ancestral lands and territories of indigenous peoples, a collective right that, as the Inter-American Court has held, is included in the right to property enshrined in Article 21 of the American Convention.<sup>202</sup>

### **C. Natural resources and participation in development projects**

245. In parallel to the drawn-out and obstacle-strewn process of granting title to lands and territories described in the preceding section, there has been an expeditious process of concessions to private businesses to exploit lumber and mining and hydrocarbons resources, a process that has sparked claims and disputes over lands that are still in the regularization process.<sup>203</sup> The Commission was concerned at information received on the manner in which these projects have been carried out, from design to implementation, in two respects.

246. On one hand, these concessions were made without any prior and informed consultation with the interested indigenous peoples and communities. The Commission reminds the Bolivian State that Article 23 of the American Convention protects the right of all citizens to participate in public affairs of concern to them. In the case of indigenous peoples and of development projects planned for the lands, territories and natural resources that they use or occupy, this right entails prior procedures of free and informed consultation, as indicated in ILO Convention 169.<sup>204</sup> The Commission notes that such procedures must involve the groups that may be affected, either because they own land or territory or because such ownership is in the process of determination and settlement.

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<sup>202</sup> I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C No. 79, para. 149; I/A Court H. R., *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005. Series C No. 125, para. 137; I/A Court H. R., *Case of the Indigenous Community Sawhoyamaxa*. Judgment of March 29, 2006. Series C No. 146, para. 118.

<sup>203</sup> Report on the human rights situation of indigenous peoples affected by the mining, gas, and oil industries. Coordination Office of the Ethnic Peoples of Santa Cruz. Chiquitana Indigenous Organization, Río Pilcomayo Defense Committee. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights. Bolivian Chapter of Human Rights, Democracy, and Development, p. 308.

<sup>204</sup> ILO Convention 169, Articles 6.2 and 15.

247. On this point, the Commission noted the decision of the Constitutional Tribunal in June of 2006, ruling that the reference to "securing the consent of the indigenous and aboriginal communities and peoples" in the Hydrocarbons Act is unconstitutional, on grounds that the consultation of indigenous peoples must not be understood in the sense of requiring authorization for exploitation activities, for the subsoil belongs to the State and the interests of the majority cannot be jeopardized by the lack of consent from indigenous peoples. In this respect, the Tribunal holds that the purpose of the consultation is to quantify damage and not to obtain consent.<sup>205</sup>

248. The Commission emphasizes that the consultation procedure, in the sense of guaranteeing indigenous peoples' right to participate in matters that may affect them, is of much broader scope: it must be designed to secure the free and informed consent of these peoples, and must not be limited to notification or quantification of damages. On the contrary, it must guarantee participation by indigenous peoples, through the consultation process, in all decisions on natural resource projects on their lands and territories, from design, through tendering and award, to execution and evaluation. It must also ensure that such procedures will establish the benefits that the affected indigenous peoples are to receive, and compensation for any environmental damages, in a manner consistent with their own development priorities.<sup>206</sup>

249. Beyond the absence of consultations preceding the design and execution of natural resource projects on the ancestral lands and territories of indigenous peoples, the Commission regrets that the foregoing decision places judicial constraints on the scope of their participation in such consultation, notwithstanding Article 6.2 of ILO Convention 169 which applies to this issue, having been incorporated into Bolivian legislation at the time of its ratification.

250. The Commission was also concerned at the severe environmental pollution that some of these development projects have generated and the harmful effects they have had on the continuity of basic subsistence activities and on the health of members of indigenous peoples and peasant communities living on the territories occupied by those projects.

251. The Commission was informed of two symptomatic examples of this situation. The first had to do with severe pollution of the waters of the Pilcomayo River in the departments of Potosi and Tarija in the south of the country, affecting both indigenous peoples and peasant farmers whose

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<sup>205</sup> Constitutional Tribunal. Official Communication of August 21, 2006, Sucre, referring to Constitutional Decision 0045 of 2003 of June 2, 2006.

<sup>206</sup> See IACHR, Report N° 40/04, Case 12.503, Merits. Indigenous Communities of the District of Toledo, Belize. October 12, 2004, paras. 142-156; Draft Universal Declaration on the Rights of Indigenous Peoples. E/CN.4/SUB.2/1994/2/Add.1 (1994). Article 30; Proposed American Declaration on the Rights of Indigenous Peoples, Article 21. (Draft Approved by the Inter-American Commission on Human Rights on February 26, 1997, during its 95th regular session).

agricultural or other subsistence activities such as fishing have been severely disrupted by the quantity of toxic wastes such as metals and other elements. The Commission noted in particular the complaints over the health effects on people who by necessity continue to ingest contaminated food, a situation of particular vulnerability for children and women of childbearing age.<sup>207</sup>

252. Another example of the situation relates to the gas pipeline to Brazil, which passes through the dry forest of Chiquitano. That forest, the Commission was advised, constitutes ancestral territory of the indigenous people of the same name, and has been severely affected by the pipeline, for the majority of its creeks and watercourses essential for subsistence activities are being polluted by wastes from the project.<sup>208</sup>

253. On this point the Commission reminds the State that the right to life enshrined in the American Convention includes the right to a dignified existence<sup>209</sup> and that when the State becomes aware of the serious situation facing persons who live in areas close to rivers and creeks polluted by natural resource projects, it is the State's duty to adopt all the measures at its disposal to mitigate the damage caused by the concessions it has granted, and to impose sanctions for the failure to comply with applicable environmental or criminal legislation. The Inter-American Court has held the failure to take such measures, despite knowledge of the severity of the situation, to engage international responsibility for the effects on life and personal integrity flowing from those conditions.<sup>210</sup>

254. The Commission has observed that one of the aspects exacerbating conflicts in Bolivia is the tension that exists between indigenous and peasant communities, on one hand, and the State and concessionaire firms in projects of this kind, where the sustainability of such projects is not measured in advance, using effective mechanisms of participation for the persons and groups affected, regardless of whether the State has recognized their ownership, and where environmental and even criminal liability rules are deliberately ignored without any penalties imposed by the State.

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<sup>207</sup> Report on the situation of the human, economic, social, and cultural rights of the indigenous peoples of the Bolivian lowlands. Center for Legal Studies and Social Research (CEJIS). Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, pp. 314-315.

<sup>208</sup> *Ibid*, p. 316.

<sup>209</sup> I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 144; I/A Court H. R., *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005. Series C No. 125, para. 161; I/A Court H. R., *Case of the Indigenous Community Sawhoyamaya*. Judgment of March 29, 2006. Series C No. 146, para. 153

<sup>210</sup> I/A Court H. R., *Case of the Indigenous Community Sawhoyamaya*. Judgment of March 29, 2006. Series C No. 146, para. 178.

255. In the Commission's view, these shortcomings reflect the failure to give effective application to Law 1257 of 1991 which incorporated ILO Convention 169 into domestic legislation. The provisions of that Convention must be incorporated horizontally into legislation governing the entire process of design, award and implementation of natural resource projects, and the absence of such regulation must not serve as an excuse for not applying the international rule which, as noted above, is part of domestic legislation and is automatically enforceable.

256. Finally, the Commission is concerned at the defenselessness of indigenous peoples and peasant communities in the face of these projects, which has been exacerbated by the lack of judicial mechanisms for challenging their impact. Although there are criminal penalties for failure to observe environmental rules, the Commission received information, from officials of the Prosecutors' Office among others, to the effect that the few criminal actions initiated over these events have been delayed and obstructed by lack of action on the part of the prosecutors, and by external pressures. Moreover, the organizations representing the persons affected by this situation complained that they have no preventive judicial remedy for extreme situations that may affect their right to life. Nor, according to that information, are there any judicial steps that could be taken collectively by a group affected by such a situation, such a class action.

#### **D. Situation of forced labor, bondage and slavery**

257. The Commission learned that there are many people who, in a variety of circumstances, have been subjected to situations of bondage analogous to slavery, aggravated in some cases by forced labor, dating back for decades and still persisting because of the lack of any comprehensive and effective response from the State. The Commission has received detailed information on the case of Guaraní families living on estates in the Bolivian Chaco, although it is aware that this is not the only situation of that kind.<sup>211</sup>

258. The information received during previous hearings of the Commission was verified in meetings with civil society organizations and representatives of the Public Defender, who told of at least 600 Guaraní families living on estates in the departments of Santa Cruz, Tarija and Chuquisaca<sup>212</sup> who are subject to this form of existence as the result of failure to recognize and grant title for their ancestral lands and territories.

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<sup>211</sup> The Commission also received information that indigenous and peasant labor is being exploited in the Northern Amazonian region of Bolivia, in the rubber and nut-harvesting industries, through a system of indentured labor ("*enganche*") that enlists approximately 30,000 individuals every year for such work.

<sup>212</sup> There are sharp discrepancies in the figures. Mention is made of at least 600 Guaraní families, based on the sum of the following figures: Report. *Aipota aiko chepiaguive cheyambae. I Want to be Free, without an Owner. Servitude and Bonded Labor in the Chaco: Vulnerability and State Absence as Defenseless, Labor Exploitation, and Work without Dignity of Captive Guaraní*

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259. This situation has persisted for decades and, in general terms, involves excessive physical labor for persons of all ages, including children, teenagers and elderly adults, in some cases under the threat of corporal punishment, about which the Commission heard alarming testimony. This labor is compensated through payments in kind or through minimal amounts of money that not only ignore the long working days but under no circumstances are sufficient to cover the workers' basic subsistence needs. Because of this insufficient compensation, workers find themselves in a situation of permanent indebtedness to the landowners for the provision of foodstuffs, clothing and other products, a status that may actually be passed on to successive generations.

260. According to reports, the landowners simply refuse to recognize the existence of a relationship of bondage with Guaraní families, and attempt to dismiss it as something from a bygone age that no longer pertains. The owners, who frequently are part of or are directly related with the local political power, minimize the situation and justify the circumstances as a cooperative arrangement given the needs of the Guaraní families. In effect, the situation is not perceived as one prohibited by the Constitution, but rather as a labor relationship with obligations agreed and fulfilled by parties who periodically cancel and renew them.<sup>213</sup>

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*Families in the department of Chuquisaca.* Public Defender's Office, Ministry of Justice, Indigenous Peoples and Empowerment Program. Council of Guaraní Captains of Chuquisaca (CCCH) Monteagudo-Bolivia. First edition: April 2006, pp. 18–23. Figures verified in recent years are: in 1996 the CCCH counted, for the provinces Hernando Siles and Luis Calvo in the department of Chuquisaca, 106 estates and 773 captive families; in 1999 the CCCH counted 121 estates and 578 captive families representing 3179 persons in total, and 61 settlements of landless Guaraní tenants representing 372 families; the newspaper *Presencia* of November 16-23, 1999, estimated that a total of 7,000 Guaranis were working under conditions of exploitation in the four provinces of the departments of Santa Cruz (Cordillera), Tarija (Gran Chaco) and Chuquisaca (Hernando Siles and Luis Calvo); in 2001 it was found that nearly all Guaraní-speaking persons over the age of six years in the department of Chuquisaca were living in those two provinces; in 2003 the final consultants report on "*Empowerment Processes in the Area of Work of the Monteagudo Human Rights Office*" speaks of 63 Guaraní communities in Chuquisaca with a total of 1,060 families and 4,600 individuals, i.e. approximately 9,900, of which 275 families are captive, all in those two provinces; in December 2003 the CCCH published its report on "*Living Situation of the Guaraní Communities in Chuquisaca Department*" recording a total of 11,227 free Guaranis living in 67 communities of the 9 zones of the Chaco region of Chuquisaca, and that there were 942 persons registered on 39 estates located in those provinces; in March 2004 the International Labour Organization (ILO) published a report on "*The Regime of Servitude among Captive Guaraní Communities and Estates of the Bolivian Chaco*," in which it reported that in the departments of Santa Cruz, Tarija and Chuquisaca there are between 5,100 and 7,200 Guaranis still living in captivity or in conditions of forced labor, on the basis of questionable criteria; in July 2005 the Ministry of Sustainable Development, through the Vice Ministry for Lands, published a report entitled "*Plan for the Liberation of Captive Guaraní Families and Communities*," indicating that in Chuquisaca there are 449 captive families in the region of Alto Parapetí and 200 families in the Huacareta area of the Department of Chuquisaca.

<sup>213</sup> Report. *Aipota aiko chepiaguive cheyambae*. I Want to be Free, without an Owner. Servitude and Bonded Labor in the Chaco: Vulnerability and State Absence as Defenseless, Labor Exploitation, and Work without Dignity of Captive Guaraní Families in the department of Chuquisaca. Public Defender's Office. Ministry of Justice, Indigenous Peoples and Empowerment

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261. These indentured families survive in absolute misery and their living conditions are precarious and subhuman. They generally sleep in huts located in marginal areas of the estate where the land is not productive. Their huts have only one room, no bigger than 20 m<sup>2</sup>, and it contains a kind of bed where all members of the family sleep. Sanitary facilities are located outdoors, and the kitchen consists of stones placed on the ground that support the receptacles.<sup>214</sup>

262. As to the kind of labor performed, this is defined by roles. The women are engaged primarily in kitchen work and must take food out to the men working in the fields, generally several kilometers distant. They also perform other tasks such as peeling manioc, carding wool, cleaning the estate houses, tending chickens, and washing clothes. They work from 4 a.m. to 6 p.m., and yet the ranchers still view the Guaraní woman as "lazy and careless". As for the men, their work depends on the season, and their day begins at 7 a.m. and ends at 6 p.m. Children and teenagers of Guaraní parents, depending on their age, work in exchange for food, shelter or study. If they are of school age, some may attend school, but in the afternoon they work together with their fathers. In other cases the children do not attend school, and instead receive instruction from the boss.<sup>215</sup>

263. The Commission received testimony about situations of physical mistreatment including whipping for "disobedience", a situation that has been corroborated by a number of owners who were questioned and who in response indicated that the Guaraní are a shiftless lot and that they have to "be goaded into action."<sup>216</sup>

264. The situation of indebtedness arises through the accounting notebook that the employers keep on their workers, where they record the name, the activities performed, advances in kind or cash and payments made for work done. This notebook, updated periodically, is the only record for use in "settling up" matters and in which nearly in all cases the workers find themselves in debt to their boss. This generates future labor obligations, a situation that can last for the rest of the worker's life and be passed on to the next generation. It was found in some cases that landlords and employers transferred their indentured workers to another landlord or employer disposing of the liberty of the worker. In such cases, the purchaser pays the debt to the

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Program. Council of Guaraní Captains of Chuquisaca (CCCH) Monteagudo-Bolivia. First edition: April 2006, pp. 43-44.

<sup>214</sup> *Ibid.*, pp. 52-53.

<sup>215</sup> *Ibid.*, pp. 46-48.

<sup>216</sup> Documentary. "I Want to be Free, without an Owner". Indigenous Peoples and Registration. 32 minutes, 8 seconds. Public Defender's Office, Ministry of the Presidency. Vice-Ministry of Justice. Indigenous Peoples and Empowerment.

previous owner, and the workers remain indentured to the new landlord or employer.<sup>217</sup>

265. One factor that allows this situation to persist is the high rates of illiteracy among the population, who, in general, are unaware of their rights and have no way to control the debts recorded in the notebooks at the time of "settling up" matters with the landowner. The result of this is that the landowner defines the conditions of work, the length of the working day, payment for the work, the form of payment of the debts acquired, the frequency of settlements, the way advances are handled, the type of work to be done, etc.<sup>218</sup>

266. Coupled with this situation is the issue of the structure of landholding and its distribution in the affected regions. For example, in the region of Huacareta in the Department of Chuquisaca, the current land owning system is a result of subdivision and successive inheritance from the original owners in favor of their sons and relatives, who at the present time own vast extensions of land in contrast to the Guaraní families who have not hectare of property.<sup>219</sup>

267. One of the practices that have had continuity is the one undertaken by the Catholic Church and certain NGOs who have promoted and engaged in the purchases of land and resettlement programs providing basic services for approximately 500 families. However that practice might be understood as a humanitarian measure, due to the fact that such lands originally belonged to the Guaraní people and thus should be recognized and titled by the State. Coupled to the land purchases, the Assembly of Guaraní People and other organizations have started to demand for the regularization of the "Community Lands of Origin,"<sup>220</sup> a process that, as indicated above (paragraphs 235-240) has severe shortcomings of both proceedings and execution: particularly because of it based in favor of the interest of livestock

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<sup>217</sup> Report. *Aipota aiko chepiaguive cheyambae*. I Want to be Free, without an Owner. Servitude and Bonded Labor in the Chaco: Vulnerability and State Absence as Defenseless, Labor Exploitation, and Work without Dignity of Captive Guaraní Families in the department of Chuquisaca. Public Defender's Office. Ministry of Justice, Indigenous Peoples and Empowerment Program. Council of Guaraní Captains of Chuquisaca (CCCH) Monteagudo-Bolivia. First edition: April 2006, p. 47.

<sup>218</sup> Documentary. "I Want to be Free, without an Owner". Indigenous Peoples and Registration. 32 minutes, 8 seconds. Public Defender's Office. Ministry of the Presidency. Vice-Ministry of Justice. Indigenous Peoples and Empowerment.

<sup>219</sup> Report. *Aipota aiko chepiaguive cheyambae*. I Want to be Free, without an Owner. Servitude and Bonded Labor in the Chaco: Vulnerability and State Absence as Defenseless, Labor Exploitation, and Work without Dignity of Captive Guaraní Families in Chuquisaca Department. Public Defender's Office. Ministry of Justice, Indigenous Peoples and Empowerment Program. Council of Guaraní Captains of Chuquisaca (CCCH) Monteagudo-Bolivia. First edition: April 2006, pp. 56-62.

<sup>220</sup> *Ibid.*, p. 62.

owner and land-owners, and in the reduction of claims and awards of very small parcels of land, in contrast to the vast extensions of land held by private individuals.

268. The situation described has been exacerbated by the lack of response from the State at all levels. The local authorities such as the mayors, deputy mayors, prefects, subprefects, municipal councilors, judges, police officers, civil registrars, and juvenile defenders, do not fulfill their legal responsibilities nor do they implement public policies to avoid violations of the law and of human rights. In other cases, the minimal staffing of these entities results in a total absence of the State in the region. This is the case, for example, with labor officials such as workplace inspectors or labor judges who, being institutionally incapable of dealing with the issue, create an aura of legitimacy for the bosses who consider the situation to be "normal."<sup>221</sup>

269. This situation is of profound concern to the Commission, for it ignores the absolute prohibition against slavery, bondage and forced labor contained in the American Convention and other international instruments to which Bolivia is party.<sup>222</sup>

270. The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery<sup>223</sup> defines the following as practices analogous to slavery:

Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;<sup>224</sup>

Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging

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<sup>221</sup> Documentary. "I Want to be Free, Without an Owner". Indigenous Peoples and Registration. 32 minutes, 8 seconds. Public Defender's Office. Ministry of the Presidency. Vice-Ministry of Justice. Indigenous Peoples and Empowerment.

<sup>222</sup> Article 6 of the American Convention provides that: "1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women. 2. No one shall be required to perform forced or compulsory labor." Article 27.2 of the Convention declares that, in the context of states of emergency, the State is not authorized to suspend any of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights."

<sup>223</sup> To which Bolivia acceded on October 6, 1983.

<sup>224</sup> Article 1(a).



to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.<sup>225</sup>

271. The Commission deplors the continuity of practices such as those described in this chapter which, in addition to being forms of bondage analogous to slavery, constitute a form of forced labor, since in many cases its continuity is enforced by the threat or application of corporal punishment. The situation also involves violations of other rights such as that to humane treatment, both physical and mental; the right to a dignified existence; and the right to education, as well as access to justice under such circumstances. All these rights are enshrined in the Constitution of Bolivia and in the international human rights instruments ratified by Bolivia, particularly in the Inter-American sphere: the American Convention on Human Rights, and the San Salvador Protocol of Economic, Social and Cultural Rights.

272. With respect to the initiatives taken by the State since the 1990s, the Commission verified that they have all been based on partial or isolated studies of a few families, without taking into account the full scope of the problem and all the factors involved. For this reason those measures have had no significant impact, and their continuity has been disrupted by periods of political instability in the country.<sup>226</sup>

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<sup>225</sup> Article 1(b).

<sup>226</sup> By way of example we may mention the following initiatives. At the end of the 1990s an interagency committee was established by the Vice Ministry of Human Rights and the Vice Ministry of Indigenous Affairs and Original Peoples, and its report sparked some actions that were not, however, continued. Subsequently, in 2003 a broad agreement was signed with the Assembly of the Guaraní People, which included a point dealing with captive communities, with an undertaking to establish a technical commission to prepare a project that would free the captive communities of Alto Parapeti by providing them with adequate lands covering at least 50,000 hectares. At that time, the Ministries of Sustainable Development, Indigenous Affairs and Labor set up a coordination body and established interagency committees, the results of which are unknown. In 2004, another interagency committee was established, this time by representatives of the Ministry of Indigenous Affairs, the Vice Ministry of Justice, the Public Defender and the Assembly of the Guaraní People, which conducted a new field mission that resulted in the discovery of 894 captive Guaraní families and cases of possible trafficking in indigenous girls. Finally, the government of Carlos Mesa issued Supreme Decree 28.159 of 2005, incorporated into the General Labor Act, defining captive and/or subjugated families or communities, providing for their registration, and calling for them to be given financing for the purchase of lands, defining the surface area per family and regularizing communal holdings. Several criticisms were received from civil society about this initiative: the terms of the decree and the project are ambiguous and do not cover all the aspects that cause and sustain the conditions and effects of bondage and subjugation, focusing only on labor aspects and the acquisition and allocation of lands; it dismisses the Guaraní communities' struggle for access to property; it invalidates and legalizes the inequitable distribution of land; it promotes conflict between Guaraní communities; it promotes the acquisition of land and property that is still in the process of regularization; it does not define the conditions for purchase and delivery of lands, especially responsibility for payment; it strips initiative from the Guaraní families; it arbitrarily defines the surface area required per family, ignoring the notion of territory; it does not call for action to abolish the system of bondage and subjugation, the basis of which goes beyond labor and land issues to embrace a complex series of power and psychological relationships as well as the absence of the State, thereby impeding full exercise of citizenship and human rights.

273. The Commission recognizes the intention of the current government to give priority to the situation, and it notes the impetus given to the Draft Law on Regulation of Unpaid Rural Labor, approval of which would imply, at least in legal terms, the obligation of landowners to pay wages and social benefits.

274. In the Commission's view, the measures taken in this direction must include at least two perspectives. On one hand, they must be designed to strengthen the process of recognition and registration of indigenous peoples' ownership over their ancestral lands and territories; and on the other hand, they must eliminate any distortion of the labor and social rights of persons working in rural areas, including work on the land and the harvesting of products.

275. In any case, the Commission must emphasize that the design of policies and programs to eradicate this alarming situation must begin with a thorough diagnosis that includes data on all families and persons subjected to this form of life, the related social, cultural and psychological factors, and the various private and government players involved, particularly the shortcomings in the various administrative and judicial bodies whose effective presence in many of the places where this reality persists is virtually nonexistent.

276. Consequently, the Commission urges the Bolivian State to give priority to designing and implementing measures that will address both the complexity of the issue and its actual extent, and that deal with the legal, institutional and other obstacles that have frustrated past initiatives.

## **E. Access to justice**

277. The situation of indigenous peoples' access to justice must be analyzed from two perspectives, both in their quality as Bolivian citizens and in their condition as indigenous peoples with their own valid legal system: (i) the additional obstacles facing these sectors of society in obtaining responses from the authorities of the official justice system; and (ii) recognition of indigenous law and justice administration. These two perspectives must be understood as constituent elements of the right of access to justice for indigenous peoples, and as in no way mutually exclusive, in the sense that the guarantee of one would exempt the State from the other.

### **1. Access to the official justice system**

278. One of the initiatives proposed to facilitate access to justice for indigenous peoples and peasant communities is to strengthen the "justice of the peace" as an alternative dispute settlement mechanism. In January 2006 the Judicial Organization Act was amended with respect to the jurisdiction and competence of these judges to promote conciliation in disputes between individuals, communities or neighborhoods, and to resolve them equitably when

conciliation fails. There is to date no accurate information on how these rules have been implemented, or on the results.<sup>227</sup>

279. Beyond the importance of strengthening the justices of the peace, indigenous peoples and peasant communities face obstacles in presenting their claims before the official justice system. The problems most frequently cited relate to land ownership and possession; access to basic services; recognition of the legal personality of indigenous peoples and communities; enforcement of labor rights for persons subjected to forced labor and bondage; and claims for environmental damages occasioned by development projects.

280. With respect to agrarian jurisdiction, the Commission received information to the effect that the selection of judges is related to regional political and economic interests. According to such complaints, following a resolution issued by the INRA, which might be favorable to indigenous or peasant communities, the landowners will turn to these judges, who in most cases issue discriminatory and unsubstantiated rulings in their favor, even referring to them in the judgments as "small farmers." What is alarming here is that in these processes the right to defense of the indigenous peoples or peasant communities is diminished, because they are not parties to the proceedings. As the Commission was informed, the jurisprudence of the National Agrarian Tribunal holds that they may participate in proceedings within agrarian jurisdiction, but they will have the status only of interested persons and not of parties.

281. With respect to applications for recognition of the legal personality of indigenous peoples and communities and peasant farmers' unions, representatives of civil society gave the Commission information revealing the excessive formality and the nearly certain negative response of both the administrative and judicial authorities, even in actions for *amparo*. The Commission noted that these problems create a perception on the part of civil society that social protest is more effective than administrative or legal channels for pressing demands, for the latter will always be a lost cause.

282. With respect to access to basic services, and recognition of labor rights in rural areas in which there are serious situations of forced labor and bondage, the Commission was told that there are no labor judges or inspectors to turn to. As an example, there are areas where families are kept captive on large estates where the nearest labor judge may be 500 km away. In

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<sup>227</sup> The judicial branch under the new Constitution. Proposal from the Supreme Court, District Courts, Judges and Magistrates to the Constituent Assembly. 2006, p. 18; Diagnostic study on the situation of justice in Bolivia. Participation and Justice Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations; Summary document Justice For All. Supreme Court of Justice. 2003. Available on the official Website: <http://suprema.poderjudicial.gov.bo/justicia.htm>. Visited on December 28, 2006.

the few places where the executive and judicial branches have a physical presence, there is no infrastructure or staff to handle complaints, or else the local authorities have been corrupted by political and economic interests, making it impossible to obtain effective and prompt responses.

283. With respect to environmental complaints, including severe damage to people's health and livelihood, various civil society organizations working with these issues, as well as some State authorities, informed the Commission that, apart from criminal proceedings, there is no judicial mechanism to challenge these situations, such as an appeal for *amparo* or an act of popular initiative.

284. Finally, the Commission was informed that, although the Code of Criminal Procedure establishes certain special guarantees for members of indigenous peoples and peasant communities,<sup>228</sup> these are not effective, primarily for lack of training among officials of the Prosecutors' Office and the judiciary, and the consequent lack of will to order the enforcement of those guarantees. One serious factor is the lack of official translators for indigenous people who do not speak Spanish, and the almost complete absence of public defenders who speak indigenous languages.

285. The Commission reminds the State that, in the jurisprudence of the Inter-American Court, access for indigenous peoples to official justice must take into account their particular features, their economic and social characteristics, their vulnerability, their customary standards, and in general their values, uses and customs, in the context of the rights to judicial protection and to judicial guarantees enshrined in Articles 8 and 25 of the American Convention.<sup>229</sup>

## 2. Indigenous law and justice

286. As to the second perspective, the so-called "community justice"<sup>230</sup> that the indigenous peoples of Bolivia have exercised for thousands

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<sup>228</sup> Article 391 of the Code of Criminal Procedure: "When a member of an indigenous people or indigenous or peasant community is charged with a crime and must be tried in the ordinary courts, the ordinary rules of this code shall be observed, and also the following special rules: during the preparatory stage and the trial, the prosecutor and the judge shall be assisted by an expert in indigenous questions; that expert may participate in the debate; and, before the judgment is issued, the expert shall prepare an opinion explaining in greater depth the customary patterns of behavior of the defendant for purposes of substantiating, attenuating or extinguishing his criminal liability; this opinion shall be substantiated orally in the debate."

<sup>229</sup> I/A Court H. R., *Case of the Indigenous Community Sawhoyamaya*. Judgment of March 29, 2006. Series C No. 146, para. 83.

<sup>230</sup> It is important to note that international law has still not settled on a uniform term for the rights of indigenous peoples and communities to recognition of their legal systems, understood as the set of rules that regulate their individual and collective behavior and the legitimate procedures and authorities for enforcing those rules and resolving disputes. Each State uses various

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of years, this constitutes one of the most debated issues of recent years in the country, and has gained special currency since the constitutional election of the current President of the Republic, Evo Morales, for it was incorporated as a priority in his political platform and is likely to be one of the crucial aspects that the National Constituent Assembly will have to grapple with.

287. The Commission observed that the issue has become a matter of great public debate and that positions are sharply polarized. Indeed, the debate is not limited to the political factions controlling the constituent process but is evident within the distinct sectors of civil society itself, and even within the branches of government, which have demonstrated the most varied and even antagonistic positions.

288. Nor does current domestic legislation shed much further light on the issue, for in its generality and vagueness it can be interpreted in various ways.<sup>231</sup> For example, the legal recognition of community justice is unclear as to its hierarchy, and this has generated a degree of confusion, even over the alternative dispute settlement mechanisms that are supposed to offer a way of circumventing the judicial case backlog, especially with the institution of Justices of the Peace with the power to take decisions in equity.

289. Another confusing issue is to determine what persons are recognized within the constitutional and legal concept of community justice, since the rules include indigenous and peasant communities without specifying any distinction, despite the obvious difference of these categories in terms of their history and the origin of their rules and procedures for applying justice. The issue was superficially addressed by the Constitutional Tribunal, which

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terms, and in Bolivia the phrase "community justice" is generally applied; for this reason the Commission will use that term in this report, understood as indicated in this footnote.

<sup>231</sup> References to this issue are found in the following. Article 171 of the Constitution: "The natural authorities of the indigenous and peasant communities may exercise the functions of administration and enforcement of their own rules as alternative dispute settlement, in conformity with their customs and procedures, provided these are not contrary to this Constitution and the laws. The law shall reconcile these functions with the attributes of the powers of the State"; Article 28 of the Code of Criminal Procedure: "Criminal action shall be extinguished when the crime or the offense is committed within an indigenous and peasant community by one of its members against another and its natural authorities have resolved the conflict in accordance with their Customary Indigenous Law, provided that resolution is not contrary to the fundamental rights and guarantees of persons established by the Constitution of the State. The law shall allow for application of Customary Indigenous Law." The same law regulates the competence for substantiation and resolution of "the extinction of criminal action in the case of disputes resolved by the indigenous communities"; Article 17 of Law 2175, the Organic Law of the Attorney General's Office: "In the context of Article 171 of the Constitution, the Attorney General's office must provide the necessary cooperation to the natural authorities of the indigenous, aboriginal and peasant communities, as requested, in order to carry out the requested procedures"; Article 16 of Law 1674 against Family Violence: "In indigenous or peasant communities, the community and natural authorities shall resolve disputes over family violence, in accordance with their customs and uses, provided these are not contrary to the Constitution and the spirit of this law."

described this difference but drew no conclusions in terms of recognizing the right of one category or another to administer justice by its own methods.<sup>232</sup>

290. Similarly, and given the lack of certainty in this area, the Constitutional Tribunal has in some isolated cases exerted a kind of control over decisions adopted in the community justice system. Thus, in exercise of its powers to consider appeals for *amparo* and habeas corpus, it has decided approximately 20 cases in which it has established certain criteria<sup>233</sup> that, while relevant, do not identify specific coordination parameters of general application.

291. In the midst of this rather confused panorama of legal, jurisprudential and political considerations, the IACHR observed two aspects which need to be clarified in the light of indigenous peoples' rights under international human rights law, especially ILO Convention 169.<sup>234</sup>

292. On one hand, the Commission is concerned that some of the most senior State bodies and certain sectors of civil society, including some of the communications media, persist in the idea that "taking justice into one's own hands" or lynchings are a reflection of community justice. The Commission reiterates that acts of this kind constitute gross violations of human rights and they must be investigated and punished by the State and that they cannot be understood as consistent with indigenous law and justice in the sense recognized in the Constitution and internationally,<sup>235</sup> for the fundamental assumption in applying them is precisely the respect of human rights.<sup>236</sup> It is

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<sup>232</sup> Constitutional Tribunal. Judgment 143 of 2003.

<sup>233</sup> The repeated jurisprudence of the Constitutional Tribunal in this matter indicates that "notwithstanding the importance of social and cultural customs and the respect that society owes them, we must not forget that social institutions of the peasant communities and indigenous peoples do not exist in isolation but form part of a much broader and more complex social setting. It is here that we find the problem in defining the subtle limits between "community justice" and "official justice," between customary law and the legal system prevailing in the country, without injuring either of these. In order not to run the risk of ignoring the value and substance of ancestral customs and cultures, or of violating the established legal system, we must arrive at a point of convergence such that the two systems can coexist in harmony, with neither one claiming hegemony over the other, and protecting in both the collective rights of the communities and the fundamental rights of individuals." In the context of these decisions, the Tribunal has determined these limitations in some concrete cases relating for example to the procedures and penalties that in its opinion ignore the rights to property, to freedom (Constitutional Tribunal, Judgment 143 of 2003, Judgment 295 of 2003, and Judgment 1017 of 2006), the prohibition of torture, the right to privacy (Constitutional Tribunal, Judgment 1100 of 2006), and the right of defense and to "citizenship" (Constitutional Tribunal, Judgment 313 of 2004), to cite a few examples.

<sup>234</sup> Ratified by Bolivia and used repeatedly by both the Inter-American Commission and the Inter-American Court as a parameter for interpreting the American Convention in cases involving violations of the human rights of indigenous peoples.

<sup>235</sup> IACHR, *Justice and Social Inclusion: the Challenges of Democracy in Guatemala*, paras. 135 and 138-140. (Available in Spanish only).

<sup>236</sup> ILO Convention 169. Article 8.2: "These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights." Article 9.1: "To the

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regrettable that such lynchings are used as a means of stigmatizing indigenous justice and denying it full recognition, when in fact one of their principal causes is the tenuous writ of the Prosecutors' Office and the judiciary and their inability to prosecute and punish crimes in more than half of Bolivian territory, as detailed above (paragraphs 63 and 65).

293. The Commission also wishes to clarify the scope and ranking of recognition of indigenous peoples' conflict resolution methods, provided they comply with the prior assumption of compatibility with constitutional and international human rights provisions. The Commission considers that the recognition of community justice as an "alternative means" must not be interpreted as resulting from the lack of coverage of the official justice system, and must therefore not be conditioned on the continuity of official institutional weaknesses. On the contrary, indigenous law and justice must be recognized as a human right of a collective nature, without any implication that the State is thereby exempt from providing those peoples the services of official justice due to them as Bolivian citizens, whereby they are guaranteed access to justice in the context of conflicts with non-indigenous individuals or arising outside the community territory.

294. As the Constitution itself indicates, the scope and effective application of the law requires a legislative framework that will reconcile, on one hand, the power of indigenous peoples and peasant communities to apply their own rules and mechanisms for dispute settlement, and on the other hand the functions of various State bodies, in particular but not exclusively those involved in criminal prosecution.

295. The Commission observed that the ambiguity in this legal framework, together with the total absence of regulation to date, constitutes the principal cause of the confusion over this issue that prevails both in civil society and in the various State institutions of Bolivia. There have been some attempts to draft legislation in this area, but they have not prospered, for

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extent compatible with the national legal system and internationally recognised human rights. the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected." In a similar vein, Article XVI of the Proposed American Declaration of the Rights of Indigenous Peoples proclaims: "1. Indigenous law shall be recognized as a part of the states' legal system and of the framework in which the social and economic development of the states takes place. 2. Indigenous peoples have the right to maintain and reinforce their indigenous legal systems and also to apply them to matters within their communities, including systems related to such matters as conflict resolution, crime prevention and maintenance of peace and harmony. 3. In the jurisdiction of any State, procedures concerning indigenous peoples or their interests shall be conducted in such a way as to ensure the right of indigenous peoples to full representation with dignity and equality before the law. This shall include observance of indigenous law and custom and, where necessary, use of their language." Article 33 of the UN Draft Declaration on the Rights of Indigenous Peoples: "Indigenous people have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards."

various reasons that will not be detailed here. Currently, with the impetus that the government has given to the issue by creating a Vice Ministry of Community Justice under the Ministry of Justice, a new draft law has been prepared, called "Administration of Justice of Indigenous-Aboriginal Peoples and Peasant Communities."

296. Without examining the specific contents of that draft, the Commission considers it relevant to note that a legal instrument of this kind, for purposes of achieving coordination between community justice and official justice, must be drafted with the participation of the peoples and communities interested, and must establish negotiated guidelines relating to at least the following: powers with respect to the subject matter, territory and subjects involved; mechanisms and criteria for resolving possible conflicts of jurisdiction; channels of dialogue for remitting cases to indigenous justice from official justice and oversight mechanisms the legitimacy of which is recognized by the authorities of both judicial systems in case the parties claim a conflict with their human rights.

#### **F. Recommendations**

297. By virtue of the foregoing, the Commission recommends that the Bolivian State:

1. Take all steps necessary to eradicate any kind of discrimination based on the indigenous and/or peasant condition of persons subject to its jurisdiction, particularly in access to justice, education and health, and to the benefits of other State policies intended to increase the coverage of economic, social and cultural rights.
2. Ensure that all measures taken in connection with the right to education and health for indigenous peoples are compatible with their particular worldview and the maintenance and strengthening of their cultural identity, and that they in no way imply a form of assimilation of indigenous peoples into the non-indigenous culture.
3. Guarantee effective enforcement of the new law relating to agrarian reform, adopting the necessary measures to eliminate the obstacles cited by the Commission that have prevented access to land and territory for all sectors of Bolivian society. As part of this process, it is essential that the State bear in mind the particular relationship that indigenous peoples have with the land and that consequently, in the process of land titling, it must give priority to recognizing their ancestral lands and territories as essential for the survival of their cultural identity.



4. Incorporate the provisions of ILO Convention 169 on this issue into its domestic legislation on development projects, and adopt measures for their effective enforcement.
5. Consistent with its international obligations, guarantee the participation of indigenous peoples and affected communities in projects for the exploration and exploitation of natural resources, through prior and informed consultations designed to obtain their free consent in the design, execution and evaluation of those projects, as well as in determining benefits and compensation for damages, according to their own development priorities.
6. In the context of projects underway, implement participatory mechanisms to determine the environmental damages they may be causing and their effects on the basic subsistence activities of indigenous peoples and peasant communities living in the vicinity of such projects. If their lives or personal integrity are threatened, such projects should be immediately suspended and the appropriate administrative and criminal penalties imposed. If the projects continue, the State must guarantee that affected persons will share in the benefits from those projects, and it must determine and enforce compensation for such damage.
7. Guarantee access to an adequate and effective judicial remedy for challenging environmental damages of a collective nature so that, in addition to criminal action, there will be a mechanism of a judicial nature to obtain an immediate response in circumstances where projects are causing irreparable damage to groups of individuals.
8. Give priority to measures for eradicating forced labor and bondage, and take immediate steps to strengthen the recognition and regularization of property for persons affected by this situation, and to prevent any weakening of labor and social rights for persons working in the rural sector.
9. Conduct an immediate analysis of the situation of bondage analogous to slavery and/or forced labor in various parts of Bolivia, including data on all families and persons subjected to this form of life, the related social, cultural and psychological factors, and the various private and State players involved, particularly weaknesses in the various administrative and judicial bodies.
10. Adopt necessary measures to guarantee that recognition of community justice does not depend on the coverage or procedural workload of official justice, but stems from the

pluricultural nature of the Bolivian State and from respect for the autonomy of indigenous peoples.

11. Establish, in the short term, guidelines for coordinating official justice with community justice, taking into account at a minimum the parameters set out in the respective section of this report.



## CHAPTER V

### WOMEN'S RIGHTS

#### A. Introduction

298. The human rights situation of Bolivian women, who according to the latest census constitute 50.16% of the population,<sup>237</sup> was one of the issues to which the Commission gave special attention during its visit, and on which it received information from State institutions and from civil society organizations.

299. With respect to the international and constitutional framework, Bolivia is a party to the United Nations Convention for the Elimination of All Forms of Discrimination against Women<sup>238</sup> and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereafter "the Convention of Belém do Pará").<sup>239</sup> The Constitution of Bolivia

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<sup>237</sup> Taken from the official Web page of the National Statistics Institute of Bolivia, Official Population Census 2001, Bolivia. Population by sex according to five-year age groups and single ages.

<sup>238</sup> The State of Bolivia has been a party to this instrument since June 8, 1990, and to its Optional Protocol since September 27, 2000. By means of that protocol, Bolivia recognized the competence of the United Nations Committee for the Elimination of Discrimination against Women to hear complaints against individual violations of the rights enshrined in that Convention.

<sup>239</sup> The State of Bolivia has been a party to this international instrument since December 5, 1994. In addition to the measures for protecting and guaranteeing the rights of women that Bolivia undertook to adopt upon ratification of this instrument, Article 12 gives the Inter-American Commission jurisdiction to hear complaints on alleged violations of Article 7 of the Convention, which reads: "The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b) apply due diligence to prevent, investigate and impose penalties for violence against women;
- c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;

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contains a clause on equality without distinction as to sex,<sup>240</sup> among other categories. It also regulates the institution of matrimony in the context of equality of rights and duties among spouses.<sup>241</sup>

300. As to internal legislation, the Commission observed that the Bolivian State has been incorporating specific rules relating to women's rights. This is the case with Law 1674 of 1995 on family or domestic violence, the objective of which is to prevent and eradicate violence against women in public and private spaces; Law 2033 of 1999 on the protection of victims of crimes against sexual freedom, which defines certain crimes and establishes interdisciplinary teams to cooperate in investigations and the establishment of centers of care and support for victims; Law of 1997 on 30% quotas in the electoral system, establishing minimum percentages that must be filled by women in popularly elected bodies; and Supreme Decree 24.864 of 1997 on equal opportunities between men and women, which provides for equality in the political, economic, social and cultural fields, and the mainstreaming of the gender perspective in public policies.

301. As well, various laws on more general topics have included the gender perspective and even some rules to counter the discrimination that women have historically faced. For example, the 1999 law on political parties requires that the constitution of each political party must reject discrimination of all kinds and establish a 30% quota for female participation at all levels of party leadership; Law 1551 of 1993 on popular participation incorporates the principle of equal opportunity in municipal development processes; Law 2828 of 2004 on municipalities promotes women's participation in the formulation, control and monitoring of municipal development plans; and Law 3545 2006 on renewal of the agrarian reform guarantees and prioritizes women's participation in the process of land regularization and distribution.

302. While civil society regards this legal framework as "advanced", there are neither the resources nor the institutions necessary to enforce it.<sup>242</sup>

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f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;

g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and

h) adopt such legislative or other measures as may be necessary to give effect to this Convention."

<sup>240</sup> Political Constitution of Bolivia, Article 6.1.

<sup>241</sup> Political Constitution of Bolivia, Article 194.1

<sup>242</sup> Report on the status of sexual and reproductive rights in Bolivia and the struggle against violence to women. Catholics for the Right to Decide. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, Continued...

The obstacles to implementing legislation on these issues will be addressed in detail in this section.

303. The Commission was concerned at the continued existence of some provisions that are highly discriminatory and consequently run counter to international standards on women's rights. The Constitution of Bolivia declares, in Article 157.1, the duty of the State to issue special regulations governing working conditions for "women and minors". In fact, certain provisions of the General Labor Act still prohibit women from work that could affect their "morals and good customs,"<sup>243</sup> and they even prohibit nighttime work, except that related to nursing or domestic service.<sup>244</sup>

304. Moreover, although the 1997 reform of the Criminal Code changed the heading of crimes against "morals and good customs" to crimes against "sexual freedom", the Commission is concerned that Article 317 of the Criminal Code remains in force, according to which a person convicted of a sexual crime can win remission of punishment by marrying the victim before the sentence is confirmed.

305. Another rule criticized by civil society is Article 44 of the Family Code which sets the minimum age of marriage for men at 16 years and for women at 14 years. Also questioned is Article 52 of that code which provides that a woman who is widowed or divorced or whose marriage has been annulled must wait 300 days after the death of her husband, the decree of personal separation of the spouses, or the declaration of annulment, before she can marry again.

306. The Commission reminds the State that legal distinctions by reason of sex, among other categories, must be strictly scrutinized as to their necessity and their proportionality. The Commission has held that the categories of "traditional values," "morals" and "good customs" cannot justify any legal distinction against women, and that they constitute a violation not only of the right to equality before the law and equal protection under the law, enshrined in Article 24 of the American Convention, but also the right to privacy enshrined in Article 11 of the Convention.<sup>245</sup>

307. As well, the Commission has held that *de jure* equality alone is not sufficient to achieve gender equality. The practices and conducts that

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social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 215.

<sup>243</sup> Article 59.

<sup>244</sup> Article 60.

<sup>245</sup> On this point, see IACHR, Report N° 4/01, case 11,625, Merits, Maria Eugenia Morales de Sierra, Guatemala, January 19, 2001, para. 45.

generate and perpetuate women's position of inferiority in society must also be undone. Nevertheless, the Commission does not underestimate the importance of formal equality and stresses the importance of the law in effecting social change.<sup>246</sup>

308. *De jure* discrimination is a flagrant violation of the international commitments freely assumed by States and, although formal equality does not guarantee the elimination of instances of discrimination, recognizing it makes it possible to encourage transformations in society, thereby enhancing the authority of this right.<sup>247</sup>

309. With respect to the institutional framework, as part of the restructuring carried out by the current government, the former Vice Ministry of Women, under the Ministry of Sustainable Development, was relocated as a Vice Ministry for Gender, Generational and Family Affairs under the Ministry of Justice. The Commission noted that this change was seen by some sectors as downgrading government strategies and policies to promote women's rights, because in their opinion this could weaken the specific and exclusive features that gender equity policies must have at all levels, and not only in the family sphere.<sup>248</sup>

310. The Commission noted the initiatives of these Vice Ministries, such as the design of the National Plan of Public Policies for the Full Exercise of Women's Rights 2004/2007; creation of the Departmental Gender Units, Creation of the Municipal Women's Offices, and creation and implementation of the Comprehensive Municipal Legal Services for the prevention and immediate redress of cases of violence against women, but only in 30% of municipalities.<sup>249</sup> As well, the National Police has created Family Protection Brigades with the capacity to respond more promptly at the scene of acts of violence against women and to provide better help than the regular police.

311. Yet the State and civil society agree that institutional action on the rights of women has been affected by political instability and changes of government, and by the lack of budgetary allocations to support the policies

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<sup>246</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 98. IACHR, *Report on the Status of Women in the Americas*, OEA/Ser.L/V/II.100 Doc. 17, October 13, 1998, Chapter IV.

<sup>247</sup> IACHR, *Report on the Status of Women in the Americas*, OEA/Ser.L/V/II.100, October 13, 1998.

<sup>248</sup> See *La Razón*: "Congresswoman Sees Backsliding in Gender Policy: Salguero Regrets Inclusion of Women in the Vice-Ministry on Gender." October 3, 2006 at [http://www.la-razon.com/versiones/20061003\\_005683/nota\\_250\\_339884.htm](http://www.la-razon.com/versiones/20061003_005683/nota_250_339884.htm). As well, in a meeting with civil society organizations on women's rights, this decision was said to indicate that the matter was not being considered a priority.

<sup>249</sup> Press release announcing International Day for the Elimination of Violence against Women, Bolivia Chapter of Human Rights, Democracy and Development, November 2006 at <http://www.derechoshumanosbolivia.org/comunicado.php?cod=CD20061123150716>.

adopted. This is reflected in the excessive workload of officials in these institutions, the lack of equipment and materials for fulfilling their functions, and the constant turnover of personnel.<sup>250</sup> The Commission also observed that there is no coordination between the local and national levels, and that the monitoring of government initiatives is left to NGOs and the Ombudsman.

312. During its visit, the Commission held meetings with various government institutions and civil society organizations involved primarily with the human rights of women in Bolivia. From the information received, the Commission was able to verify some situations that had been brought to its attention in recent years. In the following paragraphs the Commission will detail its observations on several issues identified as those of greatest concern in the situation of women's rights in Bolivia: participation in the civil service; violence; access to justice; other forms of gender-based discrimination.

### **B. Women's participation in public affairs**

313. As mentioned in the introduction, the Commission welcomes the progressive legal framework for women's political participation in Bolivia, consisting of the Elections Code, the 1997 30% Quotas Law, and the 1999 Law on Political Parties. The Commission also notes that these laws have in fact increased the levels of women's participation in various decision-making bodies.<sup>251</sup> Nevertheless, the percentages stipulated by law as mandatory quotas for women have not been achieved.<sup>252</sup>

314. The Commission was also informed that there is a large gender gap in the conformation of various decision-making bodies in the three branches of government. Following are the percentages on female participation to the year 2005: 10.17% in the executive branch, 20.90% in the legislative branch, and 25% in the judicial branch.<sup>253</sup>

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<sup>250</sup> *Ibid.*

<sup>251</sup> An example is found in the UNDP Human Development Report on Gender 2003, which points out that, although women's participation in economic and political decision making is still very low, it has increased by approximately 70% in both public and private sectors since the beginning of the last decade. As well, since 1992 women's representation in national and local political bodies rose by 16%. This report is available at: <http://idh.pnud.bo/WebPortal/Publicaciones/InformeTematico/G%C3%A9nero2003/tabid/132/Default.aspx>. Site visited on February 15, 2007.

<sup>252</sup> Committee for the Elimination of Discrimination against Women. Consideration of reports submitted by states parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 11.

<sup>253</sup> Report on the status of sexual and reproductive rights in Bolivia and the struggle against violence to women. Catholics for the Right to Decide. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 224.



315. The Commission received some alarming complaints over various forms of professional and/or sexual harassment against women who join the public function. In particular, the Commission learned of pressure and harassment by male candidates for positions won by women in municipal councils, with the clear intention of forcing them to resign their seats. Although these events have been publicly denounced, the affected women have received no response from the electoral authorities.<sup>254</sup>

316. The Commission also received complaints of professional harassment against women who are members of the State security corps, both the National Police and the Armed Forces. In addition to the wide gender gap, the communications media have carried complaints from women who claimed to have been sexually harassed by their male colleagues and to have faced gender-based discrimination in the work they perform.<sup>255</sup>

317. Finally, there were complaints of a kind of dual discrimination against indigenous and peasant women who have been unable to obtain identity documents and have thereby been prevented *de facto* from forming or joining political parties and participating individually in elections.

318. The Commission reiterates that achieving free and full participation by women in political life is a priority for the American Hemisphere.<sup>256</sup> Consequently, States must assure that women have appropriate representation at all levels of government, at the local, provincial, state and national levels; develop strategies to increase the integration of women in political parties; and take further steps to fully incorporate the sectors of civil society, including those that represent the interests of women, into the process of developing and implementing policies and programs.<sup>257</sup> In this respect, the Commission urges the State to adopt the necessary measures to consolidate the process begun with the legal initiatives described above, and to guarantee full access for women to the civil service on equality.

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<sup>254</sup> *Ibid*, p. 247.

<sup>255</sup> Press report, *La Razón* newspaper, October 26, 2006: "Women in Uniform Claim Harassment and Discrimination."

<sup>256</sup> IACHR, "Considerations regarding the compatibility of affirmative-action measures designed to promote the political participation of women with the principles of equality and nondiscrimination," *IACHR Annual Report 1999*. OEA/Ser.L/V/II.106, Doc. 3 rev., April 13, 2000, Vol. II, Chapter VI, Section IV; IACHR, *Report on the Status of Women in the Americas*, OEA/Ser.L/V/II.100, Doc. 17, October 13, 1998.

<sup>257</sup> IACHR, "Considerations regarding the compatibility of affirmative-action measures designed to promote the political participation of women with the principles of equality and nondiscrimination", Annual Report, Chapter V, C.1.

### C. Violence against women

319. The Commission was shown alarming figures on various forms of violence against women, particularly cases of "femicide"; family or domestic violence, both physical and psychological; and sexual violence. According to information received, at least seven of every 10 Bolivian women suffer some form of violence.<sup>258</sup> In the last half of 2003 and the first half of 2004, 88% of women suffered some kind of violence, compared to 12% of men.<sup>259</sup>

320. Based on the 2003 National Demographic and Health Survey, 54% of women married or living permanently with a partner reported being the victim of some form of psychological violence, especially expressions of verbal violence. According to the same survey, 41% of women in rural areas were forced to have sexual relations with men they did not know.

321. With respect to "femicide," civil society organizations reported that between 2003 and 2004 there were 439 women killed by their husbands, boyfriends, lovers, partners, relatives or neighbors; only 18 of these cases produced conviction, and 2 are still pending trial. During a public hearing in March 2006 on this issue, the Commission learned of a study confirming 373 killings of women in Bolivia in those same years; 7.7% of the victims were girls under 20 years of age, 6.17% were women between 21 and 30 years, 2.9% were women between 31 and 40 years, 4.02% were women over 41 years, and 80.16% were women whose age was unknown.

322. The United Nations Committee on the Elimination of Discrimination against Women noted recently that very severe forms of sexual aggression against women and girls were still being reported, culminating in many cases in "femicide."<sup>260</sup> The Commission was also informed that such cases are underreported to the police and the Prosecutors' Office,<sup>261</sup> and that

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<sup>258</sup> Report on the status of the economic, social, and cultural rights of women in Bolivia. Women's Coordinating Office. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 248.

<sup>259</sup> Committee on the Elimination of Discrimination against Women. Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 55.

<sup>260</sup> *Ibid.* para. 50.

<sup>261</sup> See the study prepared by UNIFEM, National Network of Women Working in Information and Communication (*Red Nacional de Trabajadoras de la Información y Comunicación*) (RED-ADA) and Gregoria Apaza: The Inventory of Death: Femicide in Bolivia (*El Inventario de la Muerte: feminicidio en Bolivia*), January 2005.

the few cases that are reported and reach the preliminary investigation stage are treated as "homicide of passion", which implies a reduced penalty.<sup>262</sup>

323. From the little information available on family violence, it may be said that while its occurrence is independent of social class, race, religion or political persuasion, the problem is rooted in fundamental cultural factors, aggravated by poverty and social inequality.<sup>263</sup>

324. According to comparative analyses of family violence cases recorded by the Family Protection Brigades and the Integral Municipal Legal Services, some 54% of women living in the principal cities of Bolivia have been subjected to physical, psychological and sexual violence over the last five years.<sup>264</sup>

325. As mentioned in the introduction, the measures taken by the State have not been implemented with the necessary continuity. The 2003 UNDP Human Development Report on Gender in Bolivia notes that as of 1997 some important objectives had been achieved and the Family Protection Brigades had been implemented, but that the entire governmental structure dedicated to this issue had stagnated because of the country's institutional and political situation, which left it with untrained personnel and new priorities, meaning that the program had been reduced to sporadic action.<sup>265</sup>

326. As detailed in the following section, legislation against family violence and sexual violence is not fully enforced, in part because of procedural bureaucracy, lack of staff training, corruption, and family, social and official pressure against reporting cases.<sup>266</sup>

327. The Commission noted the scarcity and discrepancy of figures from various civil society organizations and government entities, particularly with respect to violence against indigenous and peasant women in the countryside. This suggests that violence against women is rendered "invisible"

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<sup>262</sup> Report on the status of the economic, social, and cultural rights of women in Bolivia. Women's Coordinating Office. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 250.

<sup>263</sup> *Ibid*, p. 225.

<sup>264</sup> Press release announcing International Day for the Elimination of Violence against Women, Bolivia Chapter of Human Rights, Democracy and Development, November 2006 at <http://www.derechoshumanosbolivia.org/comunicado.php?cod=CD20061123150716>.

<sup>265</sup> Report on the status of sexual and reproductive rights in Bolivia and the struggle against violence to women. Catholics for the Right to Decide. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social, and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, pp. 226-227.

<sup>266</sup> *Ibid*, p. 255.

as a consequence of the failure to report cases and the lack of mechanisms for recording and establishing statistics on the issue. This situation is directly related to that indicated in the introduction regarding the discontinuity and absence of effective measures for implementing policies against violence, for there is no thorough diagnosis of the dimension of the problem.

328. The Commission reiterates that, under the Convention of Belém do Pará, the obligation of the State to act with due diligence takes on a special meaning in cases of violence against women. That Convention reflects a hemisphere-wide concern over the gravity of the problem of violence against women, its relationship to the discrimination that women have historically endured, and the need to adopt comprehensive strategies to prevent, punish and eradicate it.<sup>267</sup>

#### **D. Access to justice**

##### **1. General aspects**

329. Internal studies have concluded that men have greater access to justice, in terms of the likelihood of successful outcomes, than do women, even though women are more active presenting judicial claims. It is important to mention that the number of male judges is much more than twice the number of female judges. For example, in the district of La Paz, 75% of judges are men. As well, trial lawyers are for the most part men, for there is a widespread perception, even among women, that men are intellectually better suited to litigation.<sup>268</sup>

330. The main grounds for women to turn to the justice system are family violence, sexual violence, conjugal conflicts, and matters relating to their children. With respect to family assistance, 97% of claims are filed by women, and in cases of family violence, the figure is 89%.<sup>269</sup>

331. It has been demonstrated that women turn to the courts only as a last resort, when their problems have made their situation untenable, and when they have exhausted extrajudicial routes, and particularly when their children are directly affected.<sup>270</sup> Although the gender bias appears in all

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<sup>267</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 32; Convention of Belém do Pará. Article 7.

<sup>268</sup> Study headed by Magistrate Elizabeth Iñiguez of the Constitutional Tribunal and Justice Emilse Ardaya of the Supreme Court of Justice: Gender bias in the administration of justice. 2004.

<sup>269</sup> *Ibid.*

<sup>270</sup> *Ibid.*

instances,<sup>271</sup> the Commission paid special attention to the particular problem of impunity in cases of family violence and sexual violence.

## 2. Impunity in cases of family violence

332. The Commission welcomes the creation of a specific legal framework for dealing with family violence, as a demonstration that the Bolivian State intends to prevent and punish practices of this kind. Nevertheless, there have been serious shortcomings in implementing the law and in prosecuting cases, even after introduction of the accusatorial criminal prosecution procedure.<sup>272</sup>

333. While Law 1674 on family violence may be an important instrument for prevention and punishment, it does not constitute criminal legislation and the penalties it imposes are of an administrative or financial kind. On this point it should be noted that Bolivian criminal legislation does not make family or domestic violence a crime, and the only means of obtaining a criminal judgment against such acts is to subsume them under criminal attacks on personal integrity such as injuries or threats.<sup>273</sup>

334. According to the foregoing, victims of family violence may pursue the case through the family courts or through the criminal courts, and these two routes are mutually exclusive.<sup>274</sup> Legally, only the victim can decide which route to follow, but in practice the severity of the case is determined by the officials responsible for prevention and investigations, on the basis of subjective criteria that are not standardized. These officials, moreover, do not advise victims of the fact that two routes are open, or of the consequences of choosing one route over the other, so that they can make a conscious and informed decision.<sup>275</sup> The only objective criterion used is the number of days of disability caused by physical violence.<sup>276</sup>

335. With respect to the manner in which cases are handled, two major problems were identified.

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<sup>271</sup> *Ibid.*; see also IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 16.

<sup>272</sup> Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 11.

<sup>273</sup> *Ibid*, p. 35.

<sup>274</sup> *Ibid*, p. 35.

<sup>275</sup> Diagnostic study on the situation of justice in Bolivia. Participation and Justice Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>276</sup> Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 105.

336. In the first place, the system in effect selects cases for prosecution, which means that of the great number of complaints received only very few result in a judgment. According to figures from a recent study, 77% of cases reported are lost or abandoned between the filing of the complaint with the Family Protection Brigade and its registration in the courts. Only 11.04% of cases receive a judicial response, the great majority of these through the family courts, and only a minimal percentage (0.04%) receive a response from the criminal courts.<sup>277</sup>

337. The second problem relates to the inadequate handling of cases by the officials responsible for receiving, processing and investigating complaints. What frequently happens - and this is one reason why proceedings seldom advance beyond the initial stage - is that officials persuade or induce the victim to opt for conciliation with the aggressor. The Commission received information showing that these "conciliations" may end up putting the blame on the victim herself, and they consistently evoke the idea that the woman is the only person responsible for keeping the family together.<sup>278</sup>

338. The Commission reiterates that conciliation presupposes that the parties involved are negotiating under conditions of equality, and this is not true in family violence cases. It is internationally recognized that conciliation in cases of family violence is not advisable. It has been found that agreements reached through mediation increase women's physical and emotional risk, because of the unequal power relationships between the parties. Moreover, such agreements are generally not respected by the aggressor, and they do not address the causes and consequences of violence.<sup>279</sup>

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<sup>277</sup> Diagnostic study on the situation of justice in Bolivia. Participation and Justice Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations; Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 107.

<sup>278</sup> Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 107; Diagnostic study on the situation of justice in Bolivia. Participation and Justice Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations.

<sup>279</sup> IACHR. *Violence and discrimination against women in the armed conflict in Colombia*, October 18, 2006, para. 209, citing: Pan-American Health Organization (PAHO) in collaboration with the United Nations Population Fund (UNFPA), United Nations Development Fund for Women (UNIFEM), Inter-American Commission of Women of the Organization of American States (CIM/OAS), Inter-American Parliamentary Group on Population and Development (GPI), Center for Reproductive Rights (CRR), IPAS, ISIS International, Latin American and Caribbean Committee on the Defense of the Rights of Women (CLADEM), Washington, D.C., April 2004, Model Laws and Policies on Domestic Violence against Women, April 2004, p. 20.

339. Given the inadequate infrastructure and the lack of a standard protocol for use by all institutions that receive complaints, victims must wait a long time to tell their story, which they must do several times in settings that offer no privacy and before official personnel who are not properly trained and are moreover subject to constant rotation and occupational instability.<sup>280</sup>

340. In addition to these problems, there are economic obstacles, particularly to the criminal route, because despite legislative provisions, the practice is to demand that complaints be submitted in writing together with medical certificates that the victim must pay for.<sup>281</sup>

341. The Commission welcomes the initiative to create the Family Protection Brigades in Bolivia as a way of assisting victims of domestic violence who report situations of risk. Nevertheless, mechanisms of this kind are very difficult to implement in terms of staffing, infrastructure, training and sensitization, etc.<sup>282</sup>

342. All of these problems are aggravated by the fact that there is no systematic keeping of files on complaints received about family violence, and the way each case is handled, and this tends to obscure the lack of access to justice in this area and impedes the creation of policies to eradicate it.<sup>283</sup>

343. As the Commission has established, States' obligations in cases of violence against women include the duty to prosecute and convict those responsible, and to prevent such degrading practices.<sup>284</sup> In the presence of clear

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<sup>280</sup> Diagnostic study on the situation of justice in Bolivia. Participation and Justice Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations; Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 107; Study headed by Magistrate Elizabeth Iñiguez of the Constitutional Tribunal and Justice Emilse Ardaya of the Supreme Court of Justice: Gender bias in the administration of justice. 2004.

<sup>281</sup> Diagnostic study on the situation of justice in Bolivia. Participation and Justice Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations; Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, pp. 107-108.

<sup>282</sup> Civil Society and Justice Access program of the Vice Ministry of Justice in Bolivia and the Institute for the Integral Training of Women. Assessment of Law 1674 from a perspective of gender-awareness and ESCR, Cochabamba, Bolivia, 2004, pp. 31-38; IACHR, Report: Access to Justice for Women Victims of Violence in the Americas, para. 178.

<sup>283</sup> Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 107.

<sup>284</sup> IACHR, Report on the Merits, N° 54/01, Maria da Penha Fernandes (Brazil), April 16, 2001, para. 56.

and decisive evidence for concluding a trial, there should be no undue delay in taking decisions, and criminal proceedings should be completed promptly and effectively.<sup>285</sup> The Commission has held that "judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to punish such acts."<sup>286</sup>

### 3. Impunity in cases of sexual violence

344. The Commission received alarming indicators of impunity in cases of crimes against sexual integrity, occasioned by various factors.

345. With respect to legal provisions, the Commission noted that, while Law 1678 of 1997 reformed the Criminal Code to include these offenses as contrary to "sexual integrity" and not to "morals and good customs", such crimes are still classed of public action that requires the filing of a private complaint. This means that, although a complaint has to be filed, it is still the responsibility of the public prosecutor to promote the investigation. Yet in practice, the prosecutors and police in charge of investigations have interpreted this provision erroneously and have taken a passive attitude, placing the entire burden of proof on the plaintiff. This situation is especially serious in crimes against sexual integrity because their proof requires technical and scientific evidence that is difficult to obtain privately.<sup>287</sup>

346. On the other hand, the Commission noted that the legislation retains a provision for "legal absolution" when the aggressor marries the victim before the judgment is handed down, in offenses qualified as *rapto* (kidnapping for purposes of a sexual crime).<sup>288</sup> The Commission reiterates that such rules are discriminatory and contrary to international standards, in particular those of the Convention of Belém do Pará that Bolivia ratified in 1994.<sup>289</sup>

347. In general terms, it may be said that there is no policy for prosecuting these offenses as crimes,<sup>290</sup> and that, as in cases of family

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<sup>285</sup> *Ibid.*, paras. 38-39 and 44.

<sup>286</sup> *Ibid.*, para. 56.

<sup>287</sup> Study headed by Magistrate Elizabeth Iñiguez of the Constitutional Tribunal and Justice Emilse Ardaya of the Supreme Court of Justice: Gender bias in the administration of justice. 2004; Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 113.

<sup>288</sup> Penal Code. Article 317.

<sup>289</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 213.

<sup>290</sup> Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, pp. 108-113.



violence, there are many shortcomings in the processing of these offenses, to the detriment of the victims, notwithstanding the protection contained in Law 2033 of 1999.

348. As detailed above (paragraph 121), when the accusatorial criminal prosecution procedure was introduced there was an increase in the number of cases rejected through dismissal. It is noteworthy that approximately 40% of such cases involved sexual crimes.<sup>291</sup> The Commission was informed that between the Judicial Police and the Prosecutors' Office, 83% of complaints are abandoned or lost, generally for lack of evidence, because the burden of proof lies with the victim. In addition, 94% of the few cases that make it beyond the preliminary stage are abandoned or lost before they reach the trial tribunal. Of the small minority of cases that went to trial, only one judgment was identified in which the victim was older than 18 years.<sup>292</sup>

349. As was noted in the handling of family violence cases, there is no protocol for dealing with or helping victims in cases of crimes against sexual integrity, and the Commission verified situations of discriminatory treatment at various stages of proceedings.<sup>293</sup>

350. At the complaints stage, the victims must wait a long time to obtain a medical certificate, and must then present their claim in writing, because verbal complaints are not accepted. The facts of the case have to be repeated many times without any privacy, and the victims are heard by untrained official staff who do not advise them of the means they can use to protect their health, or the precautions they must take to ensure that evidence of the crime is not lost. The little information provided is not given in native languages, which means that complaints may not be properly received or the victims properly informed.<sup>294</sup> In some cases, the victims have to prove their identity, and this constitutes an additional obstacle since in most cases rural women have no identification documents.<sup>295</sup>

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<sup>291</sup> Study headed by Magistrate Elizabeth Iñiguez of the Constitutional Tribunal and Justice Emilse Ardaya of the Supreme Court of Justice: Gender bias in the administration of justice. 2004; IACHR, Report: Access to Justice for Women Victims of Violence in the Americas, para. 16

<sup>292</sup> Diagnostic study on the situation of justice in Bolivia. Participation and Justice Network. November 13, 2006. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations; Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 111.

<sup>293</sup> *Ibid.*

<sup>294</sup> *Ibid.*; Study headed by Magistrate Elizabeth Iñiguez of the Constitutional Tribunal and Justice Emilse Ardaya of the Supreme Court of Justice: Gender bias in the administration of justice. 2004.

<sup>295</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 170.

351. From the time the complaint is submitted there will be repeated attempts at conciliation, without providing sufficient information to the victim. Conciliation is generally used as a mechanism for short-circuiting the judicial backlog, despite the fact that the Code of Criminal Procedure provides that reparation through conciliation does not extinguish a crime against sexual integrity. In practice, conciliation has the effect of terminating proceedings because the victim will drop the matter and, given the mistaken interpretation of the burden of proof, the prosecutor will reject the complaint and close the case, or declare it dismissed for lack of evidence.<sup>296</sup>

352. In the processing of cases, police and public prosecution officers take an attitude of skepticism about the complaint, in most cases associating sexual violence with physical violence and thereby minimizing it,<sup>297</sup> especially if the woman is an adolescent or adult.

353. The Commission received information that victims are subjected to repeated forensic medical examinations that in most cases do not respect the minimum conditions of hygiene. Moreover, the language used is too technical for the victim to understand, and she is not clearly advised of how the case is proceeding. The actions of the police betray serious errors in the collection and preservation of evidence, while the prosecutors fail to request DNA tests unless the victim is pregnant. This situation is of particular concern in that the forensic certificate demonstrating physical violence and rupture of the hymen constitutes the “trump card” of evidence, the value of which diminishes as the victim's age and her likelihood of leading an active sexual life increases, or if it shows that she was inhibited in her resistance to an act of rape.<sup>298</sup>

354. In addition to the foregoing, the geographic disparity in the location of police and prosecution offices impedes institutional coordination during the investigation, especially in rural areas where it is also difficult to find forensic medical services.<sup>299</sup>

355. On the shortcomings in the investigation of cases of sexual violence, the Commission has verified the need to consider evidence beyond medical findings of physical injury and testimonial proof when it comes to

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<sup>296</sup> Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 112.

<sup>297</sup> Study headed by Magistrate Elizabeth Iñiguez of the Constitutional Tribunal and Justice Emilse Ardaya of the Supreme Court of Justice: Gender bias in the administration of justice. 2004; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 139.

<sup>298</sup> Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 113.

<sup>299</sup> *Ibid.*, p. 110.

substantiating cases of violence against women, particularly cases of sexual violence. On this point, the Rules of Procedure and Evidence of the International Criminal Court consider factors that may inhibit a victim from physically resisting sexual aggression, even if she does not consent to the act, and how these factors may be considered in judicial proceedings.<sup>300</sup> According to those rules, these factors may include: "force, threat of force, coercion or taking advantage of a coercive environment" that have "undermined the victim's ability to give voluntary and genuine consent."<sup>301</sup> The European Court of Human Rights has indicated a series of circumstances that may inhibit physical resistance by the victim, including the atmosphere of coercion created by the aggressor, which translates into the lack of direct and testimonial evidence of sexual aggression.<sup>302</sup> This implies that forensic medical reports that are limited to physical observations, such as determining the integrity of the victim's hymen, are only part of a set of evidence that must be evaluated to clarify the facts in a case of sexual violence.<sup>303</sup>

356. With respect to the trial stage, the Commission received no further information, and State institutions recognized that neither the Prosecutors' Office nor the judicial branch have relevant statistics such as the status of cases, the number of cases resolved through summary proceedings, the number of judgments, the type of sentences, follow-up to reparations,

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<sup>300</sup> United Nations, International Criminal Court, Rules of Procedure and Evidence, UN Doc. PCNICC/2000/1/Add.1 (2000), Rule 70. The Rules establish that:

"In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:

- (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- (b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- (c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;
- (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness."

<sup>301</sup> United Nations, International Criminal Court, Rules of Procedure and Evidence, U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 70.

<sup>302</sup> *MC vs. Bulgaria*, European Court of Human Rights, Application 39272/98, Judgment of March 4, 2004, paras. 178-184.

<sup>303</sup> Patricia Esqueteni and Jacqueline Vásquez, Report: Gender and the Reform of Criminal Procedure – Ecuador, November 2004.

among other aspects, that would allow measures to be taken to address the problems presented in this stage.<sup>304</sup>

357. On this point, the Commission reiterates its previous assertion that, given the public interest in statistical information on the problem of violence against women, states must have appropriate legal and administrative mechanisms for guaranteeing broad access to such information, and must establish means for publicizing it and fostering debate and public scrutiny over policies in this area.<sup>305</sup>

#### **E. Other forms of discrimination**

358. In addition to the problems detailed to this point, the Commission learned of other events that reflect clear discrimination against women.

359. The Commission received reports on *de facto* distinctions in the exercise of economic, social and cultural rights by women. With respect to the right to work, as indicated in the introduction, women and juveniles are placed in the same category in labor legislation, where there are still rules cast in discriminatory language that in practice is the cause of continuing discrimination against women's opportunities in the labor market.<sup>306</sup>

360. There are complaints that gender has a direct impact not only on women's occupational hierarchy but on their incomes, which may be up to 50% lower than men's incomes in both urban and rural areas,<sup>307</sup> regardless of their levels of education. In particular, women in the countryside earn 29% of what men earn.

361. Civil society organizations reported that men continue to dominate management positions in government and in business: 69% of management positions are occupied by males, compared to 31% for women.

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<sup>304</sup> Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006. USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas, p. 109.

<sup>305</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 44.

<sup>306</sup> Committee for the Elimination of Discrimination against Women. CEDAW/C/Bol/2-4. Consideration of reports submitted by states parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 41; see also articles 58 to 63 of the General Labor Act.

<sup>307</sup> Report on the status of the economic, social and cultural rights of women in Bolivia. Women's Coordinating Office. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 271.

362. When it comes to education, female illiteracy rates are more than 100% higher than those for men, according to the 2001 census.<sup>308</sup> Among the restrictions on women's access to education, there were complaints that girls are required to assist in the daily housework; family members attach little importance to women's education; and the geographic isolation of many rural villages forces girls to travel long distances to reach school. With respect to access to land ownership, there are differences in the awarding of title to men and women: 24% of men have property title, and only 6% of women.<sup>309</sup>

363. On the right to health, the Commission learned that Bolivian women are severely misinformed about their sexual and reproductive rights. The maternal mortality rate is still among the highest in the continent, and is especially severe in rural areas. The main causes of maternal mortality are obstetrical complications, hemorrhaging, and infections.

364. Figures on reproductive rights indicate that two women die in Bolivia every day from complications during pregnancy, birth and the postnatal period. The maternal mortality rate is the highest in South America; 58% of births are high-risk; of every 91 women of childbearing age, one will die from maternity causes during her fertile life; in rural areas, one of every 44 women of childbearing age may lose her life due to maternity; women with no education have 6.8 children in comparison to 2.1 for women with higher education; 40% of births over the last five years were unwanted; approximately 22% of the Bolivian population would like to have some form of birth control, but has no access to it; Bolivian teenage girls have the highest fertility rates in the region, one out of every three women 19 years of age has been pregnant once; of the 21% of teenage girls who declare themselves sexually active, only 1.6% use a contraceptive method; and seven out of 10 women are never tested for cervical cancer.<sup>310</sup>

365. To address these problems, which continue to affect women, the Sexual and Reproductive Rights Act was approved on May 5, 2004. In the Commission's opinion, this could constitute an important instrument for mitigating the situations described above. The Commission regrets, however, that the promulgation and subsequent implementation of this law, adopted by the legislative representatives of all sectors of society, has been obstructed. The Commission hopes that this law can be enacted soon given its relevance for protection of women rights.

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<sup>308</sup> *Ibid.*, p. 280, Tables 39 and 40.

<sup>309</sup> *Ibid.*, p. 283.

<sup>310</sup> Marie Stopes International. Bolivia. Report on the increase in fundamentalist religious activities in Bolivia and repercussions on human rights. Special Report for the Inter-American Commission on Human Rights. November 16, 2006.

**F. Recommendations**

366. By virtue of the foregoing, the Commission recommends that the Bolivian State:

1. Enforce existing national legislation and policies to protect women against acts of violence and discrimination, and their political, economic and social consequences, and allocate sufficient funding to enforce them effectively throughout the country.
2. Design a comprehensive and coordinated policy, with sufficient public funding to permit continuity, to ensure that the victims of violence have full access to adequate judicial protection to remedy their suffering and to prevent, investigate, punish and provide reparations for acts of violence.
3. Implement measures and publicity campaigns targeted at the general public, on the duty to respect women's civil, political, economic, social, cultural, sexual and reproductive rights; on the judicial services and remedies available for women whose rights have been violated; and on the legal consequences for the perpetrators.
4. Develop educational programs for citizens, starting at a young age, to promote respect for women as equals and to recognize their particular needs as women, and to respect their right not to suffer violence and discrimination.
5. Identify and institutionalize new forms of training for public employees in all sectors (justice, security, health and education) that will include a comprehensive approach to women's right to live free of violence and discrimination, and the need for public servants to respect women's physical and psychological integrity, in the exercise of their functions.
6. Ensure effective enforcement of laws that guarantee women's participation in public affairs, and take the steps necessary to prevent and punish any act of discrimination against women who accede to public office, in all circumstances.
7. Create and strengthen systems for recording statistical and qualitative information on incidents of violence against women within the systems for the administration of justice. Strengthen the recording of cases of violence against women to guarantee that such records are uniform, accurate and transparent.

8. Strengthen the institutional capacity of judicial bodies, such as the Prosecutors' Office, the police, the courts and the tribunals, and the forensic medical services, in terms of both human and financial resources, to combat the pattern of impunity in cases of violence against women, through effective criminal investigations followed by appropriate judicial action, thus guaranteeing proper punishment and reparations. This will involve the purchase of the necessary technical equipment to conduct chemical and forensic tests, as well as all the evidence required to clarify the facts investigated.
9. Take immediate steps to provide effective training about women's rights to all public officials involved in handling cases of violence against women (including prosecutors, police officers, judges, court-appointed lawyers, administrative officials and forensic medical professionals) so that domestic and international standards can be applied for prosecuting these crimes, and so that the integrity and dignity of victims and their relatives will be respected when they complain of such events and during their participation in the judicial process.
10. Take steps to institutionalize cooperation and the exchange of information among the authorities responsible for investigating acts of violence and discrimination, in particular between the Prosecutors' Office and the police.
11. Design protocols to facilitate and promote effective, uniform and transparent investigation of acts of physical, sexual and psychological violence, including a description of the complexity of the evidence, and a detail of the minimum proof that must be compiled to substantiate charges, including scientific, psychological, material and testimonial evidence. It is important to encourage multidisciplinary investigation of such crimes.

## CHAPTER VI

### RIGHTS OF CHILDREN<sup>311</sup>

#### A. Introduction

367. During its visit, the Commission held meetings with civil society organizations working specifically on the rights of children in Bolivia. They provided the Commission with information on situations relating to this issue that are serious enough to be mentioned here.

368. In general, the Commission takes a positive view of the legal framework for the rights of the child. Bolivia is party to the United Nations Convention on the Rights of the Child. In addition, the Constitution establishes (Article 199) that the State has the duty to protect the physical and mental health of children and to defend their rights to a home and to education, provisions that were regulated by the Juvenile Code (*Código del Niño, Niña y Adolescente*) of 1999. Nevertheless, some aspects of that Code call for some remarks as made in this section.

369. The Commission recognizes the recent efforts that the current government has made, such as using funds from the nationalization of hydrocarbons to create the "Juancito Pinto Bonus," which pays 200 bolivianos to the parents of children in grades one to five for use in their education and for the purchase of school materials.

370. Despite those initiatives the Commission observed that children in Bolivia continue to be victims of human rights violations, affecting their civil and political rights as well as economic, social and cultural rights.

371. With respect to the latter rights, the Commission learned that in 2005 there were approximately 500,499 children and adolescents who were denied the right of access to formal public education because there was no space for them in the schools.<sup>312</sup> The Commission reminds the Bolivian State that, according to the duty to accord special protection to children, pursuant to Article 19 of the American Convention, interpreted in light of the Convention on the Rights of the Child and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural

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<sup>311</sup> For purposes of this report, as determined by the Inter-American Court in its Advisory Opinion 17, "child" refers to any person who has not yet turned 18 years of age. Inter-American Court, *Juridical status and human rights of the child*, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, para. 42.

<sup>312</sup> Report on the situation of the rights of children and adolescents. Children's Defense International – Bolivia. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy, and Development, p. 205.



Rights, taken in relation with the duty for progressive development contained in Article 26 of the Convention, States must provide free primary education for all children, in an environment and under conditions conducive to their full intellectual development.<sup>313</sup>

372. The Commission also notes that the Education Reform Act and its implementation have given priority to teaching the indigenous language in rural areas. Nevertheless, given the structural situation of discrimination to which indigenous peoples are still subjected, parents are reluctant to do have their children receive such education because of the implications for exercise of their rights, especially in the cities.

373. The Commission highlights that measures taken for the progressive development of economic, social, and cultural rights must include comprehensive policies aimed at solving problems that restrict access to schools, perpetuate discrimination, and affect educational quality—problems which have historically affected children's access to the right to education.

374. The Commission is also concerned at the persistent high rates of child mortality, particularly in rural areas, as the result of precarious living conditions. According to information received, one-quarter of the population of children under the age of three years suffers from chronic malnutrition, and this rate is particularly high among those who live in rural areas.<sup>314</sup>

375. Civil society organizations also complained that, in general, interpersonal relations between adults and children continue to be relations of power and in many cases of violence, expressed in physical, psychological and sexual mistreatment.<sup>315</sup> A step forward in this area is the creation of the Ombudsman's Offices for Juveniles. Nevertheless, the Commission found that there are still problems with the coverage of the service and the stability of its personnel, since they depend on municipal governments for their funding.<sup>316</sup> The Commission observes that, although both the norms of the Juvenile Code and the Law against Domestic and Family Violence recognize the right to the humane treatment of children, such codes do not protect them effectively against all forms of violence since they contain provisions that sanction acts of violence only when they can be shown to be "an abuse of corrective or disciplinary measures."<sup>317</sup> This can be interpreted as allowing forms of violence

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<sup>313</sup> I/A Court H. R., *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 185.

<sup>314</sup> Report on the situation of the rights of children and adolescents. Children's Defense International – Bolivia. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy and Development, p. 207.

<sup>315</sup> *Ibid.*, p. 203.

<sup>316</sup> *Ibid.*, p. 203.

<sup>317</sup> Law No. 1674, Law Against Violence in the Family. Article 6. 15 December 1995.

that, because they are deemed to be used within the family for disciplinary reasons, remain invisible, contrary to the prohibition of corporal punishment against children.

376. The Commission was concerned to note that, despite the importance of the issue, there is little official information available on the rights of children in Bolivia and the measures taken to guarantee their exercise. For this reason, it will limit its considerations to the information provided by civil society on the following topics: right to legal recognition; child labor, trafficking and sexual exploitation; and justice.

#### **B. The right to legal recognition**

377. The 1999 Juvenile Code provides that "every child shall be registered in the civil registry and shall receive the corresponding certificate, free of charge, immediately after its birth, and shall have the right to bear a name that shall not be grounds for discrimination under any circumstances."<sup>318</sup> While that provision establishes no condition for its implementation, the Commission received information that a presidential decree of April 2002 rules that only those born as of January of that year would be eligible for free registration.

378. The Commission was concerned to note that this restriction has been reflected in continuing high numbers of children who are not registered. The Commission was informed that two out of every three children have no birth certificate.<sup>319</sup>

379. The Commission considers it essential for the State to provide children with the special protection due them in view of their status as developing beings and therefore to give priority to this problem, for the lack of civil registration for children has real consequences for their ability to exercise their rights: the protections and guarantees established for children in the Constitution and in international instruments are a dead letter for those who have no identity documents.

#### **C. Child labor, trafficking and sexual exploitation**

380. In keeping with international human rights standards, children have labor-related rights, the protection and exercise of which required increased protection. For example, the United Nations Convention on the Rights of the Child requires States to set the minimum age for work and to

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<sup>318</sup> Article 97.

<sup>319</sup> Report on the situation of the rights of children and adolescents. Children's Defense International – Bolivia. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy and Development, p. 193.

regulate the hours and conditions of work.<sup>320</sup> Likewise, ILO Convention 138 on the minimum working age establishes that the working age must be determined by States and that in no case may it be less than 15 years, or 14 years if certain conditions set forth in that instrument are met.<sup>321</sup> In the same context is ILO Convention 182 on worst forms of child labour<sup>322</sup>. In effect, in Bolivia the General Labor Act<sup>323</sup> and the Juvenile Code<sup>324</sup> establish the minimum working age at 14 years.

381. Notwithstanding that regulation, the conditions of poverty and extreme poverty in Bolivia are such that many children find themselves in the labor market<sup>325</sup> under conditions incompatible with their physical and mental development. The 2001 census showed that there were about 370,993 children between the ages of seven and 18 years working in Bolivia. The Commission noted that this estimate was sharply criticized by civil society organizations, which place the figure at more than 800,000. As the Commission was informed, the most common areas of child labor are agriculture, commerce, private domestic service, and manufacturing, in descending order.<sup>326</sup>

382. Various civil society organizations report that the greatest percentage of child workers are engaged in marginal activities of the informal economy, with minimum pay, long workdays, and no social benefits, in complete disregard of the provisions in the Juvenile Code. The Commission received complaints that the special protection of child labor legislation is inoperable because there are no policies to enforce it.<sup>327</sup>

383. Figures provided by civil society organizations show that in the seven municipalities where the small-scale mining industry is concentrated, there are approximately 3,800 children engaged in this hazardous work, accounting for 10% of the mining workforce.<sup>328</sup>

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<sup>320</sup> Convention on the Rights of the Child, Article 32.

<sup>321</sup> Convention 138 of 1973 of the International Labor Organization concerning the Minimum Age for Admission to Employment. Articles 2.3 and 2.4. Bolivia ratified this international instrument on June 11, 1997.

<sup>322</sup> Ratified by Bolivia on June 6, 2003

<sup>323</sup> Article 58.

<sup>324</sup> Article 126.

<sup>325</sup> Report on the situation of the rights of children and adolescents. Children's Defense International – Bolivia. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy and Development, p. 194.

<sup>326</sup> *Ibid.*, p. 195.

<sup>327</sup> *Ibid.*, p. 198.

<sup>328</sup> *Ibid.*, p. 200.

384. The Commission also received reports of Guaraní children working with their fathers on farms in the departments of Santa Cruz, Tarija and Chuquisaca, as detailed above (paragraphs 259 and 262), and that children move about with their families for harvesting sugarcane, an activity that reportedly employs more than 30,000 people every year, including nearly 7,000 children.<sup>329</sup> The Commission observes with concern that the forms of labor conducted by children primarily in rural areas and agriculture constitute forms of forced labor analogous to practice of slavery<sup>330</sup>.

385. These data are of particular concern to the Commission, as is the absence of any meaningful official information on this issue, because it leaves unrecognized a problem that is deeply rooted in the culture of Bolivian society, where it is considered normal to have children working at very young ages. In effect, the Commission was told that child labor constitutes an important portion of household incomes for families in this situation.<sup>331</sup>

386. With respect to the sale and trafficking of children, the scanty information available suggests that in the cities of La Paz, El Alto, Cochabamba and Santa Cruz there are approximately 1453 boys and girls between the ages of 11 and 17 who are victims of commercial sexual exploitation.<sup>332</sup> The situation is worse in the case of girls. According to information received, an average of 45 to 50 children between the ages of 12 and 16 are recruited in the departments of Beni, Pando, Cochabamba and Santa Cruz for purposes of prostitution in the city of La Paz.

387. The Commission is profoundly concerned that, despite studies conducted by various organizations that have verified the existence and the steady growth of this phenomenon in Bolivia, the data available are sketchy and incomplete and show that the issue is not a government priority. In effect, there is no information on measures taken by the State to prevent and investigate this situation, although Bolivia is party to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography,<sup>333</sup> and these are classed as crimes in the Criminal Code.

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<sup>329</sup> *Ibid.*, pp. 200-201.

<sup>330</sup> With that respect: Article 3 of the Covenant 182 of the ILO ratified by Bolivia June 6, 2003 states that: "For the purposes of this Convention, the term ***the worst forms of child labour*** comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict..."

<sup>331</sup> Report on the situation of the rights of children and adolescents. Children's Defense International – Bolivia. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy and Development, p. 199.

<sup>332</sup> *Ibid.*, p. 202.

<sup>333</sup> Bolivia ratified this international instrument on June 3, 2003, as of which date it was obliged to take special measures to prevent and punish conduct of this kind.

388. The Commission reminds the Bolivian State that, by virtue of Article 19 of the American Convention, it is obliged to take special measures of protection in favor of children under its jurisdiction, both with respect to the enjoyment of their rights and the special consideration they require in their situation of vulnerability.<sup>334</sup>

#### **D. Justice**

389. The Commission noted certain aspects relating to the application of criminal justice to children in Bolivia. In the first place, the Juvenile Code provides that, as of the age of 16 years, a child may be held responsible for criminal offenses it commits. Children between the ages of 12 and 16 years are deemed to have "social responsibility" and may be subjected to social and educational measures ordered by the Juvenile Courts, but not to criminal punishment. As well, persons between the ages of 16 and 21 years who are tried and convicted enjoy the protection of special legislation for children and adolescents.<sup>335</sup>

390. The application of criminal justice to children under the age of 18 years does not necessarily conflict with international standards, provided all the requirements of due process are observed, and the special guarantees established in Article 40 of the United Nations Convention on the Rights of the Child, which Bolivia has ratified.

391. The Commission noted that, although domestic legislation requires criminal prosecution and judgment of juveniles by special authorities different from the ordinary criminal courts, in practice children between the ages of 16 and 18 years are processed and tried by the same courts as adults. On this point, the Inter-American Court, in its Advisory Opinion 17, referring to Article 40.3 of the Convention on the Rights of the Child<sup>336</sup> as a criterion for interpreting Article 19 of the American Convention, has held that persons under the age of 18 who are charged with a crime must be investigated and tried by special authorities created for that purpose.<sup>337</sup>

392. The Commission also received information that, in practice, preventive detention is widely used for children between the ages of 16 and 18 years. Although the Penal Execution and Supervision Act contains a whole

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<sup>334</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 87-91.

<sup>335</sup> Report on the implementation of the criminal procedure reform process in Bolivia. City of La Paz. Justice Studies Center of the Americas. Participation and Justice Study Center. 2004.

<sup>336</sup> Convention on the Rights of the Child. Article 40.3: "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law."

<sup>337</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 109.

chapter on special protection in the preventive detention of children, the Juvenile Code allows preventive detention for 45 days, and establishes as one of the criteria for such detention a determination by the court that the child poses a "public threat."<sup>338</sup> In addition, there are no special detention centers for juvenile delinquents that offer conditions for their reeducation,<sup>339</sup> as indicated above (paragraph 197).

393. The Commission reiterates that, consistent with international standards, the detention of children must be exceptional.<sup>340</sup> With respect to preventive detention, the Commission notes that international jurisprudence is consistent in holding it as an exceptional measure that must respond exclusively to procedural purposes, and this interpretation takes on special importance for children who, by their condition, are at greater risk. A rule that applies "public threat" as a factor in determining preventive detention for children is incompatible with international standards.

394. This situation is worsened by procedural delays in these cases, caused by budgetary and personnel shortages both in the Ombudsman's Office for Juvenile, which operate as a branch of the Juvenile Courts, and in those courts themselves.<sup>341</sup> On this point, the Inter-American Court referred in its advisory opinion to the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty in the sense that preventive detention of juveniles must be limited to exceptional circumstances and, if applied, juvenile courts and investigative bodies must give the highest priority to the most expeditious processing of such cases.<sup>342</sup>

#### **E. Recommendations**

395. By virtue of the foregoing, the Commission recommends that the Bolivian State:

1. Give priority to implementing policies for preventing the situations described in this section and others that constitute

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<sup>338</sup> Juvenile Code of Bolivia, Article 233.4.

<sup>339</sup> Eighth Report of the Ombudsman to Congress – 2005, p. 170; Study headed by Magistrate Elizabeth Iñiguez of the Constitutional Tribunal and Justice Emilse Ardaya of the Supreme Court of Justice: Gender bias in the administration of justice. 2004.

<sup>340</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 19.

<sup>341</sup> Study headed by Magistrate Elizabeth Iñiguez of the Constitutional Tribunal and Justice Emilse Ardaya of the Supreme Court of Justice: Gender bias in the administration of justice. 2004.

<sup>342</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17; United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, adopted by the General Assembly by Resolution 45/113 of December 14, 1990. Rule 17.

gross violations of the human rights of Bolivian children, through a clear analysis of the situation that afflicts this sector of society.

2. Guarantee access to the civil registry free of charge, as established in the Constitution, and take steps to identify all children who have been prevented by various means from obtaining an identity document.
3. Take all steps necessary to expand the coverage of public education as far as possible, both in terms of access and in terms of educational continuity and quality.
4. Adopt measures to expand the coverage of the Juvenile Defenders' Offices and other institutions provided for in legislation, both for protection and for the prevention, investigation and punishment of crimes of all kinds committed against children.
5. Adopt all necessary measures to ensure that children are protected from all forms of violence, making certain that national norms do not include any ambiguous wording, for example, "abuse of corrective measures" or "discipline" or "disciplinary," since such terms raise doubts about the criteria used to determine when corrective measures are excessive and are included in the framework of prohibited actions as corporal punishment against children. In their place, it must be established clearly that the corporal punishment against children is prohibited.
6. Design policies to eradicate rural and urban labor for children under the age of 14 years, and to enforce the rules that allow the employment of persons under 18 years, with respect to social rights and restrictions on working hours and activities performed.
7. Take immediate steps to prevent and eradicate all forms of sexual exploitation of children, and to investigate and punish such conduct. To this end it will be essential to take steps for the effective enforcement of existing legislation.
8. Ensure that, in applying the so-called "social responsibility" or criminal liability of juveniles, deprivation of liberty is imposed only as a last resort, and that the necessary measures are taken to create establishments for the reeducation of children in this situation.

9. Take steps necessary to grant special guarantees of due process enshrined in domestic legislation, in accordance with international standards, and in particular the effective implementation, with the widest possible coverage, of specialized courts for determining the criminal liability of children.
10. Repeal the provisions of the Juvenile Code that establish "public threat" as grounds for preventive detention of children. The State must guarantee that this measure is used only exceptionally and for exclusively procedural purposes.





## CHAPTER VII

### RIGHTS OF ASYLUM SEEKERS

#### A. Introduction

396. During its visit the Commission held meetings with civil society organizations devoted to promoting the rights of refugees in Bolivia, and it received information on certain practices that may disregard international standards in this matter.

397. Article 22 of the American Convention provides that: "(7) Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the State and international conventions, in the event he is being pursued for political offenses or related common crimes", and "(8) In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions."

398. Bolivia is party to the international instruments that sets parameters in this regard and that determines the scope and content of the previous provisions: the 1951 United Nations Convention Relating to the Status of Refugees<sup>343</sup> and its 1967 Protocol.

399. Consistent with that framework, offices of the United Nations High Commissioner for Refugees were established in Bolivia in 1980, and in 1983 Supreme Decrees 19.639 and 19.640 were issued regulating internal procedures for the institution of asylum and creating the National Refugees Commission (hereafter CONARE).

400. In 1996, Decree 24.423, the Legal Migration Regime, was promulgated, incorporating rules governing the delivery of documents to refugees, and their right to stay in Bolivia.

401. The most recent rule in this matter is Supreme Decree 28.329, now in force, which regulates all matters relating to procedures, processing and guarantees for persons seeking asylum, and prohibits the return in any manner of persons with such status.

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<sup>343</sup> Bolivia has been a party to this instrument since February 9, 1982.

**B. Guarantees of due process for asylum-seekers and the principle of no forced return**

402. Despite Bolivian regulations in this area, the Commission received complaints about their application, in three respects: (i) lack of due process in the handling of refugee applications; (ii) difficulties in obtaining identity documents; and (iii) disregard of the guarantee against forced return.

403. On the first point, the Commission learned of irregularities in the make-up of CONARE. According to the rules, in order to take decisions on a person's refugee status, the CONARE must comprise government officials, representatives of the UNHCR, and representatives of civil society. However, the Commission learned of cases in which representatives of the UNHCR and civil society were not invited, and their place was taken by representatives of the Ministry of Foreign Affairs.<sup>344</sup>

404. The Commission also received complaints that in some cases the decisions were taken in a summary manner without a hearing, meeting, interview or any other opportunity for the applicant, with the optional assistance of a lawyer, to present evidence substantiating his application.

405. The Commission also noted persistent irregularities in the notification of decisions, particularly those denying or revoking refugee status. On several occasions, the Commission was informed, such resolutions are not notified directly to the applicant, and this obviously has an impact on his ability to file appeals within the legal time limit. The use of indirect means of notification has even resulted in situations where persons learned of the resolution revoking their status only some years later, when any possibility of challenge had expired.

406. Another shortcoming is the inadequate substantiation of decisions denying or revoking refugee status, which creates confusion about the grounds for the decision and impedes the presentation of appeals. In some cases, this is compounded by problems in accessing the files on interested persons, on grounds of "confidentiality".

407. On the second aspect, there were complaints of excessive bureaucracy in processing the documentation for refugees in Bolivia, which can lead them to follow alternative routes such as engaging in informal activities that do not require proof of identity, or to use a travel document, or even to obtain falsified documents.<sup>345</sup>

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<sup>344</sup> Human Rights and the Actions of Defenders. Specialized journal of the Bolivian Ombudsman. Indigenous Rights. Year 1, No. 1. 2006.

<sup>345</sup> Report on the situation of the human, economic, social and cultural rights of refugees in Bolivia. Included in the Report of Civil Society to the United Nations Committee on Economic, Social and Cultural Rights: Situation of economic, social and cultural rights in Bolivia as of 2005. Bolivian Chapter of Human Rights, Democracy and Development, pp. 366-367.

408. On the third point, the Commission has received complaints about decisions that may be contrary to the guarantee against forced return for persons who have a well-founded fear for their lives or personal integrity. This principle is enshrined in the American Convention, and in various international instruments, and does not distinguish the form of return.

409. In this respect, the Commission reminds the Bolivian State that extradition constitutes a form of forced return and that, in the case of persons recognized as refugees, the State has the duty, within its legally established framework, to determine whether the circumstances that gave rise to such recognition still prevail, and to ensure that the person in question can defend himself and file an appeal against any decision revoking his status, preparatory to extradition.

### **C. Recommendations**

410. By virtue of the foregoing, the Commission recommends that the Bolivian State:

1. Take all steps necessary to eliminate the obstacles facing refugee applicants in Bolivia, and facilitate the processing of applications and the obtaining of identity documents, whether provisional, in the case of persons whose application is being processed, or permanent, in the case of persons already recognized as refugees.
2. Ensure strict compliance with due process in administrative procedures relating to application for refugee status or its revocation. In this respect, the State must establish mechanisms whereby the applicant may submit all the evidence he deems pertinent and present arguments in favor of recognition.
3. Ensure that decisions denying or revoking refugee status are adopted through due process, with sufficient substantiation and in full observance of the notification and publicity mechanisms that allow the interested party to present an appeal within the legally established time limits.
4. Refrain from returning a person to his country of origin, by any means, if that person has valid refugee status in Bolivia, and in all cases ensure that before any decision on his deportation or extradition is taken there is an adequate assessment of the situation of risk facing the person, using the legally established procedure for this purpose that allows the person to participate and defend himself and to file an appeal with suspensive effect.



## CHAPTER VIII

### CONCLUSIONS AND RECOMMENDATIONS

411. In this report, the Commission has identified some weaknesses in the rule of law in Bolivia and has proposed recommendations for strengthening Bolivian democracy in the context of respect for and protection of human rights. The Commission reiterates that it is necessary for the Bolivian State, during the process of social inclusion that is taking shape, to develop channels of dialogue for consensus-building and negotiation regarding the different interests and priorities existing in a multiethnic and pluricultural country, especially in the important context of the Constituent Assembly.

412. Throughout the report the IACHR has described a series of problems regarding the functioning of the Judiciary and the Prosecutors' Office which have impeded access to justice and have resulted in continuing impunity for human rights violations. Some of the problems identified have to do with difficulties in implementation of important reforms, such as the accusatorial criminal prosecution procedure, the Law against Domestic Violence, the Juvenile Code, and legal mechanisms for the protection of victims. Another aspect addressed by the Commission was the independence, impartiality, and suitability of the judicial authorities.

413. As indicated in the report, the Commission reiterates that to strengthen the rule of law it is extremely important to consolidate an efficient Judiciary and a Prosecutors' Office that will generate trust in society. To achieve that, the State must guarantee that the services offered are accessible to all sectors of Bolivian society without discrimination of any kind and are capable of responding, through adequate investigations and penalties, to past and any continuing human rights violations, including those committed by private individuals.

414. In addition to a guarantee of access to justice allowing all Bolivians to have their claims vindicated through the courts, the Commission reiterates the need for the State to adopt other kinds of preventive and protective measures to address continuing human rights violations against sectors of society that are especially at risk and/or in vulnerable situations. Such is the case for penitentiary conditions; discrimination against indigenous peoples and peasant communities regarding their right to land and their right to participate in projects relating to the development of natural resources; a complete disregard for the labor rights of persons subject to different kinds of bondage analogous to slavery, in violation of international human rights law; violence against women in the various aspects of their lives; child labor and/or child sexual exploitation, to the detriment of their development and best interests; and irregularities in refugee application procedures.

415. The Commission also reiterates that it is the State's obligation to guarantee the right to life and to humane treatment of all persons who participate in demonstrations in exercise of the right of peaceful assembly. On the other hand, the Commission insists that although State can impose reasonable limitations on demonstrators to ensure that they are peaceful or to contain those who are violent, as well as to disperse demonstrations that become violent, any measures taken must be the safest, most expeditious, and least harmful possible. All kinds of arbitrary or excessive use of force committed by State security forces and any violation of the right to life and to humane treatment by individuals involved in these events must be duly investigated and punished in order to guarantee their non-recurrence.

416. The Commission is aware that many of the aspects examined in this report are structural ones and that it is not easy to achieve a change of direction to correct them. The present report is a sign of the Commission's willingness to continue collaborating with the State in the protection of human rights in Bolivia in a democratic context. In that sense, the Commission will follow up on all the topics mentioned and on the implementation of the following recommendations:

#### **Administration of Justice**

1. Increase the mechanisms of publicity and dissemination for the rights of the citizens and the judicial actions established in the Constitution as an instrument for giving effect to them, as well as the procedures and requirements for accessing them.
2. Adopt the necessary measures to achieve the fullest possible coverage of judges, prosecutors and public defenders, using criteria based on a diagnosis of the real needs in the different areas of the country, both in terms of population and jurisdictions. These measures must include budgetary and human resources so that the respective authority will have not only a physical presence but also permanent and stable personnel.
3. Comply strictly with the procedures for appointing judges and prosecutors, established as a guarantee of independence and impartiality both in the Constitution, in the case of members of the high courts, the district Superior Tribunals, the Attorney General and the district prosecutors, and in the laws and regulations governing the judicial and prosecutorial careers in the case of other judicial authorities and the prosecutors.
4. Effectively implement the judicial and prosecutorial careers systems, and eliminate all provisions relating to hierarchy and promotion for these authorities that could increase levels of corruption in the judiciary and in the Prosecutors' Office. In

particular, ensure that entry and promotion in those careers is done through public competitions and selection based on exclusively technical criteria.

5. Strengthen the disciplinary system for judges and create coordination mechanisms with the criminal jurisdiction to fill the gaps in the law that have so far prevented effective disciplinary or criminal punishment of judicial authorities who commit acts of corruption, who contribute to procedural delay, who take decisions manifestly contrary to law, or who in general obstruct access to justice.
6. Take the necessary steps to implement the evaluations and other legal mechanisms of internal and external control, with respect both to the performance and the suitability of judicial authorities and the Prosecutors' Office.
7. Conduct a clear analysis of the shortcomings in implementation of the 1999 Code of Criminal Procedure and institute comprehensive measures that include, at least, adequate training; the distinction of investigative functions; decongestion and settlement of cases at the investigation stage; guidelines for cooperation between all authorities involved in all instances, whether police, prosecutors or judges; mechanisms to comply with procedural deadlines, notifications and the holding of public hearings within legal parameters; and implementation of measures for participation by victims and their relatives.
8. Take steps to eliminate the legal uncertainty surrounding the statute of limitations for criminal cases, and establish clearly, in accordance with international standards, that its applicability cannot be determined on the basis of whether the affected person availed himself of the remedies and mechanisms of defense that criminal procedural law provides.
9. Strengthen the National Public Defender System with particular attention to the coverage and quality of service, and to the mechanisms for the hiring and tenure of public defenders.
10. Step up investigations of forced disappearances, police and military repression of public demonstrations, and other violations of human rights, using all the means at its disposal to overcome the obstacles that have to date prevented the establishment of the truth, the identification of the material and intellectual authors of the events, imposition of the corresponding sanctions, and determination of reparations for victims and their relatives.



**Conditions of penitentiaries and rights of persons deprived of liberty**

11. Ensure that the judicial authorities apply preventive detention reasonably and in conformity with the aforementioned international standards, and that all the accused have at their disposal access to a judicial remedy to question excessive time in preventive detention.
12. Take the necessary judicial, legislative and other measures to correct the excessive application of preventive detention and the procedural delays that persist in the administration of justice. Among other measures that the State may deem pertinent, these shall include the release of all detainees who have not been sentenced within a reasonable time without prejudice to the continuation of the proceedings against them.
13. Take judicial, legislative and other measures with a view to reducing overcrowding and improving living conditions in Bolivian prisons, while ensuring that prisoners are treated with the respect due to the inherent dignity of human beings.
14. Establish effective systems to ensure that accused persons are segregated from those who have been convicted, and create mechanisms for classifying persons deprived of liberty according to sex, age, reason for detention, special needs, and applicable treatment.
15. Put an immediate halt to the practice of keeping minors under the age of 18 years, accused or convicted, in prison together with accused or convicted adults, even temporarily.
16. Adopt the necessary measures to immediately regain control of internal areas of prisons in the country, and monitor – also through serious investigations – cases of corruption observed. Also, establish special recruitment and training programs for all personnel in charge of the administration, supervision, operation and security of prisons and other places of deprivation of liberty, which must include education on international human rights standards related to prison security, the proportionate use of force, and the humane treatment of persons deprived of liberty.
17. Adopt measures with a view to improving infrastructure in those prisons where conditions are precarious and do not meet the minimum requirements with respect to drinking water, sanitary facilities, personal hygiene, floor space, light and ventilation; sufficient and adequate food; and adequate bedding.

18. Take the necessary steps to ensure that persons deprived of liberty have access to adequate medical attention, which requires the presence of a medical team sufficient in relation to the number of inmates, with the capacity to respond to medical emergencies, and the availability of medications; in particular, for immediate attention to the elderly, the sick and children living in prisons.
19. Take steps to provide and facilitate educational and working opportunities for persons deprived of liberty with a view to assisting in their reform, social readaptation, and personal rehabilitation.
20. Take the necessary measures to ensure that when children are lodged in detention centers together with their father or mother deprived of liberty, the best interest of the child is taken into account upon establishing pertinent policies, and particularly that they have access to special protection, food, health and educational services necessary for their proper development. Also, take measures to guarantee, in the same terms, the best interest of children not living in prison with the parent deprived of liberty who has custody of the child. In this context, the State shall carry out serious and diligent investigations whenever there is a complaint of sexual abuse to the detriment of persons that live in prisons.
21. Guarantee detention conditions to be controlled effectively by criminal execution judges in the case of those condemned detainees, and by criminal judges in the case of persons under preventive detention.
22. Dispose adequate and effective remedies of individual and collective nature for judicial control of overcrowding and violence conditions inside penitentiaries. Those remedies must be accessible to persons deprived of liberty, their relatives, their private or public defenders, NGOs, the Ombudsman and other competent institutions.

#### **Rights of indigenous peoples and peasant communities**

23. Take all steps necessary to eradicate any kind of discrimination based on the indigenous and/or peasant condition of persons subject to its jurisdiction, particularly in access to justice, education and health, and to the benefits of other State policies intended to increase the coverage of economic, social and cultural rights.

24. Ensure that all measures taken in connection with the right to education and health for indigenous peoples are compatible with their particular worldview and the maintenance and strengthening of their cultural identity, and that they in no way imply a form of assimilation of indigenous peoples into the non-indigenous culture.
25. Guarantee effective enforcement of the new law relating to agrarian reform, adopting the necessary measures to eliminate the obstacles cited by the Commission that have prevented access to land and territory for all sectors of Bolivian society. As part of this process, it is essential that the State bear in mind the particular relationship that indigenous peoples have with the land and that consequently, in the process of land titling, it must give priority to recognizing their ancestral lands and territories as essential for the survival of their cultural identity.
26. Incorporate the provisions of ILO Convention 169 on this issue into its domestic legislation on development projects, and adopt measures for their effective enforcement.
27. Consistent with its international obligations, guarantee the participation of indigenous peoples and affected communities in projects for the exploration and exploitation of natural resources, through prior and informed consultations designed to obtain their free consent in the design, execution and evaluation of those projects, as well as in determining benefits and compensation for damages, according to their own development priorities.
28. In the context of projects underway, implement participatory mechanisms to determine the environmental damages they may be causing and their effects on the basic subsistence activities of indigenous peoples and peasant communities living in the vicinity of such projects. If their lives or personal integrity are threatened, such projects should be immediately suspended and the appropriate administrative and criminal penalties imposed. If the projects continue, the State must guarantee that affected persons will share in the benefits from those projects, and it must determine and enforce compensation for such damage.
29. Guarantee access to an adequate and effective judicial remedy for challenging environmental damages of a collective nature so that, in addition to criminal action, there will be a mechanism of a judicial nature to obtain an immediate response in circumstances where projects are causing irreparable damage to groups of individuals.

30. Give priority to measures for eradicating forced labor and bondage, and take immediate steps to strengthen the recognition and regularization of property for persons affected by this situation, and to prevent any weakening of labor and social rights for persons working in the rural sector.
31. Conduct an immediate analysis of the situation of bondage analogous to slavery and/or forced labor in various parts of Bolivia, including data on all families and persons subjected to this form of life, the related social, cultural and psychological factors, and the various private and State players involved, particularly weaknesses in the various administrative and judicial bodies.
32. Adopt necessary measures to guarantee that recognition of community justice does not depend on the coverage or procedural workload of official justice, but stems from the pluricultural nature of the Bolivian State and from respect for the autonomy of indigenous peoples.
33. Establish, in the short term, guidelines for coordinating official justice with community justice, taking into account at a minimum the parameters set out in the respective section of this report.

#### **Rights of women**

34. Enforce existing national legislation and policies to protect women against acts of violence and discrimination, and their political, economic and social consequences, and allocate sufficient funding to enforce them effectively throughout the country.
35. Design a comprehensive and coordinated policy, with sufficient public funding to permit continuity, to ensure that the victims of violence have full access to adequate judicial protection to remedy their suffering and to prevent, investigate, punish and provide reparations for acts of violence.
36. Implement measures and publicity campaigns targeted at the general public, on the duty to respect women's civil, political, economic, social, cultural, sexual and reproductive rights; on the judicial services and remedies available for women whose rights have been violated; and on the legal consequences for the perpetrators.

37. Develop educational programs for citizens, starting at a young age, to promote respect for women as equals and to recognize their particular needs as women, and to respect their right not to suffer violence and discrimination.
38. Identify and institutionalize new forms of training for public employees in all sectors (justice, security, health and education) that will include a comprehensive approach to women's right to live free of violence and discrimination, and the need for public servants to respect women's physical and psychological integrity, in the exercise of their functions.
39. Ensure effective enforcement of laws that guarantee women's participation in public affairs, and take the steps necessary to prevent and punish any act of discrimination against women who accede to public office, in all circumstances.
40. Create and strengthen systems for recording statistical and qualitative information on incidents of violence against women within the systems for the administration of justice. Strengthen the recording of cases of violence against women to guarantee that such records are uniform, accurate and transparent.
41. Strengthen the institutional capacity of judicial bodies, such as the Prosecutors' Office, the police, the courts and the tribunals, and the forensic medical services, in terms of both human and financial resources, to combat the pattern of impunity in cases of violence against women, through effective criminal investigations followed by appropriate judicial action, thus guaranteeing proper punishment and reparations. This will involve the purchase of the necessary technical equipment to conduct chemical and forensic tests, as well as all the evidence required to clarify the facts investigated.
42. Take immediate steps to provide effective training about women's rights to all public officials involved in handling cases of violence against women (including prosecutors, police officers, judges, court-appointed lawyers, administrative officials and forensic medical professionals) so that domestic and international standards can be applied for prosecuting these crimes, and so that the integrity and dignity of victims and their relatives will be respected when they complain of such events and during their participation in the judicial process.
43. Take steps to institutionalize cooperation and the exchange of information among the authorities responsible for investigating acts of violence and discrimination, in particular between the Prosecutors' Office and the police.

44. Design protocols to facilitate and promote effective, uniform and transparent investigation of acts of physical, sexual and psychological violence, including a description of the complexity of the evidence, and a detail of the minimum proof that must be compiled to substantiate charges, including scientific, psychological, material and testimonial evidence. It is important to encourage multidisciplinary investigation of such crimes.

#### **Rights of children**

45. Give priority to implementing policies for preventing the situations described in this section and others that constitute gross violations of the human rights of Bolivian children, through a clear analysis of the situation that afflicts this sector of society.
46. Guarantee access to the civil registry free of charge, as established in the Constitution, and take steps to identify all children who have been prevented by various means from obtaining an identity document.
47. Take all steps necessary to expand the coverage of public education as far as possible, both in terms of access and in terms of educational continuity and quality.
48. Adopt measures to expand the coverage of the Juvenile Defenders' Offices and other institutions provided for in the legislation, both for protection and for the prevention, investigation and punishment of crimes of all kinds committed against children.
49. Adopt all necessary measures to ensure that children are protected from all forms of violence, making certain that national norms do not include any ambiguous wording, for example, "abuse of corrective measures" or "discipline" or "disciplinary," since such terms raise doubts about the criteria used to determine when corrective measures are excessive and are included in the framework of prohibited actions as corporal punishment against children. In their place, it must be established clearly that the corporal punishment against children are prohibited.
50. Design policies to eradicate rural and urban labor for children under the age of 14 years, and to enforce the rules that allow the employment of persons under 18 years, with respect to social rights and restrictions on working hours and activities performed.

51. Take immediate steps to prevent and eradicate all forms of sexual exploitation of children, and to investigate and punish such conduct. To this end it will be essential to take steps for the effective enforcement of existing legislation.
52. Ensure that, in applying the so-called "social responsibility" or criminal liability of juveniles, deprivation of liberty is imposed only as a last resort, and that the necessary measures are taken to create establishments for the reeducation of children in this situation.
53. Take steps necessary to grant special guarantees of due process enshrined in domestic legislation, in accordance with international standards, and in particular the effective implementation, with the widest possible coverage, of specialized courts for determining the criminal liability of children.
54. Repeal the provisions of the Juvenile Code that establish "public threat" as grounds for preventive detention of children. The State must guarantee that this measure is used only exceptionally and for exclusively procedural purposes.

#### **Rights of asylum seekers**

55. Take all steps necessary to eliminate the obstacles facing refugee applicants in Bolivia, and facilitate the processing of applications and the obtaining of identity documents, whether provisional, in the case of persons whose application is being processed, or permanent, in the case of persons already recognized as refugees.
56. Ensure strict compliance with due process in administrative procedures relating to application for refugee status or its revocation. In this respect, the State must establish mechanisms whereby the applicant may submit all the evidence he deems pertinent and present arguments in favor of recognition.
57. Ensure that decisions denying or revoking refugee status are adopted through due process, with sufficient substantiation and in full observance of the notification and publicity mechanisms that allow the interested party to present an appeal within the legally established time limits.
58. Refrain from returning a person to his country of origin, by any means, if that person has valid refugee status in Bolivia, and in all cases ensure that before any decision on his deportation or

extradition is taken there is an adequate assessment of the situation of risk facing the person, using the legally established procedure for this purpose that allows the person to participate and defend himself and to file an appeal with suspensive effect.