



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.: General
5 March 2012
English
Original: Spanish

Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

Second periodic reports of States parties due in 2004

Plurinational State of Bolivia^{*,}**

[18 October 2011]

* For the initial report submitted by the Government of the Plurinational State of Bolivia, see document CAT/C/52/Add.1, which was considered by the Committee at its 462nd, 465th and 472nd meetings, held on 3, 4 and 10 May 2001 (CAT/C/SR.462, 465 and 472). For a summary of the Committee's consideration of that report, see document A/56/44, paras. 89–98.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–3	4
II. General aspects	4–9	4
III. Articles 1 and 4 of the Convention	10–15	5
A. Article 1: Definition of torture in national legislation	10	5
B. Article 4: Proper classification as an offence	11–15	5
IV. Article 2: Adoption of effective legislative, administrative, judicial and other measures to prevent acts of torture throughout the territory under the jurisdiction of the Bolivian State.....	16–78	7
A. Legislative measures	16–37	7
B. Administrative measures	38–67	13
C. Judicial measures.....	68–78	19
V. Article 3: Non-expulsion, non-refoulement and non-extradition to other States where there are substantial grounds for believing that the person in question would be in danger of being subjected to torture	79–86	23
VI. Rules of criminal procedure with regard to cases of torture	87–127	24
A. Article 5: Establishment of jurisdiction over the offence of torture	87–88	24
B. Article 6: Rules concerning the detention of persons suspected of having committed the offence of torture	89–103	25
C. Articles 7, 8 and 12: Rules governing the prosecution of persons suspected of having committed the offence of torture	104–122	29
D. Article 9: Rules on judicial cooperation	123–127	32
VII. Article 10: Training and education for the prevention of torture	128–137	32
VIII. Articles 11 and 15: Prevention and prohibition of acts of torture in connection with criminal investigations and deprivation of liberty.....	138–149	35
A. Constitution	138	35
B. Code of Criminal Procedure.	139–141	35
C. Sentence Enforcement and Supervision Act.....	142–145	36
D. Supreme Decree No. 26715 of 26 July 2002: Regulations governing the enforcement of custodial sentences	146–147	37
E. Procedural manual on investigations conducted by prosecutors, police officers and experts.....	148–149	37
IX. Articles 13 and 14: Rights of victims of torture.....	150–161	38
A. Article 13: Access to justice	150–151	38
B. Article 14: Right to redress.....	152–161	38
X. Article 16: Cruel, inhuman, degrading and/or humiliating treatment	162	39
XI. Articles 20 and 21: Competence of the Committee against Torture	163	40

XII.	Efforts to guarantee that human rights defenders are free to enjoy their right to promote respect for human rights, report violations and defend victims	164–166	40
	Bibliography		41

I. Introduction

1. The Plurinational State of Bolivia signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 4 February 1985 and ratified it by Act No. 1939 of 10 February 1999, depositing its instrument of ratification with the Secretary-General of the United Nations on 12 April 1999.
2. Pursuant to article 19, paragraph 1, of the Convention, the Plurinational State of Bolivia submitted its initial report to the Committee against Torture (hereafter “the Committee”) in 2000. On 10 May 2001 the Committee then issued the final conclusions and recommendations that are discussed and expanded upon within the various sections of this report, which provide an accounting of the actions taken in response to those recommendations.
3. This report was prepared under the supervision of the Ministry of Justice in cooperation with various entities of the State and of civil society. The actions taken by the Government over the past 10 years are described throughout the document. While some of these actions fulfil more than one of the obligations set out in different articles of the Convention, in the interest of methodological clarity and order, they have not been repeated in each section.

II. General aspects

4. The Plurinational State of Bolivia is located in the central region of South America. It has an area of 1,098,581 km², and its political and administrative divisions consist of 9 departments (Pando, Beni, Santa Cruz, Cochabamba, Chuquisaca, Tarija, La Paz, Oruro and Potosí), 112 provinces, 337 municipalities and a number of native indigenous campesino territories.
5. According to the latest population and housing census, the country had a population of 8,274,325 in 2001. The projections made by the National Institute of Statistics indicate that by 2010 that number had risen to 10,426,154. The majority of the population (62.42 per cent) resides in urban areas, while 37.58 per cent live in rural areas.¹ The next population census is scheduled to take place in 2011.
6. According to data from the Directorate-General of Prisons, in October 2010 about 8,993 persons were being held in the 54 prisons in the country,² and some 6,970 of them (about 77 per cent of the prison population) were in pretrial detention – that is, they were not under sentence but were instead being detained as an interim or precautionary measure³ to ensure that they would stand trial.
7. Of the total prison population, 88 per cent of prisoners are male (7,935) and 12 per cent (1,058) are female; 965 are between 16 and 21 years of age (10.7 per cent), 242 are over 60 years of age (2.6 per cent), and 7,786 are between 21 and 60 years of age (86.7 per cent).⁴

¹ See www.ine.gob.bo.

² Directorate-General of Prisons, Report DGRP42/2010 of 15 October 2010.

³ Ibid.

⁴ Ibid.

8. The prison system employs 1,205 permanent and contractual security staff nationwide, and its medical staff comprises 15 doctors, 2 nurses and 5 dentists, which is too few to provide proper health care for the persons deprived of their liberty in the country.⁵

9. There are a total of 54 prisons in different locations around the country, of which 3 are maximum security, 15 are medium security and 36 are minimum security facilities.⁶

III. Articles 1 and 4 of the Convention

A. Article 1: Definition of torture in national legislation

10. The Constitution, adopted by referendum on 25 January 2009 and enacted on 7 February 2009, clearly prohibits torture and other cruel, inhuman, degrading or humiliating treatment in article 15, paragraph 1, and article 114:

Article 15. I. Every person has the right to life and physical, psychological and sexual integrity. No one is to be tortured or suffer cruel, inhuman, degrading or humiliating treatment. There is no death penalty.

Article 114. I. All forms of torture, disappearance, confinement, coercion, extortion or other form of physical or mental violence are prohibited. Civil servants or public authorities who perpetrate, instigate or consent to such actions are to be dismissed and are subject to the penalties established by law.

II. Statements, actions or omissions obtained or made through the use of torture, coercion, extortion or any other form of violence are to be automatically declared null and void.

B. Article 4: Proper classification as an offence

11. Article 295 of the Bolivian Criminal Code criminalizes torture in the following manner:

Article 295 (Ill-treatment and torture). Any official who mistreats or orders or allows the mistreatment of a person held in custody is to be punished with from 6 months' to 2 years' imprisonment.

If the official inflicts any kind of suffering or torture on a person held in custody, the penalty is to be increased to between 2 and 4 years' imprisonment.

If the torture causes injuries, the penalty is to be from 2 to 6 years' imprisonment; if it causes death, the penalty is to be 10 years' rigorous imprisonment.⁷

12. In its concluding observations concerning its consideration of the initial report of the Plurinational State of Bolivia, the Committee expressed concern about "the unsatisfactory definition of the crime of torture in the Criminal Code, which does not cover some of the situations included in article 1 of the Convention, and the mild penalty prescribed, which is not consistent with the seriousness of the crime".⁸ The Committee recommended that the

⁵ Ibid.

⁶ Ibid.

⁷ Act No. 1768 of 11 March 1997, amendments to the Criminal Code.

⁸ Concluding observations of the Committee against Torture on the initial report of the Plurinational State of Bolivia (A/56/44), para. 95.

Bolivian State should “incorporate in its criminal legislation the definition of torture set forth in the Convention, make torture a crime and stipulate penalties commensurate with its seriousness”.⁹

13. The Bolivian Government recognizes that, to date, it has not yet properly classified torture as a criminal offence in accordance with the standards set out in the Convention and that it has not yet fulfilled the Committee’s first recommendation. However, it should be noted that a definition of the offence of torture in line with the definitions established not only in the Convention, but also in the Inter-American Convention to Prevent and Punish Torture¹⁰ is currently under review. This proposed definition forms part of a draft revised version of the Criminal Code which was prepared by several international experts¹¹ and includes the criminalization of the various forms of torture, as follows:

(a) Torture committed by public officials: Any public official who intentionally inflicts severe physical or mental pain or suffering upon another person or subjects a person to conditions or methods that obliterate his or her personality or diminish the person’s physical or mental capacities, even if they do not cause pain, is to be sentenced to between 4 and 20 years’ imprisonment;

(b) If the purpose of the torture is to obtain information or a confession, to punish the individual for an act or to intimidate or coerce the person for any reason or on a discriminatory basis, then the penalty is to be from 8 to 20 years’ imprisonment. If the treatment results in the individual’s death, the perpetrator(s) will be sentenced to 30 years’ imprisonment. In all such cases, the public officials concerned are to be barred from holding a public post for a period equal to the duration of their sentence.

(c) Failure to report: Any public official, representative of the Public Prosecution Service (Ministerio Público) or judge who, in the performance of his or her duties, fails to report an act of torture within 24 hours from the time that he or she learns of it will be deemed to have committed the offence of torture, will be sentenced to from 5 to 15 years’ imprisonment and will be barred from holding his or her post for an equal length of time;

(d) Failure to duly perform one’s duties: Any public official who, owing to a lack of due diligence or failure to take the necessary precautions, allows the acts referred to in the draft revised version of the Code to be committed will be deemed to have committed the offence of torture, will be sentenced to from 6 months’ to 3 years’ imprisonment and will be barred from holding his or her post for 3 years;

(e) Torture committed by private individuals: Any individual who intentionally inflicts severe physical or mental pain or suffering upon another person or subjects a person to conditions or methods that obliterate his or her personality or diminish the person’s physical or mental capacities, even if they do not cause pain, will be sentenced to between 4 and 20 years’ imprisonment;

(f) If the purpose of the torture is to obtain information or a confession, to punish the individual for an act or to intimidate or coerce the person for any reason or on a discriminatory basis, then the penalty will be increased to between 8 and 20 years’ imprisonment. If the treatment results in the individual’s death, the perpetrator(s) will be

⁹ Ibid., para. 97 (a).

¹⁰ Act No. 3454 of 27 July 2006, instrument of ratification for the Inter-American Convention to Prevent and Punish Torture.

¹¹ Moisés Hernández Moreno, Eugenio Zaffaroni et al., *Motivos y Consultoría de Reforma al Código Penal Boliviano* (second volume), Ministry of Justice, 2009.

sentenced to 30 years' imprisonment. In all cases, the public officials concerned will be barred from holding their post for a period equal to the duration of their sentence.¹²

14. Thus, once the new Criminal Code enters into force, the definition of the criminal offence of torture will be in line with the Committee's recommendations and with the definition set out in article 4 of the Convention.

15. In accordance with article 80 of Supreme Decree No. 29894 of 7 February 2009 on the organizational structure of the executive branch of government, the Ministry of Justice, as the head of the judicial branch, has called for priority to be given to amending the legal framework in line with the Constitution. The authorities of the executive, legislative and judicial branches of the Government, as well as to the Public Prosecution Service and the Constitutional Court, have made a commitment to work on developing that legal framework, starting with the Criminal Code and the Code of Criminal Procedure, with a view to complying with the transitional provision of Act No. 025 of 24 June 2009, which provides that:

A transitional process lasting for a maximum of two years will be undertaken to align the various legal codes with Act No. 025 and to secure their adoption by the Plurinational Legislative Assembly.

IV. Article 2: Adoption of effective legislative, administrative, judicial and other measures to prevent acts of torture throughout the territory under the jurisdiction of the Bolivian State

A. Legislative measures

1. The "Bolivia: Dignity for a Good Life" National Human Rights Plan of Action 2009–2013

16. By Supreme Decree No. 29851 of 10 December 2008, the Government adopted the "Bolivia: Dignity for a Good Life" National Human Rights Plan of Action 2009–2013, which sets out the general framework of human rights-related public policies, projects and legislative reforms that the State is to implement during the period covered by the plan, both at the national level (including the executive, legislative and judicial branches) and the regional level (including departmental and municipal governments).

17. The Plan was developed by means of a highly participatory process in which the actions to be taken were determined on the basis of essentially three sources: recommendations, observations and judgements issued by international human rights law organizations within both the universal system and the inter-American system for the protection of human rights; the standards and obligations set out in the various international human rights instruments; and the needs, issues and demands put forward during the input workshops by organized civil society as represented by human rights institutions and social movements.

18. Part II, chapter I, section No. 2 of the Plan (torture), which deals with the right to physical, psychological and sexual integrity of the person, provides for the following actions:

¹² Ibid.

(a) Ratify the amendments to article 7, paragraph 7, and article 8, paragraph 5, of the Convention;

(b) Draft and promote the adoption of a law that is aligned with international standards for the prevention of torture and cruel, inhuman or humiliating treatment and for the provision of comprehensive rehabilitation services for victims;

(c) Revise the definition of torture to bring it into line with international standards;

(d) Establish a national preventive mechanism pursuant to the obligations set out in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(e) Create a public register of complaints of torture or cruel, inhuman or degrading and humiliating treatment or punishment;

(f) Disseminate the Rome Statute of the International Criminal Court and provide training on its implementation at various levels;

(g) Complete and submit the second report to the Committee;

(h) Submit the declaration recognizing the competence of the Committee under articles 21 and 22 of the Convention.

19. The Plan also includes actions related to the rights of persons deprived of their liberty, such as the following:

(a) Promote the adoption of the new Criminal Code;

(b) Draft and implement a new criminal policy with a focus on prevention and enforcement;

(c) Design a new prison policy in accordance with international human rights standards;

(d) Immediately abolish *el bote* (the boat)¹³ as a punishment for persons deprived of their liberty;

(e) In accordance with the Committee's recommendation, revise regulations and their provisions regarding punishments to bring them into line with international human rights standards;

(f) Strengthen measures to support the transition to a rights-based model of criminal justice in which detention as a precautionary measure is the exception rather than the rule;

(g) Prioritize the building of detention centres for persons in pretrial detention, special prisons and social reintegration centres for adolescents;

(h) Other actions as indicated in the Plan, which is annexed to this report.

20. In accordance with the National Human Rights Plan of Action, in July 2011 the executive branch of the Government announced the start of a transitional process whereby responsibility for the prison system will be transferred from the Ministry of the Interior to the Ministry of Justice, i.e., from a part of the executive branch related to State security to one that works to ensure respect for human rights.

¹³ *El bote*, also known as *la grulla* (the crane), among other names, is an irregular disciplinary sanction that consists of solitary confinement in an extremely cramped space for long periods of time.

21. Through the actions set out in the National Human Rights Plan of Action and described in this report, the Government has attempted to act upon the Committee's recommendations. The starting point for this effort is their incorporation into the public policies set out in the Plan, which was adopted by a supreme decree that establishes that its implementation is compulsory for all State institutions.

22. The Office of the Deputy Minister for Justice and Fundamental Rights has worked with the Human Rights Monitoring Centre to conduct an assessment of the execution of the National Human Rights Plan of Action in 2010 in order to determine the degree of implementation of human rights policies in State institutions.

2. National preventive mechanism

23. As part of its efforts to fulfil the obligations stemming from its ratification and adoption of the Optional Protocol, the Bolivian State undertook to establish a national preventive mechanism in accordance with article 3 of the Optional Protocol.

24. On 12 December 2005, the Plurinational State of Bolivia ratified and adopted the Optional Protocol by Act No. 3298. Since 2007, the Government has held a series of meetings with various civil society and State institutions with the aim of setting up a national preventive mechanism. These meetings have thus far resulted in the drafting of a bill on a Bolivian national mechanism to prevent torture and other cruel, inhuman, degrading or humiliating treatment or punishment. The Ministry of Justice, the Directorate-General of Prisons, the Ministry of Foreign Affairs, the Ombudsman's Office, and the Instituto de Terapia e Investigación sobre las Secuelas de la Tortura y la Violencia Estatal have all taken part in this effort, with the support of the Bolivian office of the United Nations High Commissioner for Human Rights.

25. In accordance with the guidelines established by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the bill was circulated in various Bolivian cities to human rights organizations, organizations of native indigenous campesino peoples, relevant State institutions and representatives of persons deprived of their liberty as a means of gathering contributions and input with a view to its future implementation.¹⁴ To date, the bill has been completed and is under review by relevant divisions of the Ministry of Justice.

3. National Public Defender Service

26. In its concluding observations, the Committee against Torture recommended that the State should adopt "measures to ensure that every person deprived of liberty exercises his/her right to a defence and receives the assistance of a lawyer".¹⁵

27. Article 119, paragraph 2, of the Constitution establishes that every person has the inviolable right to a defence. The State is to provide free legal counsel for persons accused of or charged with an offence who lack sufficient means.

28. The National Public Defender Service (SENADEP) was established by Supreme Decree No. 23253 of 31 August 1992 as part of the Office of the Under-Secretary of Justice of the Ministry of the Interior, Migration, Justice and Social Defence.

¹⁴ Various workshops were held in different departments on the following dates: on 2 July 2010 in Tarija, on 22 July in Sucre, on 29 July in Cochabamba, on 27 August in La Paz, on 3 September in Trinidad and on 21 September in Santa Cruz de la Sierra.

¹⁵ A/56/44, para. 97 (g).

29. It was subsequently converted by National Public Defender Service Act No. 2496 of 4 August 2003 into a body attached to the Ministry of Justice. Article 2 of the Act states that the aim of this institution is to guarantee the inviolability of the right to a defence by providing criminal defence services to all accused persons who lack sufficient means and to those who have not designated a defence lawyer. Pursuant to article 3, this defence service is to be provided starting from the first stage in criminal proceedings and continuing until a judgement has been handed down; it is also to be made available while such persons file and pursue the successive appeals provided for by law.

30. SENADEP is currently staffed by a team composed of 1 national director, 9 district directors (1 for each department in the country), 54 public defenders, 9 assistant lawyers and 4 social workers distributed across 9 offices in the department capitals, in addition to 8 rural public defender services.

31. SENADEP is aware of the need to increase the coverage of its services in rural areas in order to reach the most vulnerable population groups, such as indigenous peoples and women. Thus, in 2010, pursuant to the annual operating plan for that year, it implemented the Pro-Justice: Access to Justice in Bolivia Programme, which is funded by the Danish Embassy. Under this programme, eight public defenders and three assistant lawyers were hired to provide public defender services in the municipalities of: Muyupampa (Chuquisaca); Tupiza (Potosí); Chulumani (La Paz); Villamontes (Tarija); Puerto Villarroel (Cochabamba); Mineros, San Julián (Santa Cruz); Challapata (Oruro); and Riberalta (Beni).¹⁶

32. In 2011, taking into account the priorities and needs of the inhabitants of various municipalities, provision was made in the 2011 annual operating plan to hire nine individual consultants in order to expand services in other regions of the country and strengthen operations in the areas served by the district directorates of La Paz (which covers the city of El Alto), Cochabamba and Santa Cruz. Currently, SENADEP also provides coverage for the following municipalities: Achacachi, Sica Sica, Copacabana, Caranavi and Coroico (La Paz); Sacaba (Cochabamba); Camiri, Puerto Suárez (Santa Cruz); Villazón (Potosí); and Camargo (Chuquisaca). The staff working in these areas are designated as “roving” public defenders and assistant lawyers and cover areas within the province where their services are required.

33. In 2010, SENADEP handled 62,801 cases, as detailed in tables 1 and 2.

34. As of April 2011, SENADEP had handled 5,833 cases nationwide that year, as detailed in table 3.

35. As may be seen from the tables, SENADEP has 76 staff members to handle an average of 3,000 cases per month, which indicates that there is a work overload within the service. The Government recognizes that the number of staff is insufficient, and it is taking steps to secure the funding needed in order to hire more staff so that it can expand SENADEP coverage.

¹⁶ National Public Defender Service, Internal Note SNBP-DNDP No. 40/2011 of 13 May 2011.

Table 1
Overview of cases handled by SENADEP as of December

<i>Department</i>	<i>January</i>	<i>February</i>	<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>	<i>July</i>	<i>August</i>	<i>September</i>	<i>October</i>	<i>November</i>	<i>December</i>
La Paz	732	806	808	808	887	1 058	1 101	1 185	1 402	1 397	1 564	2 486
Cochabamba	702	746	812	874	898	1 045	1 193	1 320	1 458	1 473	1 605	1 688
Santa Cruz	23	57	147	172	390	575	640	989	1 161	1 249	1 347	1 446
Oruro	142	147	244	343	372	403	522	576	869	879	899	929
Potosí	13	34	53	53	225	327	419	462	540	578	583	632
Chuquisaca	377	358	345	368	570	586	646	725	811	871	916	979
Tarija	11	19	42	42	113	179	198	232	302	355	419	487
Beni	73	66	74	116	210	232	289	385	468	488	508	534
Pando	39	66	95	191	238	276	286	292	305	315	380	436
Total	2 112	2 299	2 620	2 967	3 903	4 681	5 294	6 166	7 316	7 605	8 221	9 617

Table 2

Court cases reported to date	9 617
Constitutional actions	31
Police cases reported	8 028
Prison population	7 948
Prison population served by SENADEP	3 621

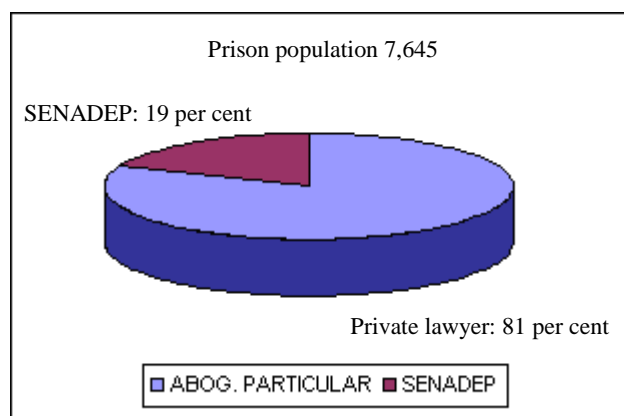
Table 3
Total number of court cases: January–April 2011

<i>Department</i>	<i>Remand in custody</i>	<i>Not remanded in custody</i>	<i>Police cases</i>	<i>Total cases</i>
La Paz	689	211	1 108	2 008
Cochabamba	213	141	332	686
Santa Cruz	352	258	380	990
Oruro	251	164	79	494
Beni	71	21	18	110
Pando	94	88	92	274
Tarija	83	191	39	313
Potosí	109	105	74	288
Sucre	147	167	356	670
Total	2 009	1 346	2 478	5 833

36. Tables 4 and 5 show the coverage of SENADEP. As may be seen, almost 20 per cent of the persons in custody or charged with an offence have the benefit of its services.

37. These data show that SENADEP provides its services throughout the country; however, the Government recognizes that coverage is still insufficient and should be expanded.¹⁷

Table 4
National coverage



SENADEP	1 434
Private lawyer	6 211
Total prison population	7 645

Table 5
Departmental coverage

<i>Department</i>	<i>Prison population</i>	<i>Persons represented</i>
La Paz	1 515	335
Cochabamba	1 815	93
Santa Cruz	2 770	279
Oruro	313	92
Potosí	222	159
Chuquisaca	174	151
Tarija	268	56
Beni	437	180
Pando	131	89
Total	7 645	1 434

¹⁷ National Public Defender Service (SENADEP), statistical paper, 2010.

B. Administrative measures

1. Medical care in detention centres

38. In its 2012 annual operating plan, the Ministry of the Interior, working through the Directorate-General of Prisons and in coordination with the Ministry of Health and departmental health services, provides for the allocation of medical resources, including equipment and medicines, to the country's prisons. The level of those allocations is such that it should enable them to offer care equivalent to that available in first-level health-care facilities.¹⁸

39. The Directorate-General of Prisons of the Ministry of the Interior has been acquiring essential medicines for the treatment of inmates in accordance with the requirements of the departmental prison directorates. These directorates are allocated supplies of medicines, which are charged to their operating budget on a monthly basis, in line with the budget assigned to the Directorate-General of Prisons.

40. In addition, the Ministry of the Interior, working through the Directorate-General of Prisons and in collaboration with the HIV/AIDS and anti-tuberculosis programmes conducted by the Ministry of Health and representatives of the World Health Organization, will conduct follow-up and undertake an assessment of the status of these services in the nation's prisons. Agreements will be signed with NGOs, churches and other stakeholders to improve the quality of information provided on sexual and reproductive health, sexually transmitted infections, HIV/AIDS, etc.

2. Protocols on care for torture victims

41. In Note FGE/IDIF-468/10, the Forensic Investigation Institute reported that no medical protocols on care for torture victims are currently in place, but that the Institute is in the process of formulating a draft protocol on care for victims of sexual violence and a draft protocol on wound analysis, both of which will address the specific subject of assessing and reporting cases of torture and other cruel, inhuman and degrading treatment.¹⁹

3. Directorate-General of Prisons

42. The Directorate-General of Prisons was established in accordance with article 33, paragraph II, of Supreme Decree No. 29894 of 7 February 2009, which outlines the organizational structure of the executive branch of the Government and lists the Directorate-General of Prisons as one of the directorates-general that are attached to the Ministry of the Interior.

43. Article 46 of Sentence Enforcement and Supervision Act No. 2298 stipulates that, as the administrative body of the prison system, the Directorate-General of Prisons is to report to the Office of the Deputy Minister for Justice and Fundamental Rights. The Directorate-General is therefore to be transferred to the Ministry of Justice in 2012.

44. The Directorate-General of Prisons has identified the following tasks as the principal challenges for the Prison Service at the national level:

(a) The construction of new prisons with infrastructure that meets the requirements of the prison population in each department of the country;

¹⁸ Ministry of the Interior, Note DMG 0644/2011 of 20 May 2011.

¹⁹ Forensic Investigation Institute, Note FGE/IDIF-468/10 of 10 August 2010.

(b) The reinforcement of policies on psychological services, employment and education aimed at promoting the social reintegration of persons deprived of their liberty.²⁰

45. To address these challenges, the Directorate-General has adopted the following management policies:

- (a) Prisons infrastructure improvement policy;
- (b) Prison security equipment policy;
- (c) Policy for reducing the number of persons in pretrial detention;
- (d) Detainee segregation and classification policy;
- (e) Social, psychological, employment and educational reintegration policy.²¹

4. Prison infrastructure

46. Among the main problems that the Bolivian Government faces in relation to persons deprived of their liberty are the substandard infrastructure and extreme overcrowding found in the country's prisons. The solutions for these problems are primarily financial in nature, and the country's budgetary situation makes their resolution difficult.

47. To help alleviate the problems described in paragraph 24 of this report, the Directorate-General of Prisons has planned to bring several new prison facilities into service before the end of 2011. The facilities due to be completed are:

- (a) Yacuiba Prison (completion);
- (b) Montero Prison, phase 3 (completion);
- (c) Palmasola Prison, blocks B and C (completion);
- (d) Oruro, perimeter wall (construction);
- (e) Qalauma Prison, women's block (completion).

48. The Qalauma Pilot Rehabilitation Centre for Young Offenders opened on 22 February 2011. The call for tenders for the design of a new prison in Chonchocoro, La Paz, has also been issued.

49. Before the end of 2011, refurbishment and extension work is due to be completed at the following prisons:

- (a) In La Paz Department:
 - San Pedro Prison
 - Chonchocoro Prison
 - Miraflores Prison
 - Obrajes Prison
- (b) In Cochabamba Department:
 - Quillacollo Prison
 - San Antonio Prison
 - San Sebastián Men's Prison

²⁰ Directorate-General of Prisons, Note DGRP/553/2010 of 17 May 2010.

²¹ Ibid.

- (c) In Tarija Department:
 - Morros Blancos Prison
- (d) In Pando Department:
 - Villa Busch Prison
- (e) In Santa Cruz Department:
 - Palmasola Prison
 - Puerto Suárez Prison
 - Montero Prison
- (f) In Beni Department:
 - Mocoví Prison
 - Riberalta Prison
- (g) In Chuquisaca Department:
 - San Roque Prison
- (h) In Oruro Department:
 - San Pedro Prison
- (i) In Potosí Department:
 - Punata Prison²²

50. The construction, refurbishment and renovation work at these prisons will help alleviate overcrowding in Bolivian prisons. However, the Bolivian authorities recognize that further work will be needed if the problem is to be totally eliminated.

5. Establishment of a public register of persons deprived of their liberty and of complaints of torture

51. In its concluding observations of 2001, the Committee urged the Bolivian State to adopt “the necessary legal and administrative measures to set up a national public register of persons deprived of liberty” and to take action to “set up a centralized public register of complaints of torture and ill-treatment and of the results of the investigations”.²³

52. The Government has encountered serious difficulties in its efforts to fully implement these two recommendations; consequently, there is as yet no single public registry of persons deprived of their liberty or of complaints of torture.

53. However, progress has been made in introducing legislative provisions that have helped to mitigate this shortcoming. For example, article 23, paragraph 6, of the Constitution states that the authorities in charge of places of detention must maintain a register of persons deprived of their liberty. Such authorities must not admit any person without entering a copy of the respective warrant into the register. Failure to do so will result in prosecution and penalties as provided by law.

²² Ibid.

²³ A/56/44, para. 97 (c) and (e).

54. The Code of Criminal Procedure establishes the following:

Article 296 (Arrest). In instances where, under the terms of the Code of Criminal Procedure, authorization is given for an arrest, police officers must abide by the following basic rules:

...

8. Enter the place, date and time of the arrest in a permanent record.²⁴

55. Sentence Enforcement and Supervision Act No. 2298 states as follows:

Article 21 (Registry of arrivals). Upon arrival, inmates must be registered and a numbered personal file containing the following information must be opened:

1. The reason for their detention and the supporting legal documents;
2. Their procedural status, along with the name of the court, the date of arrest and, where applicable, the stage reached in the proceedings.

Inmates must be informed of their right to provide the names and addresses of family members and other parties close to them so that they may be kept apprised of the inmates' state of health and any decisions regarding their transfer. This information must appear in the register.

The register must be continuously updated to include all decisions issued while a sentence is being served.

The information contained in the personal file must be provided to third parties only upon presentation of a court order or a written request from the inmate.

Article 42 (Petitions and complaints logbook). Oral and written petitions and complaints submitted by inmates, along with the decisions taken in each case, must be registered in the petitions and complaints logbook.

The logbook entry must contain:

1. The inmate's name and signature;
2. The name of the authority to whom the complaint is directed;
3. The date of submission;
4. The substance of the complaint;
5. The name of the official who receives the complaint or petition; and
6. The name of the authority who decided what action was to be taken in connection with the complaint or petition and the date and manner in which it was resolved.

Article 59 (Duties). The Director of the prison has the following duties:

...

9. Keeping the prison records up to date;
10. Keeping the petitions and complaints logbook up to date and sending a copy to the Ombudsman on a quarterly basis;

...

²⁴ Act No. 1970 of 25 March 1999, Code of Criminal Procedure.

12. Ensuring strict compliance with temporary release and return arrangements for inmates;

...

14. Providing the Ombudsman with daily reports on new arrivals and the legal status of those inmates.

Article 124 (Logbook). All cases of misconduct and resulting penalties or punishments must be recorded chronologically in a logbook with sequentially numbered pages. Separate records must be maintained for persons convicted of an offence and persons in pretrial detention. All penalties and punishments must be recorded in the inmate's personal file. The information contained in the logbook may be provided to third parties only upon presentation of a valid court order.²⁵

56. Existing criminal legislation provides that logbooks should be kept, and every prison has its own logbook. However, the data in these logbooks are not publicly available nationwide as yet. (The number of persons deprived of their liberty is known, however.)

57. According to data from the Directorate-General of Prisons, as of the end of the first half of the year, about 6,609 persons were being held in Bolivian prisons.²⁶

58. In the past five years, 85 people have died in police stations: 22 in 2006, 9 in 2007, 22 in 2008, 26 in 2009, and 6 as of May 2010. The cause of death in those cases has not been declared.²⁷

59. The National Directorate of Prison Security has indicated, on the basis of reports prepared by the various police districts at the departmental level, that from 2009 to 2010 about 20 complaints were received of alleged torture or cruel, inhuman or degrading treatment. Persons who had been deprived of their liberty lodged these complaints with such bodies as the Permanent Human Rights Assembly, the Ombudsman's Office and the National Public Defender Service. The available information indicates the number of complaints but not the outcome (that is, whether an investigation was initiated, whether the complaint was referred to the Public Prosecution Service or whether those allegedly responsible were punished).²⁸

60. In addition to the data provided by the National Directorate of Prison Security, the Prosecutor-General's Office (Fiscalía General del Estado) has an I3P computerized registration system which indicates the various offences involved in each case, the prosecutor assigned to each case, the status of the investigation or the trial, the name(s) of the accused or defendant(s), the name(s) of the victim(s) and a brief statement of the facts. This system, in use since 2006, shows that 23 cases relating to article 295 of the Criminal Code (ill-treatment and torture) have been tried since 2007.²⁹ The corresponding list can be found in the annex to this report.

61. The Office of the Deputy Minister for Justice and Fundamental Rights, which is attached to the Ministry of Justice, has worked with the National Public Defender Service to conduct a survey of persons being held in prisons in the cities of La Paz, El Alto and Santa Cruz de la Sierra. The survey results provide an indication of the situation with regard to torture.

²⁵ Act No. 2298 of 20 December 2001, Sentence Enforcement and Supervision Act.

²⁶ Directorate-General of Prisons, Note DGRP/553/2010 of 17 May 2010.

²⁷ Ibid.

²⁸ National Police Command, Note SGRAL. CMDO. GRAL.1210 of 7 July 2010.

²⁹ Prosecutor-General's Office, Note FGR/STRIA No. 983/2010 of 30 September 2010, Report No. 020/2010 ADJIOC.

62. A total of 754 questionnaires were completed, including 483 in the Department of Santa Cruz and 272 in the Department of La Paz, while 15 were returned blank (2 in Santa Cruz and 13 in La Paz). Responses were therefore obtained from 739 questionnaires, 481 from Santa Cruz and 258 from La Paz.

63. The following questions were asked in the survey:

- (a) How old are you?
- (b) What is your custody status?
- (c) For how long have you been in custody?
- (d) What does ill-treatment mean to you?
- (e) During the time that you have been in custody, have you been subjected to any type of ill-treatment?
- (f) If you answered “yes” to the previous question, who has mistreated you?
- (g) How often have you been subjected to ill-treatment?

64. The responses indicated that:

- (a) In the Department of Santa Cruz:
 - (i) A total of 87.5 per cent of the respondents were between 18 and 60 years of age, 5 per cent were under the age of 18, and 7.5 per cent were over 60 years of age;
 - (ii) A total of 63.4 per cent of respondents said that they were being held in pretrial detention; 33.5 per cent had been sentenced; and 3.1 per cent did not know or did not indicate if they were being held in pretrial detention or were serving a sentence;
 - (iii) In all, 16.8 per cent had been held for less than 1 month, 25 per cent for from 1 to 6 months, 21 per cent for from 6 to 18 months, 18.7 per cent for from 18 months to 3 years, and 18.5 per cent for more than 3 years;
 - (iv) Of those who responded, 35.1 per cent believed that ill-treatment could essentially be equated with physical aggression; 29.5 per cent believed it meant psychological aggression; 8.1 per cent considered it to mean aggression against third parties; 18.7 per cent believed that all of the above constituted ill-treatment; and 8.5 per cent believed that none of the above constituted ill-treatment;
 - (v) In total, 35.7 per cent said that they had been subjected to ill-treatment while in custody; 62.8 per cent said that they had not; and 1.5 per cent did not know;
 - (vi) A total of 179 people had answered “yes” to the previous question; of those, 44.1 per cent said that they had been mistreated by other persons being held in custody; 34.1 per cent said that they had been mistreated by police officers; 7.8 per cent by unidentified persons; 2.8 per cent by other public officials; 2.2 per cent by persons from all of the above categories; and 8.9 per cent said that none of the aforementioned persons had inflicted the ill-treatment in question;
 - (vii) Of those who responded, 32.4 per cent said that they had been subjected to ill-treatment between 2 and 4 times; 28.5 per cent said that it had happened once; 26.8 per cent said that they were subjected to ill-treatment continually; and 2.8 per cent said that they had been subjected to ill-treatment between 5 and 10 times;
- (b) In the Department of La Paz:
 - (i) In all, 92.6 per cent of the respondents were between 18 and 60 years of age; 3.5 per cent were under the age of 18; and 3.9 per cent were over 60 years of age;

(ii) A total of 55.4 per cent of the respondents said that they were being held in pretrial detention; 33 per cent were serving a sentence; and 11.6 per cent said that they did not know if they were being held in pretrial detention or were serving a sentence or did not know the status of their case;

(iii) A total of 11.2 per cent had been in custody for less than 1 month; 33.3 per cent for from 1 to 6 months; 24.8 per cent for from 6 to 18 months; 18.2 per cent for from 18 months to 3 years; and 12.4 per cent for more than 3 years;

(iv) Of those who responded, 39.5 per cent believed that ill-treatment could essentially be equated with physical aggression; 28.3 per cent believed it meant psychological aggression; 3.5 per cent considered it to mean aggression against third parties; 20.5 per cent believed that all of the above constituted ill-treatment; and 8.1 per cent believed that none of the above constituted ill-treatment;

(v) Of those responding to the survey, 57.4 per cent said that they had been subjected to ill-treatment while in custody; 41.1 per cent said that they had not; and 1.5 per cent did not know;

(vi) Of the 148 people who had answered “yes” to the previous question, 41.2 per cent said that they had been mistreated by other persons being held in custody; 38.5 per cent said that they had been mistreated by police officers; 4.7 per cent by unidentified persons; 8.8 per cent by other public officials; 2.7 per cent said that they had been mistreated by persons from all the above categories; and 4.1 per cent said that none of the aforementioned persons had inflicted the ill-treatment in question;

(vii) Of those who responded, 26.4 per cent said that they had been subjected to ill-treatment between 2 and 4 times; 29.1 per cent said that it had happened once; 14.9 per cent said that they were subjected to ill-treatment continually; and 8.1 per cent said that they had been subjected to ill-treatment between 5 and 10 times.

65. Tables containing the data referred to above are annexed to this report.

66. The information obtained clearly indicates that reliable data on the use of torture or cruel, inhuman, degrading or humiliating treatment or punishment in detention centres are not yet available, since, even though a large percentage of persons deprived of their liberty believe that they have been subjected to such treatment for various reasons, formal complaints have not been received and no other statistics have been compiled. The Government recognizes that this situation hinders it from conducting a proper campaign to eradicate torture.

67. While there is no public register of complaints of torture or ill-treatment within the Armed Forces of Bolivia, there is a register of human rights violations that goes back to 2006. This register indicates not only the names of the accused and the possible victims, but also the cases, the date of the complaint and the status of the case or investigation.³⁰ A table listing this information is annexed to this report.

C. Judicial measures

1. Judiciary Act

68. Judiciary Act No. 025 of 24 June 2010 establishes the new structure of the judicial branch. Article 3 of that law sets out the following guiding principles for its work:

³⁰ Commander-in-Chief of the General Staff of the Armed Forces of the Plurinational State of Bolivia, Note ASES. JUR. 383/10 of 12 August 2010.

- Plurinationality
- Independence
- Impartiality
- Legal certainty
- Public disclosure
- Suitability
- Expeditious proceedings
- Cost-free access to justice
- Legal pluralism
- Interculturality
- Social harmony
- Respect for rights
- Culture of peace

69. As part of this new approach, the Bolivian Government intends to implement a system for the administration of justice in which the justice systems of native indigenous and campesino peoples and nations are respected and recognized on an equal footing. As part of that system, it will be established in no uncertain terms that respect for rights is the foundation for the administration of justice. The practical expression of this principle takes the form of respect for the Bolivian people's rights based on the ethical and moral tenets of the pluralistic society promoted by the Plurinational State and its underlying values.³¹

70. The reform of legal institutions and associated norms is a priority objective, as the rights of persons who have been deprived of their liberty may be violated by delays in bringing people to trial owing to the excessive formalities that persist within the justice system and by delays in bringing proceedings to a conclusion owing to judges' work overloads. Because of such delays, an excessive amount of time may pass before judgements are handed down in criminal cases. As a result of this situation, a majority of the prison population in Bolivia is being held in pretrial detention.

71. Act No. 025 establishes new mechanisms for reducing judges' caseloads. One of those mechanisms is the use of out-of-court settlements of disputes at first instance. These conciliation proceedings have the force of *res judicata*. They are not used in cases of domestic violence or others that involve the best interests of children or adolescents, in cases to which the State is a party, or when the charges involve offences of corruption or drug trafficking, acts that jeopardize State security, or acts that endanger the life or the physical, psychological or sexual integrity of a person.³²

72. Such proceedings are not applied to cases involving the offence of torture either. They are a means of reducing overcrowding in facilities where people are held for minor or less socially objectionable offences and of lightening the caseload of judges and courts.

73. Finally, the Judiciary Act establishes the jurisdiction of the Criminal Enforcement Courts as follows:

³¹ Act No. 025 of 24 June 2010, Judiciary Act, art. 3 (12).

³² *Ibid.*, art. 67.

Article 80 (Jurisdiction of Criminal Enforcement Courts). Judges presiding over Criminal Enforcement Courts have the authority to:

- (1) Apply the Criminal Code and the Sentence Enforcement and Penitentiary System Act;
- (2) Maintain the register of criminal records and inform the relevant authorities;
- (3) Participate in visits to prisons;
- (4) Oversee the enforcement of penalties and security measures ordered by the corresponding judicial bodies;
- (5) Hand down decisions with regard to stays of proceedings and suspension of sentences and personal protective measures;
- (6) Review any and all penalties imposed while persons are serving their sentences that clearly run counter to the aims of correction and rehabilitation of offenders;
- (7) Monitor the application of policies on the rehabilitation of offenders;
- (8) Undertake other actions as established by law.³³

2. Code of Criminal Procedure

74. The Code of Criminal Procedure (Act No. 1970 of 25 March 1999) establishes that:

Article 43 (Judicial bodies): The adjudicating bodies of the criminal justice system are:

- (1) The Supreme Court;
- (2) Superior courts;
- (3) Trial courts, which are divided into those having jurisdiction over cases involving controlled substances, economic offences, administrative matters and other matters as specified by law;
- (4) Trial judges, who are divided into those having jurisdiction over cases involving controlled substances, economic offences, administrative matters and other matters as specified by law;
- (5) Examining magistrates; and
- (6) Enforcement judges.³⁴

75. Article 55 of the Code of Criminal Procedures establishes that, in addition to the powers defined in the Judiciary Act and the Sentence Enforcement and Supervision Act, adjudicating bodies will be responsible for:

- (a) Overseeing the enforcement of judgements and the conditions laid down as requirements for the granting of a stay of proceedings, monitoring the implementation of suspended sentences and ensuring that convicted persons' rights are respected;

³³ Ibid., art. 80.

³⁴ Act No. 1970 (see footnote 24 above), art. 43.

(b) Processing applications for conditional release arrangements and ruling on those applications and on any pleas or motions entered during the processing of such applications;

(c) Reviewing all penalties imposed in the course of the enforcement of the sentence that clearly run counter to the aims of correction and rehabilitation of offenders.

76. The Code of Criminal Procedure establishes that:

Article 238 (Oversight). Enforcement judges are to be responsible for monitoring how persons held in custody are treated. The trial judge is the only one who is empowered to authorize any leave permit or transfer. In extreme emergencies, such measures may be authorized by the enforcement judge, who must immediately notify the trial judge.

If the enforcement judge becomes aware of a violation of the legal provisions governing pretrial detention, he or she must immediately notify the trial judge, who shall at once take the necessary steps to ensure that those provisions are upheld.³⁵

3. Sentence Enforcement and Supervision Act

77. Sentence Enforcement and Supervision Act No. 2298 of 20 December 2001 establishes that the enforcement judge is the legal authority responsible for sentence enforcement as provided for under the following articles:

Article 18 (Judicial oversight)

The enforcement judge and, as appropriate, the trial judge are to ensure at all times that the rights and guarantees granted to all persons deprived of their liberty under the Constitution, international treaties and conventions, and applicable laws are strictly upheld.

Article 19 (Jurisdiction of enforcement judges)

Enforcement judges are authorized to implement and oversee:

1. The enforcement of executory sentences providing for the imposition of penalties or security measures and the processing of any pleas or motions entered during the proceedings;
2. The granting and revocation of conditional release arrangements and fulfilment of the conditions attached thereto;
3. Fulfilment of the conditions attached to stays of proceedings and conditional release arrangements;
4. The treatment of persons held in pretrial detention in accordance with the Code of Criminal Procedure (Act No. 1970);
5. Implementation of measures used as an alternative to pretrial detention;
6. The serving of sentences in special facilities, as appropriate;
7. Other duties as established by law.³⁶

³⁵ Ibid., art. 238.

³⁶ Act No. 2298 (see footnote 25 above), arts. 18 and 19.

78. The reform of the Bolivian system of criminal procedure supplanted the inquisitorial scheme that had been established in the preceding Code of Criminal Procedure with an oral, adversarial system based on due process. This change was set in motion by the promulgation of Act No. 1970 of 25 March 1999, which entered into force on 31 May 2001. Under the current system of criminal procedure, judges are responsible for ensuring that guarantees are observed. More specifically, the authority responsible for ensuring that the rights and guarantees of all persons deprived of their liberty are respected is the enforcement judge, who is explicitly assigned this role under the Judiciary Act, the Code of Criminal Procedure and the Sentence Enforcement and Supervision Act.

V. Article 3: Non-expulsion, non-refoulement and non-extradition to other States where there are substantial grounds for believing that the person in question would be in danger of being subjected to torture

79. In its concluding observations of 2001, the Committee recommended that the Bolivian State: “adopt adequate measures to ensure that no person can be expelled, returned or extradited to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture; steps must be taken to ensure that these persons have the possibility of explaining these grounds in impartial and adversarial proceedings whose findings are subject to review by a higher authority”.³⁷

80. The legal instrument that governs refugees and asylum seekers in Bolivia is Supreme Decree No. 28329 of 12 September 2005, which provides for the establishment and operation of the National Commission for Refugees (CONARE) in Bolivia, in addition to the corresponding regulations and procedural norms. That decree sets out the following definition of the term “refugee”:

Article 12 (Definition of refugee). The term “refugee”, as used herein, applies to all persons who:

(a) Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, being a victim or potential victim of serious and widespread human rights violations, are outside the country of their nationality and are unable, or owing to such fear, are unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, are unable or, owing to such fear, are unwilling to return to it;

(b) Have fled from the country of their nationality or who, not having a nationality, have fled from their country of habitual residence because their life, security or liberty has been threatened by widespread violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances that have gravely disturbed public order;

(c) In the cases of persons who have more than one nationality, the term “the country of their nationality” is to be understood as meaning each of the countries of which they are nationals, and such persons are not to be deemed to be lacking the protection of the country of their nationality if, without any valid reason based on a well-founded fear, they have not availed themselves of the protection of one of the countries of which they are a national.

³⁷ A/56/44, para. 97 (i).

81. Refugee status is granted by extension to spouses, children and family members to whom the refugee is related by blood or by marriage and who are under his or her guardianship.³⁸

82. Article 14 of Supreme Decree No. 28329 establishes the principle of non-refoulement. It states that no refugee and no person who has applied for refugee status and whose application is pending a final, unappealable decision may be expelled or returned to his or her country of origin or to another country where his or her life, safety or liberty is endangered for any of the reasons that would lead to the recognition of refugee status, subject to the provisions contained in the supreme decree itself.

83. The Bolivian State has regulations governing refugee status and the protection of the rights of refugees and of all applicants for refugee status. Those instruments are now being modified with a view to converting them into a law on the protection of those rights that will be in line with current international standards on such protection.

84. The Supreme Court (referred to as the Supreme Tribunal in Act No. 025 of 24 June 2010) has ratified the principle of non-refoulement in Supreme Court Decisions Nos. 307/2007 and 122/2008, in which it has established that:

The principle of non-refoulement is applicable in the case of all persons, whether or not they are refugees or asylum seekers, who would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment. No refugee and no one who has applied for refugee status and whose application is pending a final, unappealable decision may be expelled or returned to his or her country of origin or to another country where his or her life, safety or liberty is endangered for any of the reasons that would lead to the recognition of refugee status.³⁹

85. The Bolivian Government has implemented a series of administrative and legal measures to uphold the principle of non-refoulement to a country where a person's rights — including the right to integrity of the person — may be violated.

86. With regard to the introduction of an impartial, adversarial procedure in which judgements may be reviewed by a higher authority, Supreme Decree No. 28329 establishes the procedure to be followed in the consideration of applications for refugee status and the opportunities which applicants have to contest denials through administrative channels and legal proceedings.⁴⁰

VI. Rules of criminal procedure with regard to cases of torture

A. Article 5: Establishment of jurisdiction over the offence of torture

87. Article 1 of the Bolivian Criminal Code governs the spatial dimension of the application of its provisions in respect of:

(a) Offences that have been committed on Bolivian territory or in locations subject to the Bolivian State's jurisdiction;

³⁸ Supreme Decree No. 28329 of 12 September 2005, National Commission for Refugees in Bolivia, Reglamentación y Procedimientos, art. 13.

³⁹ Supreme Court, Decision No. 122/08 of 9 May 2008.

⁴⁰ Supreme Decree No. 28329 (see footnote 38 above), arts. 26–28.

(b) Offences that have been committed outside Bolivia but whose effects have been felt or would be expected to be felt on Bolivian territory or in locations subject to the Bolivian State's jurisdiction;

(c) Offences that have been committed outside Bolivia by a Bolivian, provided that he or she is present in Bolivian territory and has not already been punished in the country where the offence was committed;

(d) Offences that have been committed outside Bolivia and that jeopardize State security, the public interest or the national economy. This provision is also applicable to foreigners under extradition to Bolivia or present in Bolivian territory;

(e) Offences that have been committed on or in Bolivian ships, aircraft or other means of transport in a foreign country if the offender is not prosecuted in that country;

(f) Offences that have been committed by Bolivian civil servants outside Bolivia in the course of the performance of their duties or assignment;

(g) Offences which Bolivia is obligated to suppress under the terms of a treaty or convention, even if it was not committed in its territory.

88. Article 5 of the Convention sets out a series of cases in which States parties are to establish their jurisdiction. Those cases are covered by Bolivian law as follows:

(a) With regard to article 5, paragraph 1 (a), of the Convention, jurisdiction is established in accordance with article 1, paragraphs 1 through 5, of the Criminal Code;

(b) With regard to article 5, paragraph 1 (b), of the Convention, jurisdiction is established in accordance with article 1, paragraph 3, of the Criminal Code;

(c) With regard to article 5, paragraph 1 (c), of the Convention, jurisdiction is established on the basis of the interpretation of article 1, paragraphs 2 and 7, of the Criminal Code;

(d) With regard to article 5, paragraph 2, of the Convention, jurisdiction is established in accordance with article 1, paragraph 7, of the Criminal Code.

B. Article 6: Rules concerning the detention of persons suspected of having committed the offence of torture

89. Constitutional guarantees provided to any person suspected of having committed an offence or held in custody include those set out in article 23:

III. No one may be held, arrested or deprived of liberty except in the cases and according to the forms prescribed by law. The necessary warrant must be issued by the competent authority and served in writing; IV. Any person caught in flagrante delicto may be arrested by any other person, even without a warrant, for the sole purpose of being brought before a competent judicial authority, who must determine that person's legal status within 24 hours; V. Any person who is deprived of his or her liberty must be informed, at the time of the arrest, of the reasons for the arrest and the charges against him or her.

90. The Constitution also establishes the following:

Article 115, paragraph I, states that everyone has the right to the timely and effective protection of judges and the courts in the exercise of their rights and legitimate interests.

Paragraph II guarantees the right to due process, the right to a defence and the right to a system of justice that is pluralistic, swift, timely, free and transparent and that is administered without delay.

Article 116, I, guarantees the presumption of innocence. It states that, during legal proceedings, if there is doubt as to which legal provision is applicable, the provision that is most favourable to the accused or defendant is to be applied.

Paragraph II establishes that any penalty must be based on a law in effect prior to the punishable act.

Article 117, paragraph I, states that no one may be convicted without having been heard and tried in accordance with the principles of due process and that no penalty under criminal law may be imposed except by means of an enforceable judgement handed down by the competent judicial authority.

Paragraph II states that no one shall be tried or convicted more than once for the same act and establishes that restricted rights are to be restored immediately upon completion of the sentence.

Paragraph III states that custodial sentences shall not be imposed for a failure to honour debts or financial obligations except as provided for by law.

[...]

Article 120, paragraph I, establishes that every person has the right to be heard by a competent, independent and impartial judicial authority and that no one may be tried by special commissions or brought before judicial authorities other than those established before the offence in question was committed.

Paragraph II states that every person has the right to be tried in his or her own language; if this is not possible, the person must be assisted by a translator or interpreter.

Article 121, paragraph I, states that, in criminal proceedings, no one may be compelled to testify against himself or herself or against blood relatives up to the fourth degree or against relatives by affinity up to the second degree. It also establishes that the exercise of the right to remain silent may not be interpreted as a sign of guilt.⁴¹

91. In the event of the violation of any due process guarantee, the Constitution provides for constitutional remedies to uphold the rights of persons standing trial for a criminal offence.⁴²

92. The Code of Criminal Procedure is the nation's legal framework for rules, principles and procedures relating to the arrest and prosecution of persons suspected of having committed an offence. Book I of the second section of the Code establishes the standard procedure for trying people charged with a specified offence, including the offences defined in article 295 of the Criminal Code. The standard procedure is divided into two stages: a preparatory stage, and an oral and public trial. Special procedures exist for trying people for other types of offences, such as privately actionable offences, for summary proceedings or alternative settlements, for the filing of applications for remedies and for modifications in the standard procedure, and for the determination of damages and compensation.

⁴¹ Constitution.

⁴² Ibid, arts. 125–129.

93. The Code establishes the procedures for the apprehension and arrest of persons suspected of having committed an offence and establishes the rights of any person who is being held in custody or being tried in a criminal court. The standard criminal procedure can be divided into a number of different, clear-cut stages:

(a) During the preliminary inquiry, the police, under the supervision of the prosecutor's office, take the necessary steps to conduct an investigation, gather or secure evidence and prevent suspects from fleeing or going into hiding;⁴³

(b) The preparatory stage as such encompasses the steps taken by the prosecutor's office on the basis of the preliminary police investigation. Upon the conclusion of this stage, the prosecutor may bring formal charges (when it is determined that there is sufficient evidence of the possible participation of a given person in the commission of an offence) or drop the charges (when it is determined that there is not sufficient evidence or that the act in question does not constitute an offence or that the person in question did not take part in it) or may place the case on hold (if it is determined that there are no grounds for bringing charges, given the evidence for and against the accused). The formal indictment must indicate the name or names of the possible participants and of their defence lawyers, provide a description of the acts for which they are charged, indicate the legal classification of the specified offences on a provisional basis, identify any risk factors that may exist and specify what precautionary measures are being requested, if any.⁴⁴ The purpose of the preparatory stage is to lay the groundwork for the oral, public trial by gathering the elements needed to present the case for the prosecution and the case for the defence;⁴⁵

(c) The preparatory stage is concluded when the prosecutor, after having completed the investigation, proceeds to take the following steps:

(i) Submits the charges to the trial court if the prosecutor feels that the investigation has yielded sufficient evidence to justify a public trial of the suspect;

(ii) Submits a motion to the investigating judge for a stay of proceedings, for the use of summary proceedings, for a decision whether to continue to prosecute the case or for the use of conciliation procedures;

(iii) Substantiates the grounds for dropping the charges or for dismissal if the evaluation of the facts shows that the act in question was not committed or does not constitute an offence or that the accused did not take part in it or if the available evidence is an insufficient basis for the filing of formal charges.⁴⁶

(iv) If the actions described in (i) above are taken, the prosecutor submits the case file to the trial court so that it may proceed with a public, oral trial. If the actions described in (ii) above are taken, then the corresponding decision is to be handed down at a hearing held for that purpose.⁴⁷

(d) Public, oral proceedings are conducted in accordance with articles 329 through 372 of the Code of Criminal Procedure.

94. The due process guarantees listed in this report remain in place throughout the duration of criminal proceedings.

⁴³ Act No. 1970 (see footnote 24 above), art. 293.

⁴⁴ Ibid., art. 302.

⁴⁵ Ibid. art. 277.

⁴⁶ Ibid., art. 323.

⁴⁷ Ibid. arts. 323–328.

95. In order to provide a contextual background for the procedures followed in the arrest and trial of persons suspected of having committed torture, a case will be described in the following section which attests to the State's willingness to work to establish the facts in situations of that type.

The D.O.A. case

96. On Sunday, 4 July 2010, at 10.35 p.m., six heavily armed individuals broke into the vault of Vías Bolivia located at the Ceja toll booth station near the city of El Alto and forced the staff to hand over around 350,000 bolivianos. As they were fleeing the scene, they killed First Sergeant L.C. and wounded a passerby.

97. A police investigation was launched, and information gathered by the police led to the arrest of a number of suspects, including (following a raid on his home) D.O.A., on 6 July 2010.

98. Following a police line-up attended by witnesses, it was determined that there was sufficient evidence of the involvement of D.O.A. in the events of 4 July. Witnesses also identified one of the automobiles used in the assault, which was owned by D.O.A. Given these facts, the prosecutor assigned to the case furnished the documentation required for the issuance of an arrest warrant for D.O.A. and his live-in girlfriend, C.C.J., who allegedly had taken part in the assault as well.

99. The suspects were driven to the Arrests Division of the El Alto Crime Squad at 7.30 p.m. on 6 July. D.O.A. was last seen alive with his girlfriend at 8.30 p.m. on that same day, when he was escorted by police officers to a room for questioning.

100. On 7 July, the death of D.O.A. was announced. According to the police officers from the Crime Squad in charge of the case, he had died of a heart attack while they were taking him to a medical centre. Given the nature of the event and the circumstances surrounding it, on 7 July the Public Prosecution Service (Ministerio Público), on its own initiative, opened an investigation.⁴⁸

101. In view of the circumstances in which D.O.A. had died and based on the inconsistencies in the accounts given in their statements by the police officers who had been present at the Crime Squad on the night in question, in addition to the pictures taken of the body, a second autopsy was performed. It showed that:

(a) Mr. D.O.A. had died as the result of mechanical asphyxia caused by the compression of the neck and thorax;

(b) The death occurred between midnight on 6 July and 3.00 a.m. on 7 July, approximately;

(c) All the contusions found on the body had been inflicted while D.O.A. was alive and the victim had suffered multiple contusions of different types before his death;

(d) The victim had no naturally occurring diseases that could have caused his death;

(e) The death was classified as a homicide.⁴⁹

⁴⁸ Petition submitted by Prosecutor Daniel Aguilar Kauner to the presiding investigating judge of the Tumo Criminal Court, report of the opening of the investigation, La Paz, 7 July 2010.

⁴⁹ Forensic Physician Mabel Morales Graz, expert report on the autopsy conducted on 9 July 2010, item No. 9.

102. After the investigation was launched, the Public Prosecution Service took a series of steps, in addition to other actions usually taken as part of a criminal investigation, in order to gather more evidence: statements were taken from over 20 people, the Crime Squad cells were inspected, and public and private agencies and offices were requested to provide information and documentation. On 1 September 2010, a number of police officers were formally charged before the Fourth Investigating Judge in the El Alto Criminal Court with homicide and with infliction of ill-treatment and torture.⁵⁰

103. Although the Public Prosecution Service (responsible for the non-discretionary prosecution of publicly actionable offences) was the agency that conducted the investigation, the Ministry of the Interior (part of the executive branch) associated itself with the prosecution, as set forth in the petition of 27 July 2010⁵¹ submitted to the prosecutor assigned to the case. This step was directly related to the public statements made by the Minister of the Interior, Sacha Llorente, when she announced that seven officers from the El Alto Crime Squad had been suspended. At that time she noted that the Constitution of Bolivia prohibits torture and that torture is unacceptable in the Plurinational State of Bolivia and is a cowardly act that weakens the institutions of the State.⁵²

C. Articles 7, 8 and 12: Rules governing the prosecution of persons suspected of having committed the offence of torture

1. Prosecution in the State of the person alleged to have committed torture in cases in which the person is not extradited (art. 7)

104. Article 110 of the Constitution establishes that:

- I. Persons who violate constitutional rights are subject to the jurisdiction of the Bolivian authorities.
- II. The intellectual and material authors of violations of constitutional rights are criminally liable for such violations.
- III. Assaults on the security of the person render the immediate perpetrators criminally liable; acting on the orders of a superior does not exempt them from that liability.

105. Article 111 of the Constitution establishes the non-applicability of statutory limitations to crimes against humanity.⁵³

106. Paragraph 3 of the Criminal Code establishes that the State will apply its criminal laws to Bolivians who have committed offences outside Bolivia, are on its territory and have not been punished in the country where the offence was committed. Paragraph 7 establishes that the State will apply its criminal laws to persons who have committed offences which Bolivia is obligated to suppress under the terms of a treaty or convention, even if it was not committed in its territory.⁵⁴

⁵⁰ Public Prosecution Service, formal indictment, decision of the District Prosecutors Commission of La Paz 01/2010, Fs. 514.

⁵¹ "Ministerio de Gobierno, Presenta querrela por los delitos que refiere", 27 July 2007.

⁵² See www.la-razon.com/version.php?ArticleId=4856&a=1&EditionId=133.

⁵³ Constitution, art. 111.

⁵⁴ Act No. 1768, art. 3.

107. Article 3 of the Criminal Code states that no one subject to the jurisdiction of Bolivian law may be extradited to another State unless otherwise provided for by an international treaty or reciprocity agreement.⁵⁵

108. Article 49 of the Code of Criminal Procedure, which deals with territorial jurisdiction, establishes that jurisdiction is held by: (1) the court having jurisdiction over the place where an offence was committed (an offence is deemed to have been committed at the location in which the corresponding act is committed or in which its result is felt); (2) the court having jurisdiction over the place of residence of the accused or the location in which the accused is apprehended; ... (4) When the effects of an offence that was committed on foreign soil are felt in Bolivian territory, the court having jurisdiction over the location where those effects have been felt or can be expected to be felt.⁵⁶

109. The above-mentioned substantive and procedural rules of criminal law determine the cases in which the Bolivian State has an obligation to prosecute offenders under its jurisdiction and provide the framework for decisions as to whether or not extradition is appropriate. They also establish that the State has an obligation to prosecute criminal offences which it has made a commitment to suppress under the terms of a treaty or convention and that it holds jurisdiction over persons apprehended within its jurisdiction.

110. Since Bolivia is party to the Convention, these legal provisions establish that, when extradition is not appropriate, a person suspected of having committed a criminal offence who is found within its jurisdiction may be prosecuted under Bolivian law.

111. By Act No. 2398 of 24 May 2002, the Plurinational State of Bolivia ratified and approved the Rome Statute. The Bolivian State therefore recognizes the jurisdiction of the International Criminal Court as an international body that possesses the legal capacity to investigate and prosecute war crimes, crimes against humanity, genocide and crimes of aggression.

2. Extradition (art. 8)

112. Article 8 of the Convention establishes that the Convention itself may serve as the legal basis for extradition in cases where no extradition treaty exists between Bolivia and a State that requests extradition with respect to an offence committed in the requesting State.

113. Under these circumstances the only factor that would block extradition between Bolivia and another State if the two have no extradition treaty would be that the requesting State is not party to the Convention. In that event, the legal basis reflected in paragraphs 95 through 102 of this report would allow the Bolivian State to try the suspect under Bolivian law.

114. This is confirmed by article 149 of book III, title IV, chapter II, of the Code of Criminal Procedure, which states that extraditions are to be governed by the international treaties and conventions that are in force and, subsidiarily, by the Code of Criminal Procedure and, in cases where no applicable provision exists, the rules of reciprocity.⁵⁷

3. Prompt and impartial investigation when there is ground to believe that an act of torture has been committed (art. 12)

115. In the concluding observations which the Committee issued in 2001, it recommended that Bolivia should adopt the necessary measures to ensure effective

⁵⁵ Ibid., art. 55.

⁵⁶ Act No. 1970, art. 49.

⁵⁷ Ibid., art. 149.

compliance by the Public Prosecution Service with its duty to bring criminal action *ex officio* in response to any complaint of torture or cruel, inhuman or degrading treatment.⁵⁸

116. Paragraph I of article 225 of the Constitution states that the Public Prosecution Service shall safeguard the legal system and defend the interests of society at large and shall initiate public criminal proceedings.⁵⁹

117. Paragraph 2 of article 14 of the Public Prosecution Service Organization Act⁶⁰ lists the functions of that institution, which include the pursuit of public criminal proceedings in accordance with the Constitution, international treaties and conventions that are in force, the Code of Criminal Procedure and other laws.

118. Article 6 of that same law establishes that it is the responsibility of the Public Prosecution Service to bring public criminal action *ex officio* at any time that it receives sufficiently substantiated reports of the commission of a punishable act.⁶¹ Article 107, paragraph 3, states that a failure on the part of a member of the Prosecution Service to report the commission of offences by officials responsible for criminal prosecutions to the proper authorities once he or she becomes aware of such acts constitutes “serious misconduct” and will lead to the permanent removal of the person in question from his or her post and from the Prosecution Service as a whole.⁶²

119. Article 16 of the Code of Criminal Procedure states that public criminal action is to be brought by the Office of the Prosecutor in the case of all offences for which prosecution proceedings may be initiated *ex officio*, while maintaining the rights of the victim to participate in those proceedings as provided for in the Code. It goes on to state that criminal proceedings may not be suspended, interrupted or discontinued except as expressly provided for in the Code itself.⁶³

120. Articles 20 and 21 of the Code of Criminal Procedure specify which offences are defined as “publicly actionable on request” and as “privately actionable”. All other offences are classified as “publicly actionable”; the latter include “ill-treatment and torture”, which can consequently be prosecuted *ex officio*.⁶⁴

121. Given the above, since torture is a publicly actionable offence and since the Public Prosecution Service is responsible for bringing public action *ex officio* on a continuing basis, undertaking an investigation when there is any sign that this offence may have been committed is, by law, the duty of the country’s prosecutors.

122. In addition, the last five graduating classes of public prosecutors have received training from the Public Prosecution Service on international human rights instruments and their provisions.⁶⁵

⁵⁸ A/56/44, para. 97 (d).

⁵⁹ Constitution, art. 225.

⁶⁰ Act No. 2175 of 13 February 2001 (Public Prosecution Service Organization Act), art. 14.

⁶¹ *Ibid.*, art. 6.

⁶² Prosecutor General’s Office of the Plurinational State of Bolivia, Note FGR/STRIA, No. 983/2010 of 30 September 2010, Report No. 020/2010 ADJIOC.

⁶³ Act No. 1970, art. 16.

⁶⁴ *Ibid.*, arts. 21 and 22.

⁶⁵ Note FGR/STRIA, No. 983/2010 (footnote 62 above).

D. Article 9: Rules on judicial cooperation

123. Book III, title VI, chapter I, articles 138 to 148, of the Code of Criminal Procedure⁶⁶ lays down the rules governing international judicial and administrative cooperation.

124. Article 138 states that all possible assistance is to be given to foreign authorities, provided that their requests for such assistance are in accordance with the Constitution, international treaties and conventions that are in force and the Code of Criminal Procedure.

125. The Code of Criminal Procedure also establishes the grounds for refusing or suspending such assistance:

Article 140 (Refusal or suspension of assistance). Assistance is to be refused when:

(1) The request would violate rights or guarantees set forth in the Constitution, international treaties and conventions in force, the Code of Criminal Procedure or other Bolivian laws;

(2) The request is related to events or acts that are being investigated or are the subject of legal proceedings in Bolivia or to an offence for which a person has been sentenced.

A judge may order the suspension of cooperation if the immediate provision of such assistance would hamper the progress of an investigation or trial in Bolivia.⁶⁷

126. The above provisions indicate that the Bolivian State provides assistance under the terms of the Convention and the Constitution to all requesting States except when the decision or judgement whose execution is sought would violate rights or guarantees of the person implicated in the commission of the acts covered by article 4 of the Convention or when the request relates to events or acts which are being investigated in Bolivia, which are the object of legal proceedings in a Bolivian court or for which a person is being or has been punished by a Bolivian court.

127. Provision is made for a judge to suspend the assistance to be provided in response to such a request when it would interfere with an ongoing investigation or trial in a Bolivian court.

VII. Article 10: Training and education for the prevention of torture

128. In its 2001 concluding observations, the Committee against Torture recommended that Bolivia should “step up the activities to protect, defend and promote human rights which, according to its report, the State party has been developing, particularly those relating to vocational training for all law-enforcement officials”.⁶⁸

129. The Ministry of the Interior reported in Note DMG OF. No. 712/2010 of 1 September 2010 that it was developing a training programme on penitentiary law to be offered at the Police Academy to both administrative staff and police officers in 2011.

130. With the support of the United Nations Children’s Fund (UNICEF), the Ministry is running training courses on national and international juvenile justice law for internal and

⁶⁶ Act No. 1768, arts. 148–166.

⁶⁷ Act No. 1970, art. 140.

⁶⁸ A/56/44, para. 97 (b).

external security officers who are due to work at the Qalauma Rehabilitation Centre and the Nueva Vida (“New Life”) Santa Cruz Education Centre for juvenile offenders.

131. Since 2006, the Bolivian police force has incorporated human rights topics into its staff training programmes. For example, the Basic Police School offers classes on human rights. In 2010, these classes covered the following topics:

- Values as the foundation of human rights
- Basic concepts of international law
- General concepts and aspects of human rights
- Human rights violations
- Civil and political rights
- Economic, social and cultural rights
- Rights of peoples and new directions
- Human rights and relativism
- Vulnerability and special protection
- Protection and promotion of human rights
- International systems for the protection of human rights
- International humanitarian law
- Discrimination
- Violence as a human rights violation
- Family or domestic violence
- Human rights in the Bolivian police force
- Corruption and its effect in terms of human rights
- Maintenance of public order⁶⁹

132. The National Police Academy also includes the topic of human rights in its curriculum. This subject is taught as part of the Academy’s second-year programme. A total of 72 class hours are spent on the following:

- An introduction
- A historical overview
- International human rights standards
- The United Nations and human rights
- Application mechanisms and procedures⁷⁰

133. The Mariscal Antonio José de Sucre Police University also covers the subject of human rights in its postgraduate training programme, which deals with the following topics:

- Scope, function and value of the law

⁶⁹ National Training and Teaching Directorate, syllabus of the human rights course, El Alto Basic Police School, General Secretariat, CITE 146/10 of 12 October 2010.

⁷⁰ National Training and Teaching Directorate, syllabus of the National Police Academy, ANAPOL-SUBDEPARTMENT/Of. 198/10 of 7 October 2010.

- Recognition of human rights from a historical perspective
- Conceptual definition of human rights
- Sources of human rights
- Main issues in the study of human rights
- Sociological aspects of human rights
- Regulatory restrictions on human rights
- Statutory protection of fundamental human rights
- Universality of human rights
- Legal aspects of human rights in constitutional law and public international law
- Protection of human rights
- Compendium of United Nations international human rights instruments
- National instruments for the protection of human rights⁷¹

134. The Ombudsman's Office, the International Committee of the Red Cross and the human rights community participate in cooperative activities and provide support for the human rights training provided to police officers.

135. In accordance with the 2009–2013 National Plan of Action on Human Rights, the Bolivian police force provides ongoing human rights training for its officials.

136. The institutional policies focusing on the prevention of violations of human rights and on international humanitarian law developed by the Armed Forces on the basis of fundamental human rights instruments are covered in training courses. Information on these policies is also disseminated by other means. The Armed Forces' policies in relation to international human rights instruments emphasize individual responsibility for upholding human rights and international humanitarian law at all levels of the chain of command. They also provide for the coverage of human rights principles and international humanitarian law in teaching and training activities, the promotion of professionalism among Armed Forces personnel, and the investigation, prosecution and punishment of members of the Armed Forces. Since 2005, the Ministry of Defence (which is part of the executive branch) has incorporated the principles and standards of international humanitarian law and human rights in its policy documents, manuals and rules of engagement.

137. Civil and military authorities work closely to investigate human rights violations. Some 7,000 professional military personnel have received training in human rights and international humanitarian law. A variety of training materials on human rights and international humanitarian law, along with other related publications, have been developed.

⁷¹ National Training and Teaching Directorate syllabus, Mariscal Antonio José de Sucre Police University, School of Higher Police Studies, General Secretariat Of. E.S.P. No. 147/10 of 15 October 2010.

VIII. Articles 11 and 15: Prevention and prohibition of acts of torture in connection with criminal investigations and deprivation of liberty

A. Constitution

138. Part I, title II, chapter V, section IX, of the Constitution sets out the rights of persons who are deprived of their liberty.⁷²

B. Code of Criminal Procedure

139. Article 13 of the Code of Criminal Procedure establishes the principle of the legality of evidence, according to which evidence is to be considered valid only if obtained by lawful means and submitted to the court in a manner that is in accordance with the Constitution and the Code of Criminal Procedure. Any evidence obtained by torture, ill-treatment, coercion, threats, deceit or violation of the fundamental rights of the person, or obtained through the use of information originating from an unlawful procedure or means, is inadmissible.⁷³

140. The prohibition of torture and cruel, inhuman or degrading treatment is applicable at every stage of criminal proceedings, beginning from the very start:

Article 296 (Arrest): In instances where, under the terms of the Code of Criminal Procedure, authorization is given for an arrest, police officers must abide by the following basic rules:

- (1) Use force only when strictly necessary;
- (2) Do not use arms except in the event of:
 - (a) Resistance which endangers a person's life or physical safety;
 - (b) Flight, should less extreme measures to make the arrest prove ineffective and only after a warning has been given.
- (3) Do not inflict, instigate or tolerate any act of harassment, torture or other cruel, inhuman or degrading treatment or punishment, either at the time of the arrest or during detention;
- (4) Do not allow persons who have been arrested to be presented to the media without their express consent, which is to be granted in the presence of defence counsel and documented in the record of the proceedings;
- (5) Identify yourself as a police officer by showing your police badge at the time of the arrest. Give your full name and verify the identity of the person or persons who are being arrested;
- (6) Inform suspects at the time of their arrest of the charges against them and of the fact that they have the right to remain silent without this being used against them and to name a defence lawyer;

⁷² Constitution, arts. 73 and 74.

⁷³ Code of Criminal Procedure, art. 13.

(7) Inform relatives or others close to the accused that they have been arrested and where they will be taken;

(8) Enter the place, day and time of the arrest in a permanent record.⁷⁴

141. Criminal procedural law therefore strictly prohibits torture at all stages of the investigation and criminal proceedings, not only recognizing such rights, but also setting out a number of due process guarantees in order to prevent human rights violations.

C. Sentence Enforcement and Supervision Act

142. Sentence Enforcement and Supervision Act No. 2298 of 20 December 2001 establishes the framework for enforcing sentences and implementing precautionary measures under a progressive system for the classification and social rehabilitation of offenders.

143. The Act establishes guarantees for persons deprived of their liberty while they are serving their sentence or subject to other measures and sets out the obligations and restrictions placed on civilian prison staff and on correctional officers. Article 5 of the Act focuses on ensuring respect for the dignity of persons deprived of their liberty by providing that, in correctional facilities, respect for human dignity, constitutional guarantees and human rights are to prevail. All cruel, inhuman or degrading treatment is prohibited. Anyone who orders, engages in or tolerates such conduct will be liable to the penalties set out in the Criminal Code, without prejudice to any other applicable penalties.⁷⁵

144. The Act also prohibits the use of torture or cruel, inhuman or degrading treatment in the following cases:

Article 74 (Prohibited actions): Prison staff and internal and external security personnel may not:

[...]

2. Inflict torture or cruel, inhuman or degrading treatment on inmates;

3. Use physical or psychological violence against inmates or their families, except as provided for in article 69;

[...]

7. Provide information to the media;

[...]

9. Grant privileges to inmates or treat them unequally;

[...]

12. Abuse their authority;

13. Use excessive physical force;

14. Examine the contents of the complaints box with the intention of harming an inmate or somehow preventing information from reaching the enforcement judge.⁷⁶

⁷⁴ Ibid., art. 296.

⁷⁵ Act No. 2298, art. 5.

⁷⁶ Ibid., art. 74.

145. The prohibition of torture applies to all stages of criminal proceedings and sentence enforcement. The personal safety of persons deprived of their liberty is safeguarded not only by this prohibition but also by a number of other restrictions (against the use of physical or psychological violence against inmates' families, abuse of authority, interference with the complaints box, and so on) intended to protect the dignity of persons in custody.

D. Supreme Decree No. 26715 of 26 July 2002: Regulations governing the enforcement of custodial sentences

146. The purpose of Supreme Decree No. 26715 is to regulate the treatment of prisoners at the different procedural stages provided for in the country's progressive corrections system in such a way as to promote rehabilitation, re-education and social reintegration. It establishes the obligations of persons serving custodial sentences and the powers and duties of the staff of the Prison Administration.⁷⁷

147. In its recommendations, the Committee requested Bolivia to "review the disciplinary procedures and rules in prisons so as to ensure that violations are dealt with impartially and that any inhuman and cruel punishments are excluded".⁷⁸ The right to the integrity of the person is protected by Bolivian prison regulations, which were introduced after this recommendation had been made, and by Circular No. 10/2009,⁷⁹ which tightens the restrictions on the use of punishments or penalties liable to infringe the rights of persons deprived of their liberty.

E. Procedural manual on investigations conducted by prosecutors, police officers and experts

148. In practical terms, the procedural manual on investigations conducted by prosecutors, police officers and experts, which was approved by Joint Resolution No. 001/2001 of 22 February 2007 of the Prosecutor-General's Office and the National Police Command, is a compilation of the principal tenets of the Constitution, international human rights instruments, the Code of Criminal Procedure and the Public Prosecution Service Organization Act.⁸⁰

149. Part I of the manual establishes that the actions of both the police and the Public Prosecution Service are governed by the Constitution and international human rights law and defines the authority of the Prosecutor-General to ensure that investigative actions are lawful. Part I, section IV, states that in the course of their duties investigators must respect an individual's fundamental rights and uphold the established guarantees throughout the proceedings.⁸¹

⁷⁷ Directorate-General of Prisons, Circular DGRP/553/2010 of 17 May 2010.

⁷⁸ A/56/44, para. 97 (h).

⁷⁹ Circular DRGP/553/2010 (see footnote 77 above).

⁸⁰ Circular FGR/STRIA No. 983/2010 (see footnote 62 above).

⁸¹ Ibid.

IX. Articles 13 and 14: Rights of victims of torture

A. Article 13: Access to justice

150. Article 121, paragraph II, of the Constitution establishes that victims may participate in criminal proceedings as provided for by law and have the right to be heard before any judicial decision is taken. If they lack the necessary funds, they are to be provided with the services of a court-appointed lawyer free of charge.

151. Article 11 of the Code of Criminal Procedure, as amended by Act No. 007 of 17 May 2010, which deals with guarantees for victims, establishes that the victim, acting alone or through a privately engaged or court-appointed lawyer, may take part in criminal proceedings even if he or she is not a complainant.⁸² This principle is set forth in part I, book II, title III, of the Code, which deals with procedural rules regarding victims and complainants.⁸³

B. Article 14: Right to redress

152. Article 113, paragraph 1, of the Constitution provides that victims are entitled to compensation, redress and reparation for damages, in timely fashion, whenever their rights have been violated.⁸⁴

153. Part 2, book II, title III, of the Code of Criminal Procedure sets out the procedures for the provision of compensation for damages and for the presentation of a request by a victim that an offender be ordered to provide redress.⁸⁵

Act on Exceptional Reparation for Victims of Political Violence during Periods of Unconstitutional Government (Act No. 2640)

154. On 11 March 2004, Act No. 2640 on Exceptional Reparation for Victims of Political Violence during Periods of Unconstitutional Government was adopted.

155. Supreme Decree No. 29214 of 2 August 2007 sets out requirements, new time limits and modifications to the procedure by which the National Commission on Reparation for Victims of Political Violence (CONREVIP) may determine what compensation is due to the parties involved.

156. Act No. 4069 of 27 July 2009 provided for the discontinuation of the work of the National Commission on Reparation for Victims of Political Violence and for the appointment by the Ministry of Justice of a technical certification commission to continue and complete the task of screening applications submitted by victims of political violence during periods of unconstitutional government.

157. In accordance with Ministerial Resolution No. 195/2010 of 1 June 2010, the Technical Certification Commission delivered a first-instance notification of the acts which could give rise to redress under article 4 of Act No. 2640. In accordance with Ministerial Resolution No. 018/2011 of 2 February 2011, decisions on applications continued to be issued until 18 February 2011, and reviews of contested decisions were held until 29 March

⁸² Constitution, art. 121.

⁸³ Code of Criminal Procedure, art. 11.

⁸⁴ Ibid. art. 76.

⁸⁵ Constitution, art. 113.

2011. The official lists of all petitioners and of the decision taken in each case were to be completed within the first six months of 2011, and this deadline was met.

158. Article 1 of Act No. 2640 states that this law's purpose is to establish the procedure for providing compensation to people who have been the victims of acts of political violence at the hands of agents of an unconstitutional regime which violated their human rights and the guarantees enshrined in the Constitution and the International Covenant on Civil and Political Rights ratified by Bolivia. Article 2 states that reparation may be claimed for acts committed between 4 November 1964 and 10 October 1982,⁸⁶ on which date democracy was restored after almost 18 years of dictatorship.

159. Article 4 sets out the acts that give rise to an entitlement to reparation, which include torture (subparagraph I (b)). Torture is, additionally, considered to be an aggravating circumstance that entitles a victim to obtain the maximum level of compensation, as established in article 7 of the Act,⁸⁷ in accordance with the procedure specified in Supreme Decree No. 28015, which regulates the implementation of that law.

160. Act No. 2640 provides for the following means of reparation:

- (a) The conferral of honours (art. 5);
- (b) Social benefits, including free health care and medicine (art. 6);
- (c) Exceptional compensation of up to a maximum of 300 times the minimum wage⁸⁸ for victims or their legal successors based on the extent of the political violence suffered (arts. 7 and 8);
- (d) Burial expenses, as established in article 12 of Supreme Decree No. 25851 and article 9 of Act No. 2640.

161. On the basis of this legal framework, Bolivia has policies and other legal provisions under which torture victims may seek redress by following the procedures laid down in the Code of Criminal Procedure and, in the specific case of victims of the dictatorships which ruled the country during the 1960s, 1970s and 1980s (military dictatorships and de facto Governments between 1964 and 1982), those set forth in Act No. 2640.

X. Article 16: Cruel, inhuman, degrading and/or humiliating treatment

162. As has been indicated throughout this report, there are various mechanisms in Bolivia for preventing the commission not only of acts which constitute torture, but also of cruel, inhuman, degrading and/or humiliating treatment and punishment. These mechanisms include the administrative, judicial and legislative provisions, as well as preventive measures, forms of reparation and punishments, that are described herein.

⁸⁶ Code of Criminal Procedure, arts. 382 to 388.

⁸⁷ Act No. 2640 of 11 March 2004, the Act on Reparation for Victims of Political Violence, arts. 1 and 2.

⁸⁸ Ibid., arts. 7 and 4.

XI. Articles 20 and 21: Competence of the Committee against Torture

163. In compliance with the recommendations made by the Committee in its concluding observations, and specifically recommendation (j),⁸⁹ on 14 February 2006, the Plurinational State of Bolivia made the declarations referred to in articles 21 and 22 of the Convention,⁹⁰ which empower the Committee to receive and consider communications sent by a State party or individual regarding non-fulfilment by Bolivia of its obligations under the Convention.

XII. Efforts to guarantee that human rights defenders are free to enjoy their right to promote respect for human rights, report violations and defend victims

164. The Committee recommended that the Plurinational State of Bolivia should adopt “measures to guarantee the free exercise by human rights defenders of their right to promote respect for such rights, to report violations of this right and to defend victims”.⁹¹

165. Section No. 10 in part II, chapter 5, of the National Human Rights Plan of Action sets out a number of steps designed to safeguard the rights of human rights defenders:

- (a) Adopt the Declaration on Human Rights Defenders into law;
- (b) Adopt legislation on the protection of human rights defenders and social organizations and movements;
- (c) Ensure that this legislation contains provisions for regulating and ensuring access to institutions and to the information in their possession for individuals seeking to substantiate violations or requiring information for use in the defence of human rights;
- (d) Make sure that human rights defenders have recourse to guarantees that will safeguard their fundamental rights;
- (e) Disseminate information on national and international laws concerning human rights defenders’ activities and the protection available to them;
- (f) Develop a programme to promote the study and recognition of outstanding human rights defenders;
- (g) Develop training and educational programmes for human rights defenders.

166. The Plurinational State of Bolivia is already implementing a number of these actions and plans to carry out others by 2013.

⁸⁹ The minimum wage in Bolivia is 679 bolivianos, according to information on the website of the Ministry of Economic Affairs and Finance, which equates to US\$ 96. Source: www.economiayfinanzas.gob.bo/index.php?opcion=com_contenido&ver=contenido&id=1215&seccion=306&categoria=446.

⁹⁰ A/56/44, para. 97 (j).

⁹¹ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#EndDec.

Bibliography

- Constitution of 25 January 2009
- Act No. 1768 of 11 March 1997, amending the Criminal Code
- Act No. 1970 of 25 March 1999 (the Code of Criminal Procedure)
- Act No. 007 of 17 May 2010, amending the Code of Criminal Procedure
- Act No. 2175 of 13 February 2001 (the Public Prosecution Service Act)
- Act No. 2298 of 20 December 2001 (the Sentence Enforcement and Supervision Act)
- Act No. 2640 of 11 March 2004 (the Act on Exceptional Reparation for Victims of Political Violence during Periods of Unconstitutional Government)
- Inter-American Convention to Prevent and Punish Torture of 9 December 1985 and Act No. 3454 of 27 July 2006 (the instrument of ratification)
- Act No. 025 of 24 June 2010 (the Judiciary Act)
- Supreme Decree No. 28329 of 12 September 2005 on the Rules and Regulations of the National Refugee Commission of Bolivia
- Supreme Decree No. 29851 of 10 December 2008, by which the “Bolivia: Dignity for a Good Life” National Human Rights Plan of Action 2009–2013 was adopted
- Supreme Decree No. 26715 of 26 July 2002 (regulations governing the execution of custodial sentences)
- Concluding observations of the Committee against Torture concerning Bolivia of 10 May 2001 (A/56/44)
- Ministry of the Interior, Circular DMG No. 712/2010 of 1 September 2010
- Ministry of the Interior, “Presenta querella por los delitos que refiere” (charges filed), 27 July 2010
- Directorate-General of Prisons, Circular DGRP/553/2010 of 17 May 2010
- Directorate-General of Prisons, Report DGRP42/2010 of 15 October 2010
- National Police Command, Circular SGRAL. CMDO. GRAL.1210 of 7 July 2010
- National Training and Teaching Directorate, syllabus of the human rights course, El Alto Basic Police School, General Secretariat, CITE 146/10 of 12 October 2010
- National Training and Teaching Directorate, syllabus of the National Police Academy, ANAPOL-SUBDEPARTMENT/Of. 198/10 of 7 October 2010
- National Training and Teaching Directorate syllabus for the human rights course, Mariscal Antonio José de Sucre Police University, School of Higher Police Studies, General Secretariat Of. E.S.P. No. 147/10 of 15 October 2010
- High Command of the Armed Forces, General Staff Headquarters, Circular ACES. JUR 383/10 of 12 August 2010
- Prosecutor-General’s Office, Circular FGR/STRIA/No. 983/2010 of 30 September 2010, Report No. 020/2010 ADJIOC

- Public Prosecution Service, formal indictment, decision of the District Prosecutors Commission of La Paz, 01/2010, Fs. 514
- Prosecutor-General's Office, Circular FGR/STRIA/No. 983/2010 of 30 September 2010, Report No. 020/2010 ADJIOC
- Brief submitted by Prosecutor Daniel Aguilar Kauner to the presiding investigating judge of the Tumo Criminal Court, report on the opening of the investigation, La Paz, 7 July 2010
- Mabel Morales Graz, coroner, expert report on the forensic autopsy of 9 July 2010
- Moisés Hernández Moreno, Eugenio Zaffaroni et al., *Motivos y Consultoría de Reforma al Código Penal Boliviano* (second volume), Ministry of Justice, 2009
- Supreme Court of Justice, Supreme Court Decision No. 122/08 of 9 May 2008
- National Public Defence Service, statistical report, 2010
- Forensic Investigation Institute, Note FGE/IDIF-468/10 of 10 August 2010

Weblinks

www.economiayfinanzas.gob.bo/index.php?opcion=com_contenido&ver=contenido&id=1215&seccion=306&categoria=446.

www.ine.gob.bo.

www.la-razon.com/version.php?ArticleId=4856&a=1&EditionId=133.
