



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Seventeenth session**

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Item 7 of the provisional agenda

**Consideration of reports of States parties to the Convention**

**List of issues in relation to the report submitted by the  
Plurinational State of Bolivia under article 29 (1) of the  
Convention**

**Addendum**

**Replies of the Plurinational State of Bolivia to the list of  
issues\*, \*\*, \*\*\***

[Date received: 7 August 2019]

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\* The present document is being issued without formal editing.  
\*\* The annexes are on file with the secretariat and are available for consultation.  
\*\*\* The footnotes are reproduced in the language of submission only.



## I. Introduction

1. The Plurinational State of Bolivia, in accordance with article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (“the Convention”), submitted to the Committee on Enforced Disappearances (“the Committee”) its initial report (CED/C/BOL/1) in 2018 and received the list of issues to be taken up during the review of the initial report (CED/C/BOL/Q/1) in April 2019.
2. In the framework of the inter-agency mechanism, the present report was prepared by the Ministry of Justice and Institutional Transparency, with information provided by State institutions involved in the protection and promotion of human rights.

## II. Replies to the Committee’s questions

### A. General information

#### Reply to paragraph 1 of the list of issues

3. The Bolivian State will consider at a later stage whether or not it is appropriate to make the declarations provided for in articles 31 and 32 of the Convention.

#### Reply to paragraph 2 of the list of issues

##### *Preparation of the report*

4. The initial report was prepared by the Ministry of Justice and Institutional Transparency, in cooperation with the institutions of the executive, judicial and legislative branches and the electoral bodies, and submitted to a review process by the inter-agency coordination mechanism for the drafting and presentation of the reports of Bolivia, composed of the Ministry of Justice and Institutional Transparency, the Ministry of Foreign Affairs and the Counsel General’s Office,<sup>1</sup> in compliance with the commitment made by Bolivia during the second universal periodic review in October 2014.<sup>2</sup>

##### *Remit and activities of the Ombudsman’s Office*

5. The remit of the Ombudsman’s Office is established in articles 218, 222 and 223 of the Constitution.
6. Article 218.I states: “I. The Ombudsman’s Office shall be responsible for overseeing the observance, promotion, dissemination and enforcement of the individual and collective human rights established in the Constitution, legislation and international instruments. The Ombudsman’s mandate covers administrative work throughout the public sector and the activities of private institutions that provide public services.”
7. In addition, article 222 of the Constitution provides that the tasks of the Ombudsman’s Office include: “3. Investigating, either of its own motion or at the request of a party, acts or omissions that might entail a violation of the individual or collective rights established in the Constitution, the law and international treaties, and calling on the Public Prosecution Service to take the relevant legal action. 4. Requesting information on matters under investigation from the authorities and public servants, who may not withhold such information for any reason. (...) 6. Having free access to places of detention or internment without opposition.”
8. Likewise, paragraphs 4 and 6 of article 5 of the Ombudsman Act<sup>3</sup> provide that the tasks of the Ombudsman’s Office include: “4. Requesting from the authorities, public servants, legal representatives of private companies, joint ventures and cooperatives that

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<sup>1</sup> Convenio de Cooperación Interinstitucional entre el MJTI, MRE y PGE de 01.12.2015.

<sup>2</sup> A/HRC/28/7, párr. 50.

<sup>3</sup> Ley 870 de 13.12.2016.

provide public services, or indigenous and aboriginal authorities, the information required for the exercise and discharge of its functions. (...) 6. Having free, unrestricted access to police or military detention and internment centres, police or military training academies, shelters, care centres for children and adolescents and for older persons, hospitals, health centres or institutions providing health services, temporary shelters and training and education centres for the purpose of ensuring respect for, and promotion of, the rights of the persons housed there”.

9. In accordance with this mandate, the Ombudsman’s Office undertakes activities in the area of enforced disappearance, and in March 2019 submitted a report to the Committee, which includes information to supplement the State party report submitted in 2018.

10. In 2017 and 2018, the Ombudsman’s Office, together with the Ministry of Justice and Institutional Transparency and other institutions, participated in several joint working meetings with associations of victims of political violence, such as Plataforma de Luchadores Sociales and Kilómetro Cero.

11. The Office also worked with the Ministry of Defence to have the archives of the military dictatorship declassified. The Ministry issued Ministerial Decision No. 0316 of 19 May 2009, article 1 of which states: “The Commander in Chief of the Armed Forces of the State is authorized to facilitate the access of victims of military dictatorships and their relatives to the available archives, public records and documentation of the Armed Forces upon request, if they demonstrate a legitimate interest in doing so.”

## **B. Definition and criminalization of enforced disappearance (arts. 1–7)**

### **Reply to paragraph 3 of the list of issues**

#### *Statistical information on disappeared persons*

12. In Bolivia, all cases of enforced disappearance took place during the period of military coups between 1964 and 1982. There are 79 cases that match the international legal definition of the criminal offence of enforced disappearance. Two of the cases involve women, one of whom disappeared in August 1971 and the other in 1980. The list of disappeared persons includes Argentine and Chilean citizens and one Brazilian (annex 1).

#### *State of emergency*

13. With regard to exceptional circumstances as a justification for enforced disappearance, as indicated in paragraph 20 of the initial report, article 137 of the Constitution provides: “In no case may the declaration of a state of emergency suspend guarantees of rights, fundamental rights, the right to due process, the right to information or the rights of persons deprived of their liberty.”

14. This provision is consistent with article 15 of the Constitution, which establishes as fundamental rights the right to life and physical, psychological and sexual integrity and stipulates that no person may be subjected to enforced disappearance. Accordingly, enforced disappearance is prohibited in Bolivia even in a state of emergency.

### **Reply to paragraph 4 of the list of issues**

#### *Clarification with respect to the definition of enforced disappearance*

15. Article 292 bis of the Criminal Code defines the offence of enforced disappearance as follows:

Anyone who, with the authorization, support or acquiescence of any State body, deprives one or more persons of their liberty and deliberately conceals or refuses to disclose information on or to acknowledge that deprivation of liberty or to disclose the whereabouts of the person or persons, thereby preventing the exercise of remedies and procedural safeguards, shall be liable to 5 to 15 years’ imprisonment. If, as a result of the act, the victim suffers serious physical or psychological harm,

the penalty shall be from 15 to 20 years' imprisonment. If the perpetrator of the act is a public official, the maximum penalty shall be increased by one third. If the act results in the death of the victim, the penalty shall be 30 years' imprisonment.

16. Thus, all of the elements must be present in order for an act to constitute the offence of enforced disappearance as defined in article 292 bis.

17. Articles 334 and 292 of the Code establish the offences of abduction<sup>4</sup> and deprivation of liberty,<sup>5</sup> which are punishable with prison sentences.<sup>6</sup>

#### **Reply to paragraph 5 of the list of issues**

18. Under the above-mentioned article 292 bis, the offence of enforced disappearance in Bolivia can only be committed, by a public official or other person, with the authorization, support or acquiescence of a State body.

19. The offences of abduction, deprivation of liberty and trafficking in persons<sup>7</sup> are committed by persons acting on their own behalf.

20. However, these are all public order offences that are dealt with under the procedure described in paragraphs 32 and 58 et seq. of the initial report.

#### **Reply to paragraph 6 of the list of issues**

21. As stated in paragraph 25 of the State party's initial report, the Rome Statute, ratified through Act No. 2398 of 23 May 2002, and other international human rights instruments form part of the constitutional body of law and thus prevail over domestic law, in accordance with articles 13.II<sup>8</sup> and IV, 256<sup>9</sup> and 410.II<sup>10</sup> of the Constitution.

22. Accordingly, enforced disappearance is considered a crime against humanity in Bolivia.

<sup>4</sup> CP, art. 334 (Secuestro). El que secuestrare a una persona con el fin de obtener rescate u otra indebida ventaja o concesión para sí o para otros como precio de la libertad de la víctima, será sancionado con la pena de cinco (5) a quince (15) años de presidio. Si como consecuencia de este hecho resultaren graves daños físicos en la víctima o el culpable consiguiera su propósito, la pena será de quince (15) años a treinta (30) años de presidio. Si resultare a la muerte de la víctima, se aplicará la pena correspondiente al asesinato.

<sup>5</sup> CP, art. 292 (Privación de Libertad). El que de cualquier manera privare a otro de su libertad personal, incurrirá en reclusión de seis (6) meses a dos (años) y multa de treinta (30) a cien (100) días. La sanción será agravada en un tercio, cuando el hecho fuere cometido: 1. Por un funcionario público, con abuso de su autoridad. 2. Sobre un ascendiente, descendiente o cónyuge. 3. Si la privación de libertad excediere de cuarenta y ocho horas.

<sup>6</sup> CP, art. 27 (Privativas de libertad). Son penas privativas de libertad: 1. (Presidio). El presidio se aplicará a los delitos que revistan mayor gravedad y tendrá duración de uno a treinta años. En los de concurso el máximo no podrá, en ningún caso, exceder de treinta años.

<sup>7</sup> CP, art. 281 *bis* (trata de seres humanos).

<sup>8</sup> CPE, art. 13.II. Los derechos que proclama esta Constitución no serán entendidos como negación de otros derechos no enunciados (...) IV. Los tratados y convenios internacionales ratificados por la Asamblea Legislativa Plurinacional, que reconocen los derechos humanos y que prohíben su limitación en los Estados de Excepción prevalecen en el orden interno. Los derechos y deberes consagrados en esta Constitución se interpretarán de conformidad con los Tratados internacionales de derechos humanos ratificados por Bolivia.

<sup>9</sup> CPE, art. 256.I. Los tratados e instrumentos internacionales en materia de derechos humanos que hayan sido firmados, ratificados o a los que se hubiera adherido el Estado, que declaren derechos más favorables a los contenidos en la Constitución, se aplicarán de manera preferente sobre ésta. II. Los derechos reconocidos en la Constitución serán interpretados de acuerdo a los tratados internacionales de derechos humanos cuando éstos prevean normas más favorables.

<sup>10</sup> CPE, art. 410.II. "... El bloque de constitucionalidad está integrado por los Tratados y Convenios internacionales en materia de Derechos Humanos...".

## Reply to paragraph 7 of the list of issues

### *Penalties for the offence of enforced disappearance*

23. As noted in paragraph 36 of the initial report, article 292 bis of the Criminal Code establishes the following penalties for the offence of enforced disappearance:

- (a) 5 to 15 years' imprisonment for the offence of enforced disappearance;
- (b) If, as a result of the act, the victim suffers serious physical or psychological harm, 15 to 20 years' imprisonment;
- (c) If the act results in the death of the victim, 30 years' imprisonment.

24. The parameters for the application of minimum and maximum penalties are set out in article 27 of the Criminal Code<sup>11</sup> and in the Constitution;<sup>12</sup> prison sentences are applicable to the most serious offences.

### *Application of amnesty decrees*

25. In Supreme Court Decision No. 596/2017 of 14 August, the Supreme Court of Justice stated:

Article 29 of the Rome Statute of the International Criminal Court ... establishes that international crimes shall not be subject to any statute of limitations; therefore, crimes against humanity are not subject to a statute of limitations even if the acts do not constitute a violation of the domestic law of the country where they were committed.

The peculiarity of crimes against humanity is that they are "ordinary" crimes, such as murder, violation of sexual freedom and torture, which, in certain contexts and under certain conditions, may become crimes against humanity. One of the main consequences of this, as was pointed out above, is that these crimes are then no longer subject to a statute of limitations and States have an obligation to prosecute the perpetrators regardless of their nationality or the place where the acts were committed and the perpetrators will not be able to enjoy the potential benefits of a pardon or amnesty. Thus, the classification of certain behaviour as a crime against humanity has serious repercussions for the person alleged to have committed the acts, owing to the restrictions of liberty this would entail.

26. Thus, as enforced disappearance is a crime against humanity and is not subject to a statute of limitations, amnesty decrees cannot be applied to the offence of enforced disappearance.

### *Mitigating circumstances*

27. The Criminal Code does not set out specific mitigating circumstances for the offence of enforced disappearance; however, article 292 bis provides for the following specific aggravating factors: "If, as a result of the act, the victim suffers serious physical or psychological harm, the penalty shall be from 15 to 20 years' imprisonment. If the perpetrator of the act is a public official, the maximum penalty shall be increased by one third. If the act results in the death of the victim, the penalty shall be 30 years' imprisonment."

28. Articles 39 and 40 of the Criminal Code, meanwhile, establish general and special extenuating circumstances; the criminal judge is competent to determine the penalty applicable to each offence, within the legal limits.<sup>13</sup>

<sup>11</sup> CPE, art. 27 (Privativas de Libertad); 1 (Presidio). El presidio se aplicará a los delitos que revistan mayor gravedad y tendrá duración de uno (1) a treinta (30) años. En los concursos el máximo no podrá, en ningún caso, exceder de treinta (30) años.

<sup>12</sup> CPE, art. 118.II. La máxima sanción penal será de treinta años de privación de libertad, sin derecho a indulto.

<sup>13</sup> CP, art. 37 (Fijación de la Pena).

**Reply to paragraph 8 of the list of issues***Criminal responsibility*

29. Articles 8 (attempt),<sup>14</sup> 13 bis (commission by omission),<sup>15</sup> 20 (perpetrators),<sup>16</sup> 22 (instigator)<sup>17</sup> and 23 (complicity)<sup>18</sup> of the Criminal Code establish the degrees of criminal participation.

30. With regard to domestic provisions that expressly prohibit the issuance by public authorities of orders or instructions directing, authorizing or encouraging the commission of enforced disappearances, the provision on the offence of enforced disappearance, article 292 bis of the Criminal Code, is applicable to all persons whose conduct constitutes the offence of enforced disappearance, according to their degree of participation.

**C. Judicial proceedings and cooperation in criminal matters (arts. 8–15)****Reply to paragraph 9 of the list of issues***Non-applicability of the statute of limitations*

31. Article 34 of the Code of Criminal Procedure establishes that the rules on statutes of limitation contained in international treaties and conventions shall take precedence. Article 111 of the Constitution establishes that crimes against humanity are not subject to a statute of limitations.

32. Bolivia acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity through Act No. 2116 of 11 September 2000 and to the International Convention for the Protection of All Persons from Enforced Disappearance through Act No. 3935 of 26 September 2008; both conventions are part of the domestic legal order.

33. In addition, as stated in paragraphs 21, 22 and 27 of the present report, in accordance with article 7 (1) (i) of the Rome Statute, the offence of enforced disappearance of persons is a crime against humanity.

**Reply to paragraph 10 of the list of issues***Jurisdiction over offences of enforced disappearance*

34. Jurisdiction is governed by Act No. 3935, through which the Convention was approved, and Act No. 3326 of 18 January 2016, which incorporates the offence of enforced disappearance into the Criminal Code, thereby establishing the jurisdiction of the Bolivian State to hear cases involving Bolivian and foreign nationals, whether they are the perpetrators or victims, if the offence occurred in the Bolivian territory.

<sup>14</sup> CP, art. 8 (Tentativa). El que mediante actos idóneos o inequívocos comenzare la ejecución del delito y no lo consumare por causas ajenas a su voluntad, será sancionado con los dos tercios de la pena establecida para el delito.

<sup>15</sup> CP, art. 13 (Comisión por Omisión). Los delitos que consistan en la producción de un resultado solo se entenderán cometidos por omisión cuando el no haberlos evitado, por la infracción de un especial deber jurídico del autor que lo coloca en posición de garante, equivalga, según el sentido de la ley, a su causación.

<sup>16</sup> CP, art. 20 (Autores). Son autores quienes realizan el hecho por si solos, conjuntamente, por medio de otro o los que dolosamente prestan una cooperación de tal naturaleza, sin la cual no habría podido cometerse el hecho antijurídico doloso. El autor mediato el que dolosamente se sirve de otro como instrumento para la realización del delito.

<sup>17</sup> CP, art. 22 (Instigador). Es instigador el que dolosamente determine a otra a la comisión de un hecho antijurídico doloso. Sera sancionado con la pena prevista para el autor.

<sup>18</sup> CP, art. 23 (Complicidad). Es cómplice el que dolosamente facilite o coopere a la ejecución del hecho antijurídico doloso, en tal forma que aún sin esa ayuda se habría cometido; y el que en virtud de promesas anteriores, preste asistencia o ayuda con posterioridad al hecho. Sera sancionado con la pena prevista para el autor del delito.

*Jurisdiction over crimes committed abroad*

35. Article 1 (2), (3), (4), (6) and (7) of the Criminal Code<sup>19</sup> establishes the cases in which the Bolivian courts may exercise jurisdiction over crimes committed abroad.

36. Article 49 of the Code of Criminal Procedure sets out the rules on the territorial jurisdiction of judges.<sup>20</sup>

*Procedural guarantees*

37. Article 14.I<sup>21</sup> of the Constitution provides that every human being, without distinction, enjoys the rights recognized in the Constitution. Furthermore, paragraph III guarantees all persons and communities, without any discrimination whatsoever, the free and effective exercise of the rights enshrined in the Constitution and in legislation and international human rights treaties. Paragraphs V and VI, on Bolivian and foreign nationals, stipulate that all Bolivian laws apply to all persons and that foreign nationals have the rights and duties set forth in the Constitution.

38. The Code of Criminal Procedure establishes among its guarantees that no conviction shall be imposed without prior trial and legal process (art. 1),<sup>22</sup> the impartiality and

<sup>19</sup> CP, art. 1 (En cuanto al espacio). Este Código se aplicará: 1) A los delitos cometidos en el territorio de Bolivia o en lugares sometidos a su jurisdicción; 2) A los delitos cometidos en el extranjero, cuyos resultados se hayan producido o debían producirse en el territorio de Bolivia o en los lugares sometidos a su jurisdicción; 3) A los delitos cometidos en el extranjero por un boliviano siempre que se encuentre en territorio nacional y no haya sido sancionado en el lugar que delinquiró; 4) A los delitos cometidos en el extranjero contra la seguridad del Estado, la fe pública y la economía nacional. Esta Disposición será extensiva a los extranjeros, si fueren habidos por extradición o se hallasen dentro del territorio de la Republica; 5) A los delitos cometidos en naves, aeronaves u otros medios de transporte bolivianos, en el país extranjero cuando no sean juzgados en este; 6) A los delitos cometidos en el extranjero por funcionarios al servicio de la Nación, en el desempeño de su cargo o comisión; 7) A los delitos que por tratado o convención de la Republica se haya obligado a reprimir aun cuando no fueren cometidos en su territorio.

<sup>20</sup> CPP, art. 49 (Reglas de competencia territorial). Serán competentes: 1. El juez del lugar de la comisión del delito. El delito se considera cometido en el lugar donde se manifieste la conducta o se produzca el resultado; 2. El juez de la residencia del imputado o del lugar en que éste sea habido; 3. El juez del lugar donde se descubran las pruebas materiales del hecho; 4. Cuando el delito cometido en territorio extranjero haya producido sus efectos en territorio boliviano, conocerá el juez del lugar donde se hayan producido los efectos o el que hubiera prevenido; 5. En caso de tentativa, será el del lugar donde se realizó el comienzo de la ejecución o donde debía producirse el resultado; y, 6. Cuando concurren dos o más jueces igualmente competentes conocerá el que primero haya prevenido. Los actos del juez incompetente por razón del territorio mantendrán validez, sin perjuicio de las modificaciones que pueda realizar el juez competente.

<sup>21</sup> CPE, art 14.I. Todo ser humano tiene personalidad y capacidad jurídica con arreglo a las leyes y goza de los derechos reconocidos por esta Constitución, sin distinción alguna. II. El Estado prohíbe y sanciona toda forma de discriminación fundada en razón de sexo, color, edad, orientación sexual, identidad de género, origen, cultura, nacionalidad, ciudadanía, idioma, credo religioso, ideología, filiación política o filosófica, estado civil, condición económica o social, tipo de ocupación, grado de instrucción, discapacidad, embarazo, u otras que tengan por objetivo o resultado anular o menoscabar el reconocimiento, goce o ejercicio, en condiciones de igualdad, de los derechos de toda persona. III. El Estado garantiza a todas las personas y colectividades, sin discriminación alguna, el libre y eficaz ejercicio de los derechos establecidos en esta Constitución, las leyes y los tratados internacionales de derechos humanos. IV. En el ejercicio de los derechos, nadie será obligado a hacer lo que la Constitución y las leyes no manden, ni a privarse de lo que éstas no prohíban. V. Las leyes bolivianas se aplican a todas las personas, naturales o jurídicas, bolivianas o extranjeras, en el territorio boliviano. VI. Las extranjeras y los extranjeros en el territorio boliviano tienen los derechos y deben cumplir los deberes establecidos en la Constitución, salvo las restricciones que ésta contenga.

<sup>22</sup> CPP, art. 1. (Ninguna condena sin juicio previo y proceso legal). Nadie será condenado a sanción alguna si no es por sentencia ejecutoriada, dictada luego de haber sido oído previamente en juicio oral y público, celebrado conforme a la Constitución, las Convenciones y Tratados internacionales vigentes y éste Código.

independence of judges (art. 3),<sup>23</sup> the status and rights of the accused (art. 5)<sup>24</sup> and the equality of the parties (art. 12),<sup>25</sup> which constitute due process and provide legal certainty to the parties to the proceedings that, regardless of whether the accused is a Bolivian or foreign national, he or she will face criminal proceedings under the same conditions, with the same guarantees and the same rights.

39. In analysing article 119 of the Constitution, the Plurinational Constitutional Court stated the following in Plurinational Constitutional Judgment 0235/2015-S1 of 26 February:

Article 119.I of the Constitution establishes that: “During the legal process, the parties to the conflict shall enjoy equal opportunities to exercise the privileges and rights that may help them, whether in ordinary proceedings or in the indigenous and aboriginal system.” This provision constitutes an enforceable right for persons involved in judicial proceedings.

This constitutional principle, which has been interpreted as such in settled jurisprudence, identifies the right to equality of the parties to the proceedings as one of the elements that make up the right to due process. This equality presupposes that the parties involved in the judicial proceedings are granted the same rights, possibilities and burdens, without any type of privilege being granted or denied to any of them; in other words, each of the parties to the proceedings has similar procedural duties and rights and must therefore be subject to the same treatment by the judge or the court hearing the case. This means that the judicial authority may not act in a way that favours any of the parties to the conflict; on the contrary, it is obliged to maintain a neutral position with respect to parties, ensuring the equality of the parties to the proceedings and ensuring justice prevails in all its dimensions.

#### **Reply to paragraph 11 of the list of issues**

##### *Domestic legal measures on the detention of alleged perpetrators*

40. Article 138 of the Code of Criminal Procedure states that assistance will be provided in response to requests from foreign authorities, provided that such requests are in accordance with the Constitution, international conventions and treaties, and the provisions of the Code of Criminal Procedure. In addition, with respect to extradition, article 149 et seq. of the Code of Criminal Procedure regulates the procedure to be followed.

41. As has already been mentioned, the Convention is part of the domestic legal order, so article 17 of the Convention, on the right to consular assistance, applies to the handling of criminal proceedings.

42. In accordance with the Vienna Convention on Diplomatic Relations, approved by Supreme Decree No. 10529 of 13 October 1972, and the Vienna Convention on Consular Relations, ratified by Supreme Decree No. 09384 of 10 September 1970, both incorporated into law by Act No. 456 of 14 December 2013, the Supreme Court of Justice issued Instructions No. 26/2016 of 12 October, which give guidance on compliance with article 36.1 (b) of the Vienna Convention on Consular Relations, providing that judges shall give notification, without delay, if a foreign detainee requests consular assistance.

<sup>23</sup> CPP, art. 3 (Imparcialidad e independencia). Los jueces serán imparciales e independientes, sometidos únicamente a la Constitución, las Convenciones y Tratados internacionales vigentes y a las leyes.

<sup>24</sup> CPP, art. 5 (Calidad y derechos del imputado). Se considera imputado a toda persona a quien se atribuya la comisión de un delito ante los órganos encargados de la persecución penal. El imputado podrá ejercer todos los derechos y garantías que la Constitución, las Convenciones y los Tratados internacionales vigentes y este Código le reconozcan, desde el primer acto del proceso hasta su finalización. Se entenderá por primer acto del proceso, cualquier sindicación en sede judicial o administrativa contra una persona como presunto autor o partícipe de la comisión de un delito. Toda persona a quien se atribuya un delito tiene derecho a ser tratada con el debido respeto a su dignidad de ser humano.

<sup>25</sup> CPP, art. 12 (Igualdad). Las partes tendrán igualdad de oportunidades para ejercer durante el proceso las facultades y derechos que les asisten.



*Notification of the arrest of alleged perpetrators to other States that may also have jurisdiction*

43. Notifications are made through the International Criminal Police Organization (INTERPOL) National Central Bureau, which is part of the Bolivian Police. This specialized police agency's functions include maintaining ongoing communication on matters involving international police cooperation; getting national law enforcement agencies involved in investigations by other INTERPOL offices; attracting the interest of other INTERPOL offices in investigation into events that occurred in Bolivia that are of police or judicial interest; and maintaining a permanent working relationship with national and international institutions and bodies interested in matters relating to the work of INTERPOL Bolivia.

**Reply to paragraph 12 of the list of issues**

*Investigations into cases of alleged enforced disappearance*

44. As mentioned in paragraph 86 of the initial report and several times in this report, all cases of enforced disappearance in Bolivia took place during the period from 1964 to 1982.

45. However, with regard to paragraph 12 (a), the following complaints have been received by the Attorney General's Office.

<i>Case No.</i>	<i>Initiation of investigation</i>	<i>Name of the disappeared person(s)</i>	<i>Sex</i>	<i>Age</i>	<i>Nationality</i>	<i>Date of disappearance</i>	<i>Located</i>	<i>Current status of proceedings</i>
LPZ0906441	Ex officio	Marcelo Quiroga Santa Cruz	Male	49	Bolivian	17/07/1980	No	Preliminary
LPZ1804674	Complaint	Félix Melgar Antelo	Male	30	Bolivian	April 1972	No	Rejected
PTJ9908933 (14222/200 9)	Complaint	José Carlos Trujillo Oroza José Luis Ipsen Peña	Male	21 47	Bolivian	02/02/1972	Not located	Conviction and sentence
LPZ1009466	Complaint	Mario Ibsen, Rainer Ibsen Castro, José Luis Ibsen Peña	Male	22 47	Bolivian	1971 1973	No	Intermediate stage
Teoponte case	Complaint	Luis Renato Pires de Almeida Francisco Imaca Rivera Norberto Domínguez Silva Antero Calpiña Hurtado Carlos Aguedo Cortes Rueda Herminio Villca Colque Gonzalo Rojas Paredes Emilio Quiroga Bonadona Ricardo Oscar Puente Gonzales Julio Cesar Pérez López Filiberto Parra Rojas Carlos Navarro Lara Tirso Montiel Martínez Eloy Mollo Mamani Delfín Mérida Vargas Benito Mamani Efraín Lizarazu Cabrera Ricardo Imaca Rivera Jorge Fernández Meana Clemente Fernández Fuentes Rubén Cedat Acuña Evaristo Bustos Aranibar Luis Barriga Luna Fabián Barba Hilario Ampuero Ferrada Julio Zambrano Acuña Carlos Suarez Coímbra Federico Argote Carlos Brain Pizarro	Male	Between 22 and 28	Bolivian	1970s	No	Under investigation

46. With regard to paragraph 12 (b), article 16<sup>26</sup> of the Code of Criminal Procedure states that public prosecution is exercised by the Public Prosecutor's Office for all crimes that can be prosecuted *ex officio*, without prejudice to the participation of the victim. Accordingly, since the offence of enforced disappearance is a public order crime under article 20 of the Code of Criminal Procedure, criminal action is taken *ex officio*; the criminal investigation is carried out by the prosecutor who knows the facts and, in the operational control of the investigation, can plan his or her own investigation strategy in coordination with the investigators assigned to the case. The prosecutor's actions must be in compliance with the Code of Criminal Procedure, the Organic Act on the Public Prosecution Service,<sup>27</sup> internal regulations, the Constitution and applicable international instruments.

47. When it comes to the investigation policy or plan for cases of enforced disappearance, the Attorney General's Office establishes two objectives: (i) The investigation shall aim to establish the occurrence of the offence and the circumstances, including time, method, place and presumed perpetrators; and, (ii) once these have been identified, the investigation must, without fail, aim to locate and identify the bodies and hand them over to the victims' families.

48. The Attorney General's Office issued Instructions FGE/RJGP 141/2017, in which it ordered that the investigation of crimes involving human rights violations during the period from 1964 to 1982 should be prioritized and carried out with due diligence.

49. With respect to the Human Rights Unit of the Prosecution Service, Decision FGE/JLP/DAJ 92/2018 of 31 December cancelled the prosecution management model that had been in force up to that point and provided for the implementation of a new organizational model, in which cases are assigned individually, in accordance with the needs of the service and the caseload, working in a coordinated manner and with mutual cooperation in order to standardize the interpretation and application of the law.

50. Specialized Prosecutor's Offices were created, to be made up, in accordance with the needs of the service and the caseload, of one or several prosecutors, applying set criteria and interpretations in order to standardize prosecutorial actions. The following Specialized Prosecutor's Offices be established, at least:

- (a) Prosecutor's Office for drug trafficking crimes and seizure of illegal assets;
- (b) Prosecutor's Office for corruption and money-laundering, customs and taxes;
- (c) Prosecutor's Office for crimes against life;
- (d) Prosecutor's Office for early resolution;
- (e) Prosecutor's Office for juvenile criminal justice;
- (f) Prosecutor's Office for environmental crimes;
- (g) Prosecutor's Office for property offences;
- (h) Prosecutor's Office for gender-based crimes, sexual violence and trafficking;
- (i) Joint services office.

51. The duties of the Inter-Agency Council of Inquiry on Enforced Disappearances were described in detail in paragraph 102 of the initial report.

52. With respect to access to military information considered restricted or secret, in the investigation of acts linked to enforced disappearance, it is possible to obtain and gain access to classified information from the Armed Forces, in accordance with the authorization provided for in article 17 (obligation to cooperate) of the Organic Act on the

<sup>26</sup> CPP, art. 16 (Acción penal pública). La acción penal pública será ejercida por la Fiscalía, en todos los delitos perseguibles de oficio, sin perjuicio de la participación que este Código reconoce a la víctima. La acción penal pública será ejercida a instancia de parte sólo en aquellos casos previstos expresamente en este Código. El ejercicio de la acción penal pública no se podrá suspender, interrumpir ni hacer cesar, salvo en los casos expresamente previstos por la ley.

<sup>27</sup> Ley 260 de 11.07.2012.

Public Prosecution Service<sup>28</sup> and the provisions of articles 218 (reports),<sup>29</sup> 13 (legality of evidence),<sup>30</sup> 171 (admissibility of evidence),<sup>31</sup> 172 (excluded evidence),<sup>32</sup> 173 (evaluation)<sup>33</sup> and 297 (operational control)<sup>34</sup> of the Code of Criminal Procedure.

53. As mentioned in paragraph 8 of this report, the Ombudsman's Office may request the information it needs to exercise and fulfil its functions.

54. Concerning paragraph 12 (c) of the list of issues, article 55.II of the Organic Act on the Public Prosecution Service stipulates that:

Prosecutors may reject written complaints, criminal charges and police incident reports: (a) whose description of the facts is inconsistent, (b) which fall under the remit of private criminal prosecution, (c) which do not meet relevant legal requirements, (d) where there is no clear narrative, or (e) where there is insufficient evidence to make a decision.

In the latter three cases, a period of 24 hours shall be granted for the rectification of the submission, otherwise it shall be discounted.

<sup>28</sup> LOMP, art. 17 (Obligación de Cooperación). Para el cumplimiento de las funciones del Ministerio Público, toda persona, institución o dependencia, pública o privada, tiene la obligación de proporcionar la información, remitir la documentación requerida y/o realizar cualquier diligencia relacionada con la investigación solicitada por el Ministerio Público de manera inmediata, directa y gratuita, bajo responsabilidad prevista en el Código Penal. No podrán condicionarse el cumplimiento al pago de tasas, timbres o cualquier otro tipo de valor.

<sup>29</sup> CPP, art. 218 (Informes). El fiscal, juez o tribunal, podrá requerir informes a cualquier persona o entidad pública o privada sobre datos que consten en sus registros. Los informes se solicitarán por cualquier medio, indicando el proceso en el cual se requieren, el plazo para su presentación y las consecuencias en caso de incumplimiento.

<sup>30</sup> CPP, art. 13 (Legalidad de la Prueba). Los elementos de prueba sólo tendrán valor si han sido obtenidos por medios lícitos e incorporados al proceso conforme a las disposiciones de la Constitución Política del Estado y de este Código. No tendrá valor la prueba obtenida mediante torturas, malos tratos, coacciones, amenazas, engaños o violación de los derechos fundamentales de las personas, ni la obtenida en virtud de información originada en un procedimiento o medio ilícito.

<sup>31</sup> CPP, art. 171 (Libertad Probatoria). El juez admitirá como medios de prueba todos los elementos lícitos de convicción que puedan conducir al conocimiento de la verdad histórica del hecho, de la responsabilidad y de la personalidad del imputado. Podrán utilizarse otros medios además de los previstos en este Libro. Su incorporación al proceso se sujetará a un medio análogo de prueba previsto. Un medio de prueba será admitido si se refiere, directa o indirectamente, al objeto de la investigación y sea útil para el descubrimiento de la verdad. El juez limitará los medios de prueba ofrecidos cuando ellos resulten manifiestamente excesivos o impertinentes.

<sup>32</sup> CPP, art. 172 (Exclusiones Probatorias). Carecerán de toda eficacia probatoria los actos que vulneren derechos y garantías consagradas en la Constitución Política del Estado, en las Convenciones y Tratados internacionales vigentes, este Código y otras leyes de la República, así como la prueba obtenida en virtud de información originada en un procedimiento o medio ilícito. Tampoco tendrán eficacia probatoria los medios de prueba incorporados al proceso sin observar las formalidades previstas en este Código.

<sup>33</sup> CPP, art. 173 (Valoración). El juez o tribunal asignará el valor correspondiente a cada uno de los elementos de prueba, con aplicación de las reglas de la sana crítica, justificando y fundamentando adecuadamente las razones por las cuales les otorga determinado valor, en base a la apreciación conjunta y armónica de toda la prueba esencial producida.

<sup>34</sup> CPP, art. 297 (Dirección Funcional). La Fiscalía ejerce la dirección funcional de la actuación policial en la investigación del delito. Dirección que tiene los siguientes alcances: 1. El cumplimiento obligatorio por parte de los funcionarios policiales de todas las órdenes relativas a la investigación del delito emitidas por la Fiscalía o los jueces. La autoridad administrativa policial no podrá revocar o modificar la orden emitida ni retardar su cumplimiento; 2. A requerimiento del fiscal la asignación directa y obligatoria de funcionarios policiales para la investigación del hecho delictivo. Asignados los funcionarios, la autoridad administrativa policial no podrá apartarlos de la investigación ni encomendarles otras funciones que les impidan el ejercicio de su comisión especial, sin autorización del fiscal; 3. La separación de la investigación del funcionario policial asignado, con noticia a la autoridad policial, cuando no cumpla una orden judicial o fiscal, actúe negligentemente o no sea eficiente en el desempeño de sus funciones; 4. Cuando corresponda, el fiscal podrá solicitar a la autoridad policial competente, a través de la Fiscalía del Distrito, la aplicación de sanciones disciplinarias para los funcionarios policiales separados de la investigación.

55. By law, prosecutors have the exclusive power to admit or reject written complaints, criminal charges and police incident reports.

56. The prosecutor's decision to reject a written complaint, criminal charges or a police incident report may be challenged by the aggrieved party within five days, following the procedure set out in article 305 of the Code of Criminal Procedure, in accordance with the terms of Plurinational Constitutional Judgment 0092/2014-S3 of 27 October.

57. If the complaint is admitted, the 20-day preliminary investigation phase begins, during which evidence is collected to enable the prosecutor to take a decision on the course of the first phase of the investigation. Once the police files have been received, the prosecutor may formalize the charges in respect of the alleged offence on a provisional basis, provided that there is sufficient evidence of an offence and the suspect's participation therein; alternatively, the prosecutor can order that the complaint be dismissed.

58. Again, this decision by the prosecutor may be challenged, in accordance with article 305 of the Code of Criminal Prosecution and within five days of its notification, and reviewed by the senior prosecutor, that is the Departmental Prosecutor, who will either uphold the dismissal and closure of the case or order that the decision be overturned and the investigation continued, in accordance with articles 300, 301, 302, 304 and 305 of the Code of Criminal Procedure.

59. Once the investigation phase of the preparatory stage has been completed, the prosecutor may present the indictment to the examining judge, provided that he or she considers that the investigation provides a basis for the public prosecution of the accused, in which case the background information is forwarded to the judge or court for trial. Alternatively, where appropriate, the prosecutor may issue a reasoned order dismissing the case.

60. The decision to dismiss the case can be challenged within 5 days of notification, following the procedure set out in article 324 of the Code of Criminal Procedure, with a view to it being reviewed by the Departmental Prosecutor, who may overturn the dismissal decision, in which case he or she will request the junior prosecutor or another prosecutor to bring charges before the judge or trial court within a maximum of 10 days. Alternatively, the Departmental Prosecutor will uphold the decision to dismiss the case, ordering the conclusion of the proceedings with respect to the accused and the cessation of precautionary measures and the cancellation of his or her criminal record, all in accordance with articles 134, 277, 323 and 324 of the Code of Criminal Procedure.

61. With regard to the measures in place to prevent the alleged perpetrators of an enforced disappearance from influencing the investigations, article 231 bis of the Code of Criminal Procedure, as amended by the Act on Summary Criminal Proceedings and Strengthening Comprehensive Efforts to Combat Violence against Children, Adolescents and Women,<sup>35</sup> provides for individual precautionary measures that include: pretrial detention and the prohibition of going to certain places and communicating with certain persons, applicable when there is sufficient evidence to suggest that the accused likely committed or participated in a punishable act and there is also clear and convincing evidence that the accused will fail to appear in court or will impede the establishment of the truth.

62. Concerning paragraph 12 (d) of the list of issues, in accordance with articles 11<sup>36</sup> and 88<sup>37</sup> of the Organic Act on the Public Prosecution Service and articles 27<sup>38</sup> and 28<sup>39</sup> of

<sup>35</sup> Ley 1173 de 03.05.2019.

<sup>36</sup> LOMP, art. 11 (Protección a víctimas, testigos y servidoras y servidores públicos) I. El Ministerio Público, en coordinación con la Policía Boliviana, Órganos del Estado e instituciones públicas, protegerá a las personas que por colaborar con la administración de justicia corran peligro de sufrir algún daño. A tal efecto, dispondrá de programas permanentes de protección a testigos, denunciantes, peritos, víctimas y a sus propias servidoras o servidores. II. Esta protección se brindará, en especial, cuando se trate de delitos vinculados al crimen organizado, corrupción, narcotráfico, en contra de niños, niñas, adolescentes y mujeres, trata y tráfico de personas y/o violación de derechos fundamentales.

the Act on the Protection of Complainants and Witnesses,<sup>40</sup> the Directorate for the Protection of Victims, Witnesses and Members of the Public Prosecution Service has implemented the Programme for the Protection of Victims, Witnesses, Complainants and Members of the Public Prosecution Service, approved by the Attorney General through decision FGE/JLP/DAJ 082/2018, as an institutional policy establishing the procedure to be followed for a person's inclusion in the programme, including the request, assessment, granting, follow-up and evaluation of protection measures.

63. In addition, according to the Triton system used by the Attorney General's Office, no victims, witnesses, complainants, members of the Public Prosecution Service or public servants have joined the Programme for the Protection of Victims, Witnesses, Complainants and Members of the Public Prosecution Service in connection with proceedings for the offence of enforced disappearance.

### **Reply to paragraph 13 of the list of issues**

#### *Funding of the Truth Commission*

64. The Truth Commission is a decentralized public institution under public law, with legal personality, administrative, financial, legal and technical autonomy, and its own assets, under the supervision of the Ministry of Justice and Institutional Transparency.<sup>41</sup>

65. Since it was decentralized in June 2018, the Truth Commission has had a budget of 5,683,412.71 bolivianos.

#### *Declassification of files*

66. Article 7 of Act No. 879 of 23 December 2016 on the establishment of the Truth Commission provides for the declassification of military files on disappeared persons.

67. Since March 2019, the Truth Commission's technical team has had access to the archive of Department II of the Chief of Staff of the Army.

### **Reply to paragraph 14 of the list of issues**

#### *Requests for judicial assistance or cooperation*

68. The procedure for international judicial assistance in judicial matters and extradition is regulated by title VI, International Judicial and Administrative Cooperation, chapter I and

<sup>37</sup> LOMP, art. 88 (Dirección de Protección a las Víctimas, Testigos y Miembros del Ministerio Público) Está encargada de promover la protección y asistencia a las víctimas de delitos, testigos, personas que colaboran con la persecución penal y servidoras o servidores del Ministerio Público.

<sup>38</sup> Ley de Protección de Denunciantes y Testigos, art. 27 (Atribuciones del Ministerio Público). A los fines del cumplimiento de la presente Ley, el Ministerio Público tiene las siguientes atribuciones: 1. Valorar la otorgación de medidas de protección a una persona particular o servidor público y establecer qué medida o medidas le serán asignadas.; 2. Requerir la adopción de medidas de protección a través de la Dirección de Protección a Víctimas, Testigos y Miembros del Ministerio Público; 3. Velar porque la Dirección de Protección a Víctimas, Testigos y Miembros del; 4. Ministerio Publico, se encuentre en condiciones de otorgar las medidas de protección establecidas en la presente Ley; 5. Orientar a las personas que hayan realizado o se dispongan a realizar una actividad protegida, sobre las consecuencias que pueden derivar de su realización, así como en relación con las medidas de protección a las que tienen derecho, y las características de los mecanismos y procedimientos administrativos y judiciales aplicables.

<sup>39</sup> Ley de Protección de Denunciantes y Testigos, art. 28 (Dirección de Protección a Víctimas, Testigos y Miembros del Ministerio Público). La Dirección de Protección a Víctimas, Testigos y Miembros del Ministerio Público, de acuerdo a su normativa propia, además de las funciones que desempeña, deberá atender todos los casos que lleguen por delitos establecidos en el artículo 3 de la presente Ley.

<sup>40</sup> Ley 458 de 19.12.2013.

<sup>41</sup> DS 3594 del 13 de junio de 2018, art. 2.

chapter II, Extradition, of the Code of Criminal Procedure<sup>42</sup> as well as international human rights treaties and conventions.

69. The Special Unit for Extradition, Cooperation in Criminal Matters and International Relations was established under the Attorney General's Office in 2008.

70. With respect to the role of the Ministry of Foreign Affairs in the field of judicial assistance, article 17 of Supreme Decree No. 29894 of 7 February 2009 on the organizational structure of the executive branch of the Plurinational State provides that it shall: "(x) Exercise the role of central authority in the field of international legal cooperation".

71. Article 12.I of the Constitution establishes a framework for coordination and cooperation between State bodies, providing that the organization of the State is based on the independence, separation, coordination and cooperation of the legislative, executive, judicial and electoral bodies.<sup>43</sup>

72. With respect to the request for information on judicial cooperation treaties applying to enforced disappearance that have been concluded with other States parties, in the absence of an international treaty or agreement on a specific human rights issue, the Bolivian State applies the principles of reciprocity and good faith.

## **D. Measures to prevent enforced disappearances (arts. 16–23)**

### **Reply to paragraph 15 of the list of issues**

*Prohibition on the expulsion, return, surrender or extradition of persons other than refugees and asylum seekers*

73. The Convention, ratified by Bolivia, prohibits the extradition of persons when there is reason to believe that they could be subjected to enforced disappearance; this rule is part of the domestic legal order.

74. In addition, a decision by the Supreme Court of Justice authorizing extradition may be appealed to the Constitutional Court.

75. With regard to the expulsion, return or surrender of a person, article 37 of the Migration Act<sup>44</sup> states:

I. The General Directorate of Migration shall, subject to an administrative hearing,<sup>45</sup> make a decision on the expulsion of the foreign migrant from the national territory.

<sup>42</sup> Código de Procedimiento Penal, el art. 138° (Cooperación). "Se brindará la máxima asistencia posible a las solicitudes de las autoridades extranjeras, siempre que lo soliciten conforme a lo previsto en la Constitución Política del Estado, las Convenciones y Tratados internacionales vigentes y en las disposiciones de este Código. La solicitud de cooperación será presentada ante el Ministerio de Relaciones Exteriores y Culto que la pondrá en conocimiento de la autoridad competente".

<sup>43</sup> CPE, art. 12. "I. El Estado se organiza y estructura su poder público a través de los órganos Legislativo, Ejecutivo, Judicial y Electoral. La organización del Estado está fundamentada en la independencia, separación, coordinación y cooperación de estos órganos".

<sup>44</sup> Ley 370 de 08.05.2013.

<sup>45</sup> DS 1923 de 13 de marzo de 2014, art. 32 (Procedimiento administrativo de salida obligatoria) I. La Dirección General de Migración iniciará proceso administrativo para determinar la salida obligatoria, de acuerdo al siguiente procedimiento: a) Notificar a la persona extranjera con la Resolución Administrativa debidamente fundamentada, que disponga la conminatoria de salida obligatoria; b) La persona extranjera, mediante recurso de revocatoria, tendrá un plazo de tres (3) días hábiles para impugnar la Resolución Administrativa de conminatoria de salida obligatoria ante la autoridad que la emitió; c) La autoridad recurrida, para confirmar, revocar o desestimar el recurso de revocatoria, tendrá un plazo de veinticuatro (24) horas; d) La autoridad recurrida, notificará a la persona extranjera con la Resolución del Recurso de Revocatoria en el domicilio señalado o por vía electrónica, veinticuatro (24) horas posteriores a la emisión de la misma; e) La persona extranjera tendrá un plazo de tres (3) días hábiles para interponer el Recurso Jerárquico ante la misma autoridad administrativa que resolvió el Recurso de Revocatoria; f) La autoridad recurrida, en un plazo de veinticuatro (24) horas de recibido el Recurso, remitirá el mismo a la autoridad jerárquica superior; g) La autoridad

II. Obligatory departure means that the foreign migrant must leave the national territory within 15 working days of legal notification, after application of the guarantees established in article 15 of this Act ... III. The obligatory departure shall be effective when the decision is enforced; to that end, the Directorate General of Migration shall provide for the transfer of the foreign migrant to his or her country of origin or a third country that has agreed to admit him or her. In no case shall the foreign migrant be obliged to leave the territory of the State to a country in which there is good reason to believe that there is a danger or risk to his or her life and integrity ... V. If the foreign migrant faces criminal prosecution abroad and an arrest warrant has been issued, the Directorate General of Migration will refer him or her to the competent authority.

#### **Reply to paragraph 16 of the list of issues**

76. The offence of enforced disappearance is considered grounds for extradition, the procedure for which is regulated in articles 149 (Extradition)<sup>46</sup> to 159 (Preference)<sup>47</sup> of the Code of Criminal Procedure, which means there are no limits on the application of article 13 of the Convention.

77. Furthermore, as mentioned in paragraph 21 of this report, the Convention is part of the constitutional body of law.

#### **Reply to paragraph 17 of the list of issues**

78. Concerning paragraph 17 (c), article 23.I of the Constitution stipulates that: “Every individual has the right to freedom and security of person. Personal freedom may be restricted only within the limits prescribed by law, to ensure that historical truth is revealed in the proceedings of judicial bodies.” In addition, article 75 of the Sentence Enforcement and Supervision Act<sup>48</sup> states: “Penitentiary establishments are classified as follows: 1. Detention centres; 2. Prisons; 3. Special facilities; and 4. Facilities for young offenders. Penitentiary establishments shall have separate units for men and women.”

79. According to article 2 of the Sentence Enforcement and Supervision Act, before placing an individual deprived of liberty in a penitentiary facility, the Directorate-General of Prisons, through the management of the penitentiary establishments under its supervision, must have the relevant order signed by the competent judicial authority.

80. With respect to paragraph 17 (b), article 73.II of the Constitution states: “All detainees also have the right to communicate freely with their counsel, interpreter, family members and other persons. Incommunicado detention is prohibited. Any restrictions on communication may be made only in the context of investigations into offences, and may last no more than 24 hours.”

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jerárquica superior, tendrá un plazo de cinco (5) días hábiles para confirmar o rechazar la Resolución Administrativa impugnada; h) La autoridad jerárquica superior remitirá a la Dirección General de Migración en el plazo de veinticuatro (24) horas la Resolución Administrativa impugnada que confirme, desestime o rechace la impugnación interpuesta; i) La Dirección General de Migración en el plazo de veinticuatro (24) horas de recibida la Resolución Administrativa impugnada, notificará a la persona extranjera en el domicilio señalado o por vía electrónica; j) En caso de que la Resolución Administrativa emitida por la autoridad jerárquica superior rechace la Resolución Administrativa de impugnación de salida obligatoria, de manera inmediata la persona extranjera deberá iniciar su regularización migratoria; k) En caso de que la Resolución Administrativa emitida por la autoridad jerárquica superior confirme la Resolución Administrativa de Impugnación de salida obligatoria, la Dirección General de Migración deberá ejecutarla. II. En caso de incumplimiento a la Resolución de Salida Obligatoria, la Dirección General de Migración iniciará las acciones legales que correspondan.

<sup>46</sup> CPP, art. 149 (Extradición). La extradición se regirá por las Convenciones y Tratados. Internacionales vigentes y subsidiariamente por las normas del presente Código o por las reglas de reciprocidad cuando no existe norma aplicable.

<sup>47</sup> CPP, art. 159 (Preferencia). En caso de contradicción entre las normas previstas en este Código y las estipuladas en el en una Convención o Tratado de extradición, serán de aplicación preferente estas últimas.

<sup>48</sup> Ley 2298 de 20.12.2001.



81. In addition, article 115 of the Constitution provides that “I. Everyone has the right to the timely and effective protection of the judges and courts in the exercise of their rights and legitimate interests. II. The State 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, transparent and administered without delay.”

82. The Constitution prohibits the incommunicado detention of any person deprived of liberty, whose rights are protected in a timely and effective manner by judges and courts. However, that constitutional provision exceptionally establishes the possibility of limiting the exercise of this right to communication in the context of the investigation of a crime for a maximum period of 24 hours, in accordance with article 231 of the Code of Criminal Procedure, which states: “Incommunicado detention may be imposed only in extremely serious cases when there are reasons to fear that the accused will otherwise hinder the establishment of the truth. In no case may the time limit exceed 24 hours and this shall not prevent the accused from being assisted by his or her counsel prior to the performance of any act requiring his or her personal intervention. Incommunicado detention shall be ordered by the public prosecutor in charge of the investigation, duly substantiated on the grounds set out in article 235 of this Code, who shall immediately inform the examining judge so that he or she may confirm or cancel the incommunicado detention. The person held in incommunicado detention shall be allowed to use books and writing material, and may also carry out civil acts that cannot be postponed and that do not harm the investigation.”

83. In addition, article 9 of the Code of Criminal Procedure provides that: “Every defendant has the right to be assisted and defended by a lawyer from the first act in the proceedings until the sentence has been served. This right may not be waived.”

84. Article 296.7 of the Code establishes that whenever members of the police arrest a citizen, they must inform the relatives or others close to the accused that he or she has been arrested and where he or she will be taken.

85. Article 8 of the Sentence Enforcement and Supervision Act states that every inmate has an unrestricted right to a material and technical defence. To this end, he or she shall have the right to meet with his or her defence counsel, without being subject to a fixed schedule or any other limitation. In addition, articles 103.2 (visits),<sup>49</sup> 104.2 (interviews),<sup>50</sup> 105.2 (visits by counsel),<sup>51</sup> 106.2 (conjugal visits)<sup>52</sup> and 156.2 (rights of pretrial detainees)<sup>53</sup> regulate the rights of persons deprived of their liberty, whether they are in pretrial detention or serving a sentence.

86. Consequently, from the outset of the process, the person accused of an unlawful act or deprived of liberty has the broad and unrestricted right to contact a lawyer to assist and

<sup>49</sup> LEPS, art. 103.2 (Visitas). El interno tendrá derecho a recibir visitas dos veces a la semana, todos los domingos y los días feriados, sin más restricciones que las relativas al horario, orden y seguridad previstas en el Reglamento Interno del establecimiento. En casos de emergencia, la Dirección del establecimiento, podrá autorizar visitas extraordinarias. Las visitas serán tratadas con el debido respeto y consideración y se someterán a lo establecido en el Reglamento Interno.

<sup>50</sup> LEPS, art. 104.2 (Entrevistas). Sin perjuicio del derecho de visitas previsto en esta Ley, el interno tendrá derecho a entrevista todos los días según horarios y modalidad que fije el Reglamento. La prohibición temporal o definitiva impuesta como sanción a una visita no afecta el derecho a entrevista.

<sup>51</sup> LEPS, art. 105.2 (Visitas del Abogado). El abogado del interno, no estará sujeto al horario de visitas. El personal de seguridad, no podrá tomar conocimiento del contenido de los papeles del abogado.

<sup>52</sup> LEPS, art. 106.2 (Visitas Conyugales). Además de las visitas establecidas en el artículo 103, todo interno tendrá derecho de recibir visitas conyugales, dos veces al mes. Cuando ambos cónyuges o convivientes se hallen detenidos en el mismo Distrito, la Dirección Departamental, determinará el cronograma de visitas conyugales. A tal efecto, el Director dispondrá el personal de seguridad necesario para el traslado.

<sup>53</sup> LEPS, art. 156.2 (Derechos del Detenido Preventivo). Además de los derechos previstos para los internos en general, los detenidos preventivos tendrán los siguientes derechos: 1. Recibir visitas, por lo menos tres veces a la semana, todos los domingos y feriados; 2. Recibir visitas conyugales, por lo menos cuatro veces por mes; y, 3. Ocupar su tiempo de acuerdo a su preferencia, siempre que ello no provoque alteraciones del orden dentro del Recinto Penitenciario.

defend him or her, whether a private lawyer or public defender. The right to contact and/or communicate with relatives is also an inviolable right.

87. With regard to consular assistance for foreign nationals, the Vienna Convention on Consular Relations of 24 April 1963 regulates the right to consular communication for any foreign national arrested or detained in the country. The Public Prosecution Service has the obligation to comply with the legal precepts set out in that convention, especially with regard to official communication with diplomatic or consular representatives concerning the detention or prosecution of any foreign citizen in Bolivia. Instructions No. 270/15 are also in force and stipulate:

If a person arrested or detained in Bolivia is known to be a foreign national, the prosecutor assigned to the case must expressly inform him or her that he or she has the right to inform the diplomatic mission of his or her country (embassy or consulate) of the situation and to expressly challenge any intervention by the consular officer on his or her behalf. This notification must be added to the investigation log.

88. Instructions No. 002/2014 of the Attorney General's Office set out concrete measures to facilitate diplomatic and consular officials' access to information on their fellow nationals who are under investigation in Bolivia.

89. With regard to paragraph 17 (c), the Service for the Prevention of Torture was established pursuant to Act No. 474 of 30 December 2013. It is a decentralized public institution under the supervision of the Ministry of Justice and Institutional Transparency and serves as the mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified through Act No. 3298 of 12 December 2005.

90. Supreme Decree No. 2082 of 20 August 2014 regulating Act No. 474 establishes the structure and functioning of the Service and modalities for the decentralization of this institution, in line with the criteria of free and unrestricted access, confidentiality and cooperation. The Service for the Prevention of Torture is guided by the principles and values of integrity, objectivity, suitability, speed, responsibility and warmth.

91. Its duties, which are set out in article 9 of Supreme Decree No. 2082 and are consistent with articles 19 and 20 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, are as follows:

(a) Conducting spontaneous visits to custodial centres, prisons, special facilities, juvenile detention facilities, military prisons, police academies, military academies, military barracks and any other institution, without discrimination of any kind, for the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment;

(b) Making recommendations to the competent authorities with a view to the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Making legislative proposals within its area of competence;

(d) Implementing promotional, awareness-raising and training programmes with a view to preventing violations of the right to personal integrity in the centres and facilities listed in article 2 of the above Supreme Decree;

(e) Submitting reports and any other documents required by the competent authorities for the investigation and sanctioning of acts of torture and other cruel, inhuman or degrading treatment or punishment;

(f) Acting ex officio as a plaintiff in complaints of torture and other cruel, inhuman and degrading treatment or punishment;

(g) Following up on investigations and trials involving torture and other cruel, inhuman and degrading treatment or punishment;

(h) Working in conjunction with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment within the framework of the Optional Protocol to the Convention against Torture and related standards;

(i) Carrying out any other functions required under the Optional Protocol and related standards.

92. The Service for the Prevention of Torture is made up of an executive level and the operational and technical level; its organizational structure, duties, processes and procedures are established in specific regulations. The Executive Director General is the highest executive authority of the Service, appointed by supreme resolution by the President of the State, from a short list of three candidates proposed by the supervising Ministry.

93. With regard to the independence of the Service for the Prevention of Torture, article 32 of Supreme Decree No. 28631, regulating the Organization of the Executive Branch Act, establishes that the characteristics of decentralized public institutions include the following:<sup>54</sup>

(a) They are under the supervision of the responsible minister;

(b) They have their own assets;

(c) They are legal persons under public law;

(d) They have independent control of their administrative, financial, legal and technical activities;

(e) They are headed by a chief executive officer, appointed by supreme resolution, who represents the institution and is its highest executive authority; he or she defines the matters that fall within the institution's jurisdiction through administrative decisions.

94. With regard to paragraph 17 (d), the right to appeal is provided for in article 180.II of the Constitution,<sup>55</sup> thus ensuring that all persons can pursue the judicial remedies they deem necessary.

95. In the event that a person considers that his or her life is in danger or that he or she is being unlawfully prosecuted or wrongly tried or detained, he or she may file a petition of habeas corpus<sup>56</sup> with the Constitutional Court, as provided for in the Constitution. In accordance with article 46 of the Code of Constitutional Procedure,<sup>57</sup> this remedy aims to guarantee, protect and safeguard the rights to life, physical integrity, personal freedom and movement of any person who believes him or herself to be unduly or unlawfully prosecuted, detained, accused or imprisoned or who considers his or her life or physical integrity to be in danger.

96. The procedure for initiating habeas corpus is set out in article 49 of the Code of Constitutional Procedure.

97. With regard to paragraph 17 (e), paragraphs 109, 111, 112, 114 and 129 of the initial report submitted by Bolivia refer to the regulatory framework for a centralized register managed by the prison system and the data to be recorded therein.

98. In order to modernize the register of persons deprived of liberty, the Bolivian prison information system (SIPENBOL) is being implemented, which contains information concerning prisoners and the legal status of criminal proceedings, as well as folders holding

<sup>54</sup> Ley 3351 de 21.02.2006.

<sup>55</sup> CPE, art. 180.II. Se garantiza el principio de impugnación en los procesos judiciales.

<sup>56</sup> CPE, art. 125. Toda persona que considere que su vida está en peligro, que es ilegalmente perseguida, o que es indebidamente procesada o privada de libertad personal, podrá interponer Acción de Libertad y acudir, de manera oral o escrita, por sí o por cualquiera a su nombre y sin ninguna formalidad procesal, ante cualquier juez o tribunal competente en materia penal, y solicitará que se guarde tutela a su vida, cese la persecución indebida, se restablezcan las formalidades legales o se restituya su derecho a la libertad.

<sup>57</sup> Ley 254 de 05.06.2012.

social, family-related, psychological and work-related information on prisoners, which will ensure that they are dealt with in a comprehensive manner.

99. The process of developing the computerized system is divided into three phases: (1) Pilot trial at the Women's Orientation Centre in Obrajes and the Qalauma Rehabilitation Centre for Young Offenders, with the development of legal filiation and permanent release modules; (2) Development of the remaining modules in accordance with the model in Qalauma and the launch of the system in the central axis of the country (La Paz, Cochabamba and Santa Cruz); and (3) Extension of the computerized system nationwide.

100. In this regard, the Ministry of the Interior, within the framework of measures taken to enhance cooperation and coordination between public bodies, entered into an agreement with the Supreme Court of Justice on 10 February 2017 to combine the computerized systems of the Bolivian prison information system (SIPENBOL) and the Supreme Court of Justice (TULLIANUS).<sup>58</sup> The latter system registers legal proceedings relating to general trials as well as criminal trials involving detainees (records are documented as the computerized system shows all the various proceedings, including warrants issued by the judiciary), allowing information to be consulted and compared online and in real time.

101. On 11, 12 and 13 April 2019, through an agreement signed by the Ministry of Justice and Institutional Transparency, the Ministry of the Interior, the Supreme Court of Justice, the Attorney General's Office, the Supreme Electoral Tribunal, the Ombudsman's Office, the Prison System, the National Institute of Statistics, the Personal Identity Service, the Agency of Electronic Government and Information and Communication Technologies and the Executive Committee of the Bolivian University, a prison census was carried out in the country's nine departments. The objectives were to survey and analyse the legal and procedural situation of all persons deprived of liberty, gather up-to-date information on the number of persons deprived of liberty nationwide, both in pretrial detention and serving sentences, identify the number of cases in which alternative measures could be applied, establish the number of convicted prisoners who have already served their sentence, promote the cessation of pretrial detention and facilitate and support the obtention of appropriate alternative measures.

102. With regard to paragraph 17 (f), article 3.5 of the Judiciary Act<sup>59</sup> establishes openness as the principle underpinning the justice system, whereby the acts and decisions of courts and judges are accessible to any person who has the right to obtain information, except in cases expressly restricted by law.

103. In this regard, article 129 of the Judiciary Act provides that simple photocopies of court proceedings may be obtained at the oral or written request of the parties.

104. Within the framework of transparency and openness, in February 2016 the judicial branch launched the Integrated Judicial Registration System (SIREJ) for handling cases in the country's courts and tribunals. When a case is registered in the platform, it is assigned a judicial registration number and personal identification code. All actions, decisions and judgments handed down by the judge, including referrals to a court of appeal, are registered, up until the case is closed or archived. This system enables the effective control of judicial proceedings and allows the parties to follow their case via the SIREJ web page or mobile phone application.

105. The rights to access and request information are established and guaranteed by the Constitution and international human rights treaties and conventions that make up the constitutional body of law. If one of these fundamental rights is denied, an application for the remedy of *amparo*<sup>60</sup> can be filed. The Plurinational Constitutional Court ruled on the

<sup>58</sup> Sistema informático del Tribunal Supremo de Justicia.

<sup>59</sup> Ley 025 de 24.06.2010.

<sup>60</sup> CPE, art. 128. La Acción de Amparo Constitucional tendrá lugar contra actos u omisiones ilegales o indebidos de los servidores públicos, o de personas individuales o colectiva, que restrinjan, supriman o amenacen restringir o suprimir los derechos reconocidos por la Constitución y la Ley.

matter in Plurinational Constitutional Judgment No. 1503/2013 of 27 August and Judgment No. 0162/2012 of 14 May.<sup>61</sup>

106. With regard to paragraph 17 (g), article 39 of the Sentence Enforcement and Supervision Act states: “Inmates shall be released on the same day that their sentence is served in full, they are granted conditional release or they cease to be held under pretrial detention, without any further processing. Any public official who fails to comply with this provision shall incur criminal liability, without prejudice to the application of corresponding disciplinary sanctions.”

107. In addition, article 2 of the Regulations on the Execution of Prison Sentences<sup>62</sup> provides: “In carrying out their duties, officials of the prison administration and the administration of justice shall: 6. Execute the custodial sentence within the strict limits of the sentence”.

### **Reply to paragraph 18 of the list of issues**

#### *Training*

108. The Ministry of Defence, which is responsible for promoting and coordinating the protection of human rights in the Armed Forces, through Ministerial Decision No. 0840 of 23 November 2017 institutionalized the Education and Training Programme on Human Rights and International Humanitarian Law for staff (officers, non-commissioned officers and sergeants), soldiers and/or sailors of the Armed Forces. Consequently, the Directorate General for Human Rights and Interculturality in the Armed Forces develops thematic courses in the field of international humanitarian law and human rights, covering enforced disappearances, prevention of genocide and torture, for a total of 24 course hours. In 2017, 764 members of the Armed Forces participated in training and awareness-raising activities.

109. The diploma course in human rights and police training offered in 2012, 2013, 2015, 2016 and 2017 and the 2019 international course for police investigators offered by the Police University include subjects such as the universal system of human rights protection, including the International Convention for the Protection of All Persons from Enforced Disappearance.

110. Similarly, the initial training programme to be run at the School of State Prosecutors in 2019 includes modules on enforced disappearances and the treaty body system, including the Committee and the Convention.

## **E. Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)**

### **Reply to paragraph 19 of the list of issues**

#### *Victims of enforced disappearance*

111. Article 292 bis of the Criminal Code establishes that the victim is the person or persons subjected to deprivation of liberty, which the perpetrator deliberately conceals or refuses to disclose information on or to acknowledge that deprivation of liberty or to disclose the whereabouts of the person or persons. It also provides for the possibility that the deprivation of liberty may result in physical or psychological harm to the victim or victims or death.

112. Article 3 of Act No. 2640 of 11 March 2004 stipulates that the victims are those directly affected and the widows or widowers of victims who have died as a result of political violence, heirs, provided that there are no successors in interest, family members who are victims of enforced disappearance. Article 4 provides that acts for which compensation may be claimed, encompassed in the concept of political violence, during the

<sup>61</sup> Disponible en la página web: [https://buscador.tcpbolivia.bo/\\_buscador/\(S\(vzn3hw00ytk0i5mh1044wvfh\)\)/WfrResoluciones1.aspx](https://buscador.tcpbolivia.bo/_buscador/(S(vzn3hw00ytk0i5mh1044wvfh))/WfrResoluciones1.aspx) (Visitada el 12.06.19).

<sup>62</sup> DS 26715 de 27 de julio de 2002.

period from 4 November 1964 to 10 October 1982, shall be: (a) arbitrary detention and imprisonment; (b) torture; (c) exile or banishment; (c) bodily harm or the certifiable infliction of disability; (e) death, at home or abroad, as a result of political violence; (f) enforced disappearance; and (g) persecution for political or trade union activities.

### Reply to paragraph 20 of the list of issues

#### *Reparation to victims of enforced disappearance*

113. As mentioned in paragraph 12 of the initial report, all cases of enforced disappearance in Bolivia took place during the period from 1964 to 1982. There have been no reports of enforced disappearances since then.

114. Enforced disappearance is defined as an offence in article 292 bis of the Criminal Code. According to article 14 of the Code of Criminal Procedure, the commission of any offence gives rise to: criminal action for the investigation of the act, a trial and the imposition of a sentence or security measure and the civil action for reparation of damages. The latter is subject to the provisions of articles 36 et seq. of the Code of Criminal Procedure.

115. In relation to the reparation of victims from the period of the dictatorship between 1964 and 1982, through Supreme Decree No. 1211 of 1 May 2012, an official and definitive list of 1,714 beneficiaries was approved, in accordance with the sole additional provision of Act No. 238 of 30 April 2012.

116. In 2012, after five years of work, the Ministry of Justice, now the Ministry of Justice and Institutional Transparency, registered the following results.

<i>Result</i>	<i>Number</i>
Admissible:	
National Commission on Compensation for Victims of Political Violence – Technical Certification Commission	1,714 case files
Inadmissible after reconsideration	1,201 case files
Inadmissible – first instance	3,214 case files
Files in the process of revision by the Technical Certification Commission	49 case files

117. The selection process for granting payments to beneficiaries was carried out using the manual on the criteria for classifying detention, exile, and qualifying injury and disability and in connection with requests for reconsideration, which established criteria for classifying acts that qualify for compensation, such as death at home or abroad, as a result of political violence, enforced disappearance, exile or banishment, arbitrary detention and imprisonment or repeated incarceration as a political prisoner, persecution for political or trade union activities, bodily harm or the certifiable infliction of disability and torture.

### Reply to paragraph 21 of the list of issues

#### *Mechanisms for guaranteeing the right of victims of enforced disappearances to be informed of the progress and outcome of the investigation*

118. Information provided in paragraphs 104 to 107 of the present report.

#### *Members of the Truth Commission*

119. The members of the plenary of the Truth Commission were appointed in accordance with the provisions of article 4 of Act No. 879 and the Executive Director General was appointed by the President of the Plurinational State of Bolivia through Supreme Resolution No. 23818 of 12 July 2018. The Truth Commission's multidisciplinary technical team was formed through a merit-based competition and is governed by the Basic Regulations of the Personnel Administration System.

120. The Commission's budget is mentioned in paragraph 67 of the present report.

*Results obtained by the Truth Commission*

121. The information submitted to the Truth Commission is in the process of being archived, which involves archiving on magnetic media and having access to the document collections of the Asociación de Familiares de Detenidos, Desaparecidos y Mártires por la Liberación Nacional de Bolivia, the National Commission on Compensation for Victims of Political Violence, the Inter-Agency Council of Inquiry on Enforced Disappearances, the Ministry of Foreign Affairs, the Technical Certification Commission, the library of the Plurinational Legislative Assembly and the Armed Forces.

122. It has also succeeded in obtaining testimonies from both victims and perpetrators. Similarly, field work and specific research are being carried out on the issues dealt with by the Commission, all geared towards the Commission's final report.

**Reply to paragraph 22 of the list of issues***Number of persons whose remains have been found, identified and returned to their families*

123. In 2008, skeletal remains were exhumed from the mausoleum of the Asociación de Familiares de Detenidos, Desaparecidos y Mártires por la Liberación Nacional de Bolivia by the Argentine Forensic Anthropology Team and later transferred to the Forensic Investigation Institute in La Paz for analysis; 5 of the 17 sets of remains exhumed from the mausoleum have been identified through scientific analysis as being the skeletal remains of the following persons: Rainer Ibsen Cardenas, Agustín Carrillo, Oscar Pérez Betancourt, Jaime Virrueta Aramayo and Rodolfo Abel Elguero Suarez.

124. The Public Prosecution Service handed over the unidentified remains to the Forensic Investigation Institute for analysis. At present, skeletal remains exhumed from the mausoleum on 29 October 2014 are in the custody of the Institute and have been reviewed through "inventory verification" carried out on 10, 11 and 25 October 2018, in the presence of authorities of the Public Prosecution Service and members of the Truth Commission. It was noted that those remains had previously undergone anthropological and genetic analysis by the Argentine Forensic Anthropology Team.

**Reply to paragraph 23 of the list of issues***Database containing genetic data from disappeared persons and their family members*

125. In July 2015, the Forensic Investigation Institute launched a national public call for the establishment of a genetic database so that the relatives of persons killed and disappeared between 1964 and 1982 could submit their blood samples (DNA) and physical data (photographs, descriptions or other forms), which would serve to clarify the facts and identify those who died during the military dictatorships. This call was issued in compliance with international standards established in agreements, treaties, declarations and other instruments.

126. In order to disseminate this information to as many institutions as possible, notifications were sent to a wide range of bodies at the national and subnational levels, including the Asociación de Familiares de Detenidos, Desaparecidos y Mártires por la Liberación Nacional de Bolivia. The call was also published and disseminated through a variety of audiovisual media and written press in order to reach a wider audience.

127. The Forensic Investigation Institute published a poster calling for members of the families of persons subjected to enforced disappearance between 1964 and 1982 to present themselves at the Institute's offices to have samples taken for the purpose of establishing a genetic databank.

**Reply to paragraph 24 of the list of issues**

*Right to freedom of association*

128. Article 21.4 of the Constitution establishes the right of all Bolivians to freedom of assembly and association, in public and in private, for lawful purposes.

129. Article 298 of the Constitution provides that the central Government has exclusive competence to: “14. Grant legal personality to social organizations that carry out activities in more than one department; 15. Grant and register legal personality to non-governmental organizations, foundations and non-profit civil entities that carry out activities in more than one department”.

130. The Act on granting legal personality<sup>63</sup> regulates the granting and registration of legal personality to social organizations, non-governmental organizations, foundations and non-profit civil entities that carry out activities in more than one department and whose activities are not financial.

**Reply to paragraph 25 of the list of issues**

131. In Bolivia, there have been no cases involving the abduction of children subjected to enforced disappearance, so no information is available on the subject.

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<sup>63</sup> Ley 351 de 19 de marzo de 2013.