



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

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Committee on Enforced Disappearances

**Information received from the Plurinational State
of Bolivia on follow-up to the concluding
observations on its initial report submitted under
article 29 (1) of the Convention***

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* The present document is being issued without formal editing.



I. Introduction

1. The Plurinational State of Bolivia (“the State”, “Bolivia”, “the Bolivian State”), in accordance with article 29 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance (“the Convention”), submitted its initial report (CED/C/BOL/1) to the Committee on Enforced Disappearances (“the Committee”) in October 2018. Following its review of that report in October 2019, the Committee issued its concluding observations (CED/C/BOL/CO/1), in paragraph 45 of which it requested the State to submit information on the follow-up given to the recommendations contained in paragraphs 27, 29 and 39.
2. In the framework of the Inter-institutional Coordination Forum,¹ the present report was prepared by the Ministry of Justice and Institutional Transparency, with information provided by State institutions involved in protecting and promoting human rights.

II. Follow-up information (CED/C/BOL/CO/1)

A. Follow-up information relating to paragraph 27 of the concluding observations (CED/C/BOL/CO/1)

3. 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, to a defence and to a system of justice that is pluralistic, swift, timely, free, transparent and administered without delay.”
4. Article 167 of the Code of Criminal Procedure provides a legal safeguard against procedural defects and article 168 establishes the circumstances in which procedural defects may be corrected of the judge’s own motion or at the request of a party.
5. Articles 169 and 170 of the Code of Criminal Procedure establish the factual circumstances constituting either fundamental or non-fundamental procedural defects, allowing for the correction of procedural defects that may undermine basic rights. Articles 314 and 315 establish the procedure for filing and resolving objections and motions, which, in the event of a procedural defect, constitute express, effective, adequate and timely defence mechanisms for requesting the judge in the case to protect the fundamental rights at stake in the proceedings.
6. Article 73 (II) of the Constitution provides that: “All persons deprived of liberty have the right to communicate freely with their defence counsel, interpreter, relatives 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.”
7. The Constitution also 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, the same constitutional provision exceptionally establishes the possibility of limiting the exercise of the right to communication in the context of the investigation of an offence for a maximum period of 24 hours, in accordance with article 231 of the Code of Criminal Procedure, which provides that: “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 may 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 must be ordered and duly substantiated on the grounds set out in article 235 of this Code by the public prosecutor in charge of the investigation, who shall immediately inform the investigating judge of the incommunicado detention so that said judge may confirm or cancel

¹ The Inter-institutional Coordination Forum for the Drafting, Submission and Presentation of Reports of the Plurinational State of Bolivia was established pursuant to an inter-institutional cooperation agreement concluded on 1 December 2015. It comprises representatives of the Ministry of Justice and Institutional Transparency, the Ministry of Foreign Affairs and the Counsel General’s Office.

it. The person held in incommunicado detention must 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.”

8. With regard to legal assistance, 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.”

9. Article 296 (7) of the Code of Criminal Procedure provides that whenever members of the police arrest a citizen, they must “inform his or her relatives or others close to the accused that he or she has been arrested and where he or she will be taken”.

10. Article 8 of the Sentence Enforcement and Supervision Act (Act No. 2298)² provides that: “Every inmate has an unrestricted right to a material and expert defence. To this end, he or she has the right to meet with his or her defence counsel, without being bound to a fixed schedule or any other limitation.” Act No. 2298 also provides that persons deprived of liberty in prison must have access to legal assistance. This service is the responsibility of the Plurinational Public Defender Service,³ which has a duty to provide legal guidance.

11. The Plurinational Public Defender Service was set up to oversee the national public defence system for suspects, indicted persons and defendants in criminal proceedings. Its institutional mission is “to guarantee the inviolability of the right to a defence and access to a system of justice that is timely and free by providing expert assistance and criminal defence to all suspects, indicted persons and defendants in criminal proceedings who lack sufficient means and to whom a defence lawyer has not been assigned”.

12. Consequently, from the outset of the proceedings, any person accused of an unlawful act or deprived of liberty has the broad and unrestricted right to contact a lawyer to assist and defend him or her, whether a private lawyer or public defender. This right is inviolable. Such persons also have the right to contact and/or communicate with relatives, in accordance with articles 103.2 (visits), 104.2 (interviews), 105.2 (visits by counsel), 106.2 (spousal visits) and 156.2 (rights of persons in pretrial detention) of Act No. 2298.

B. Follow-up information relating to paragraph 29 of the concluding observations

13. All persons placed in detention must be informed of the reasons for their arrest; this is a constitutional guarantee (Constitution, art. 23). The authorities in charge of places of detention must keep a register of persons deprived of liberty and are prohibited from admitting any person without a court order, on pain of prosecution and sanctions; this provision is consistent with article 21 of the Sentence Enforcement and Supervision Act, which provides that access to the files of a person deprived of liberty is permitted only with a court order.

14. According to article 2 of Act No. 2298,⁴ before placing a person in prison, the Directorate General of Prisons must, through the management of the prisons under its supervision, have the relevant order signed by the competent judicial authority.

15. In accordance with article 21 of Act No. 2298, persons arriving in prison are registered and a file is opened listing (i) the reason for their detention, complete with supporting legal documentation; and (ii) and the status of their case, along with the name of the court, the date of detention and the stage reached in the proceedings. Inmates have the right to provide the

² Act No. 2298 of 20 December 2001.

³ Act No. 463 of 19 December 2013 on the Plurinational Public Defender Service.

⁴ Act No. 2298, art. 2 (Principle of legality): No one may be imprisoned or placed in pretrial detention in prison except by virtue of a written order issued by a competent judicial authority, in accordance with legal formalities and on grounds previously defined by law. Persons are deprived of their liberty in execution of a sentence or as a personal precautionary measure ordered in accordance with the law. The only limitations on the rights of inmates are those that result from sentencing and those provided for in the present Act; no other limitations are applicable.

names and addresses of relatives. The register is kept up to date with the progress of each inmate's sentence and any changes in the status of his or her case.⁵

C. Follow-up information relating to paragraph 39 of the concluding observations

16. As mentioned in the initial report of Bolivia to the Committee (CED/C/BOL/1) and in its replies to the list of issues (CED/C/BOL/Q/1/Add.1), the Truth Commission was established pursuant to Act No. 879 of 23 December 2016 to investigate cases of murder, enforced disappearance, torture, arbitrary detention and sexual violence – considered to be grave human rights violations, committed with political or ideological motives – that occurred between 4 November 1964 and 10 October 1982.⁶

17. Within this framework, the Truth Commission issued two documents at the end of its mandate, in December 2019, in accordance with article 11 of Act No. 879:

- Its final report, in which the Commission presented an account of the serious human rights violations investigated, its conclusions and its recommendations. The report will allow the truth to be established and contribute to upholding the right to memory in accordance with article 24 of the Convention. It was submitted to the Office of the President of the Plurinational State, the Office of the President of the Plurinational Legislative Assembly, the Attorney General's Office, the Counsel General's Office and the Ombudsman's Office.
- A historical memory document, in which the Commission explained the geopolitical, political, social, economic and cultural conditions in which these human rights violations and crimes against humanity against the Bolivian people were committed. The document was sent to the Plurinational Legislative Assembly for inclusion in the Library and Historical Archive.

⁵ Act No. 2298, art. 21 (Register of inmates): Upon arrival, the inmate must be registered and a numbered personal file containing the following information must be opened: (1) the reason for his or her detention complete with supporting legal documentation; and (2) the status of his or her case, along with the name of the court, the date of detention and, where appropriate, the stage reached in the proceedings. The inmate must be informed of his or her right to provide the names and addresses of family members and other parties close to him or her so that they may be kept apprised of the inmate's state of health and any decisions regarding his or her 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 may be provided to third parties only upon presentation of a court order or a written request from the inmate.

⁶ Act No. 879, art. 1: "The Truth Commission is hereby established to investigate cases of murder, enforced disappearance, torture, arbitrary detention and sexual violence – considered to be grave human rights violations, committed with political or ideological motives – that occurred in Bolivia between 4 November 1964 and 10 October 1982."