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Committee on Economic, Social and Cultural Rights

Information received from the Plurinational State of Bolivia on follow-up to the concluding observations on its third periodic report*, **

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* The present document is being issued without formal editing.

** The annexes to the present document may be accessed from the web page of the Committee.



I. Introduction

1. In March 2019, pursuant to article 16 (1) of the International Covenant on Economic, Social and Cultural Rights, the Plurinational State of Bolivia (hereinafter referred to as “the State”, “Bolivia” or “the Bolivian State”) submitted its third periodic report to the Committee on Economic, Social and Cultural Rights (E/C.12/BOL/3). Following examination of the report in October 2021, the Committee issued its concluding observations thereon (E/C.12/BOL/CO/3), in which it requested the Bolivian State to provide information on the follow-up it had given to the recommendations set forth in paragraphs 9 (a), on human rights defenders, 11 (c), on climate change, and 15 (a), on the right to be consulted and to free, prior and informed consent.

2. In line with the mandate of the Commission for the Submission of State Reports on Enforced Disappearances,¹ which was created by Supreme Decree No. 4816 of 26 October 2022, the present report was prepared by the Technical Secretariat of the Commission, which is part of the Office of the Deputy Minister of Justice and Fundamental Rights within the Ministry of Justice and Institutional Transparency, on the basis of information provided by State institutions responsible for the protection and promotion of human rights in Bolivia.

II. Follow-up information

Follow-up information relating to paragraph 9 (a) of the concluding observations (E/C.12/BOL/CO/3) – Human rights defenders

3. During the last decade, Bolivia has not adopted any legislation on the protection of human rights defenders or any specific comprehensive policy to protect defenders of economic, social and cultural rights that includes measures to prevent attacks, particularly against Indigenous Peoples.

4. However, the Bolivian State is responsible for ensuring respect for human rights defenders,² putting an end to all forms of harassment aimed at them and giving effect to the provisions of the Declaration on Human Rights Defenders, which was adopted by the General Assembly on 9 December 1998, as well as the international covenants and conventions ratified by Bolivia.

5. The Constitution promotes the construction of a new State paradigm that introduces changes to the backbone of the legal system and enshrines the plural, inviolable, universal, interdependent and progressive nature of constitutional rights and human rights recognized by international treaties and conventions.³ It also guarantees compliance with the paradigm⁴ and the promotion of culture and the right to peace.

6. The State conception of human rights is one that guides society and institutions towards a culture of recognition of the role of human rights defenders. To this end, the executive branch has established institutions responsible for the protection of human rights, including the Office of the Deputy Minister of Justice and Fundamental Rights, the Office of the Deputy Minister of Indigenous and Aboriginal Justice, the Office of the Deputy Minister of Equal Opportunities and the Office of the Deputy Minister of the Rights of Users and Consumers, all of which are part of the Ministry of Justice and are responsible for formulating, promoting and implementing policies for the protection, promotion and defence of human rights.

7. With respect to the legislative branch, the Plurinational Legislative Assembly has a Human Rights Commission in the Chamber of Deputies. The Commission is a multiparty body with a rotating presidency and is responsible for upholding human rights.

¹ The Commission is comprised of the Ministry of Justice and Institutional Transparency, the Ministry of Foreign Affairs and the Counsel General’s Office.

² Article 8 of the Constitution.

³ Article 13 of the Constitution.

⁴ Article 9 (4) of the Constitution.

8. In terms of defending human rights within society, the Ombudsman's Office is an institution with functional, financial and administrative autonomy. It is responsible for raising awareness of individual and collective human rights and overseeing the promotion and upholding thereof, as established in the Constitution, national laws and international instruments.⁵

9. In line with its international commitments and in the light of the core values of social justice,⁶ respect for rights⁷ and material truth,⁸ the State not only guarantees the rights of all Bolivian nationals under the Constitution, but also directly fights impunity through its criminal justice system.

10. The Constitution states that all persons shall be protected in a timely manner by judges and courts in the exercise of their rights and legitimate interests.⁹ It also guarantees the right to due process, to a defence and to plural, prompt, timely, free and transparent justice without delay. Therefore, in the event of a violation of the right to life or any other right recognized in the Constitution, the Bolivian State, through the judiciary and the Public Prosecution Service, investigates the violation and prosecutes and punishes those responsible.

11. The obligation to investigate such violations also involves the duty to carry out an impartial, prompt, full, diligent and effective investigation focused on ensuring the full clarification of the facts, the identification, prosecution and punishment of those responsible and the right to compensation for the victim.¹⁰

12. In addition, the State affords constitutional guarantees to Bolivian and foreign nationals residing in Bolivia. To this end, the Constitution establishes that all rights are directly applicable and enjoy equal protection through the use of remedies, including habeas corpus, *amparo*, actions for the protection of privacy, writs of mandamus, applications for constitutional review and *actio popularis*.¹¹

13. Under the terms of the Constitution,¹² military jurisdiction is limited to offences of a military nature as regulated by special legislation. Offences committed against civilian human rights defenders are therefore subject to ordinary jurisdiction.

14. In addition, the Bolivian State, by means of Act No. 1182 of 3 June 2019, ratified the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, which is the first regional environmental agreement in Latin America and the Caribbean and contains specific provisions on defenders of environmental rights.

15. Pursuant to the Agreement, the Ombudsman's Office has been working on a bill aimed at protecting the rights of defenders of environmental rights, with a focus on the protection of the rights of Indigenous persons who are engaged in such work.

16. The Supreme Court is the highest authority in ordinary jurisdiction and is responsible for imparting justice in civil, commercial, family, juvenile, tax, administrative, labour and social security, anti-corruption, criminal and other matters. It has developed specific and general jurisprudential guidelines on the rights of Indigenous, original and campesino nations and Peoples and on Indigenous and aboriginal justice in the areas of women's rights, access to information and communication (Annex 1).

17. It also organized academic activities to strengthen the competencies, skills and knowledge of the judiciary in the area of the defence of human rights and of economic, social and cultural rights. The Judicial Academy provides training, including in-service training, for

⁵ Article 218 of the Constitution.

⁶ Article 8 (III) of the Constitution.

⁷ Article 178 of the Constitution.

⁸ Article 180 (I) of the Constitution.

⁹ Article 115 of the Constitution.

¹⁰ Articles 110 and 113 of the Constitution.

¹¹ Article 109 of the Constitution.

¹² Article 180 (III) of the Constitution.

judicial officials with the aim of ensuring that they have the relevant technical and ethical qualifications and improving the administration of justice and human rights training.

Follow-up information relating to paragraph 11 (c) of the concluding observations – climate change

18. With regard to the strengthening of national institutional capacity for the preparation of national greenhouse gas inventories, in 2020 the Plurinational State of Bolivia presented its third national communication on climate change, which was the result of a continuous process of capacity-building and knowledge management on climate change in the country. Currently, the Ministry of the Environment and Water, through the Plurinational Authority for Mother Earth, is preparing the country's fourth national communication and its biennial transparency report.

19. The Plurinational Authority for Mother Earth also prepared a workplan for institutional strengthening and capacity-building in the energy sector, with support from the Nationally Determined Contributions Partnership for the AFOLU sector.¹³ The design of the emission estimation guidelines for the different sectors and subsectors remains pending. It also prepared a workplan with the Initiative for Climate Action Transparency that prioritizes data collection and processing activities to prepare the greenhouse gas emissions projection for the energy sector. The workplan also includes the identification of policies and measures in the energy sector to prepare projections for greenhouse gas emissions under the “with measures” and, where appropriate, the “with additional measures” and “without measures” scenarios.¹⁴

20. With respect to nationally determined contributions, the State submitted its updated nationally determined contribution for the period 2021–2030, pursuant to the relevant provisions of the Constitution, Act No. 777 on the Comprehensive State Planning System, Act No. 071 on the Rights of Mother Earth and Act No. 300 on the Framework for Mother Earth and Comprehensive Development for *Vivir Bien* (the notion of peaceable, harmonious, ethical and environmentally-sustainable living that underpins the Indigenous cosmovision). The preparation of the contribution was guided by the General Plan for Economic and Social Development contained in the Patriotic Agenda for the 2025 Bicentennial and the drafting process for the Economic and Social Development Plan 2021–2025.

21. The updated nationally determined contribution of Bolivia for the period 2021–2030 was shaped on the basis of coordination between the Plurinational Authority for Mother Earth, the Ministry of Development Planning, the Ministry of the Environment and Water, the Ministry of Rural Development and Land, the Ministry of Hydrocarbons and Energy and the Office of the Vice-President of the Plurinational State of Bolivia, together with other relevant sectors.

22. Despite the devastating social, economic and productive impact of the COVID-19 pandemic, Bolivia has chosen to pursue the path of reconnecting with Mother Earth as the best way forward, within the framework of its productive community-based economic and social model for *Vivir Bien*. The updated nationally determined contribution of Bolivia is focused on four main areas: (i) water; (ii) forests; (iii) energy; and (iv) agriculture and livestock. It also sets out the relevant implementation measures (Annex 2).

23. With respect to the adoption of measures aimed at meeting the nationally determined contribution in the forestry and agricultural production sectors, the National Forestry Development Fund, which was created by means of the Forestry Act (Act No. 1700 of 12 July 1996), is the financial body for forestry. It is responsible for providing non-reimbursable counterpart funding for programmes and projects focused on integrated and sustainable forest management, expansion of forest cover and restoration of degraded forests and woods that contribute to the achievement of medium and long-term national sectoral goals. It is expected that the Fund will become a nationally and internationally recognized non-bank State financial entity with sustainable technical and economic capacity and will be tasked with

¹³ Agriculture, Forestry and Other Land Use.

¹⁴ Plurinational Authority for Mother Earth - Technical Report APMT/DMM/INF/0040/23.

promoting the conservation, protection, restoration and use of forests and woods in the face of climate change in Bolivia.

24. Within the framework of the Economic and Social Development Plan for the period 2016–2020 and the intended nationally determined contribution, the Fund’s activities are focused on promoting, managing and allocating financial resources for programmes and projects focused on integrated and sustainable forest management, the implementation of agroforestry systems, expansion of forest cover and the elimination of illegal deforestation throughout the territory.

25. In 2022 and 2023, 1,364.92 hectares were reported to have been forested or reforested in 12 municipalities as part of projects co-financed by the Fund. Forestation and reforestation strategies have the capacity to ensure that greenhouse gas emissions are absorbed. These positive measures have been instituted by the Fund through the programme and project financing it provides to the Autonomous Territorial Entities.

26. Since 2022, the Ministry of Rural Development and Land has operated programmes and projects to reduce the risk of climate change in highly vulnerable communities in the areas within its remit, as detailed below:

- National programme to support cocoa production and harvesting in Bolivia. The aim of the programme is to increase the productive potential of cultivated and wild native cocoa in Bolivia and improve the production, harvesting and post-harvest processes for the domestic and foreign markets. In 2022 and 2023, 1,947 hectares of new cocoa crops will be planted, which will help reduce and mitigate the problems caused by the greenhouse effect, as reflected by climate change in Bolivia and in other parts of the world.
- National coffee-growing investment programme. The programme’s aim is to develop the sustainable productive potential of the Arabica coffee crop, with a focus on organic cultivation methods, and increase production and productivity to obtain high-quality coffee for the domestic and export markets. A total of 2,919 hectares of new coffee crops have been planted, made up of 12,843,600 seedlings, which will help reduce and mitigate the problems caused by the greenhouse effect, as reflected by climate change in Bolivia and in other parts of the world.
- National programme for the production and harvesting of Amazonian fruits in Bolivia. The programme is focused on Brazil nuts, açai, copoazu and majo, with the aim of increasing the income of Indigenous and intercultural communities through the sustainable use of forest resources. During the programme, Alliance Plans were implemented in 936,720 hectares of Brazil nut, majo and açai harvesting areas, which will help reduce and mitigate the problems caused by the greenhouse effect, as reflected by climate change in Bolivia and in other parts of the world.
- Programme on building climate-change resilience among rural families in Bolivia (Accesos-Rural): this programme was set up to counteract the impact of climate change in rural regions of the country and increase the production of staple foods.

Follow-up information on paragraph 15 (a) of the concluding observations – the right to be consulted and to free, prior and informed consent

27. The Constitution not only recognizes Indigenous Peoples, but also grants them the status of Indigenous nations, guarantees their self-determination within the framework of the unity of the State and establishes their right to autonomy, self-government, recognition of their institutions and the consolidation of their territorial entities.

28. The Bolivian State guarantees the participation and consent of the Indigenous, original and campesino nations and Peoples in prior, free and informed consultation processes, which in the hydrocarbons sector are known as “Consultation and Participation” and are governed by the following texts:

- The Constitution¹⁵
- International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), adopted by means of Act No. 1257 of 11 July 1991
- United Nations Declaration on the Rights of Indigenous Peoples, which was elevated to the rank of law by means of Act No. 3760 of 7 November 2007
- Act No. 3058 of 17 May 2005 on hydrocarbons
- Supreme Decree No. 29033 of 16 February 2007 on the regulation of consultation and participation processes for hydrocarbon activities
- Supreme Decree No. 29124 of 9 May 2007, supplementing Supreme Decree No. 29033
- Supreme Decree No. 29574 of 21 May 2008, amending and supplementing Supreme Decree No. 29033
- Supreme Decree No. 2298 of 18 March 2015, amending and supplementing Supreme Decree No. 29033
- Supreme Decree No. 2195 of 26 November 2014, which establishes a mechanism for the percentage-based allocation of financial compensation for the social and environmental impacts of hydrocarbon activities, works or projects in Indigenous and aboriginal territories or on communal, Indigenous or peasant lands

29. The Hydrocarbons Act complies with the guidelines established in articles 6 and 15 of ILO Convention No. 169.¹⁶

30. The regulations on consultation and participation processes for hydrocarbon activities¹⁷ and the Supreme Decrees amending them set out the procedure for the four phases of a consultation process: (1) coordination and information; (2) organization and planning; (3) consultation phase; and (4) agreement.

31. Since the approval of the regulations, the Ministry of Hydrocarbons and Energy has continued to make adjustments to the current regulatory framework in order to improve the consultation procedure. The consultation and participation processes that have been conducted for the hydrocarbon sector concluded with the signing of an agreement certifying that the communities gave their consent for the implementation of the projects about which they were consulted.

32. Under the Constitution, Indigenous, original and campesino nations and Peoples have the right to be consulted through appropriate procedures and in particular through their institutions, whenever consideration is being given to legislative or administrative measures which may affect them. Similarly, the Mining and Metallurgy Act guarantees¹⁸ the right of Indigenous, original and campesino nations and Peoples, intercultural communities and Afro-Bolivian peoples to be consulted by the State in a free, prior and informed consultation. These texts therefore guarantee and enshrine respect for the right to mandatory prior consultation, conducted by the State in good faith, regarding the exploitation of non-renewable natural resources in the territory inhabited by the aforementioned groups.

33. Similarly, the Constitution stipulates that the exploitation of natural resources in a particular territory must be subject to a free, prior and informed consultation process with the affected population, convened by the State. It also establishes that consultations with Indigenous, original and campesino nations and Peoples must be conducted in accordance with their own rules and procedures.

34. The constitutional provisions on prior consultation are also set out in the Mining and Metallurgy Act, which regulates mining and metallurgical activities with respect to the granting, retention and termination of mining rights and establishes principles, guidelines,

¹⁵ Article 30 (II) (15) of the Constitution.

¹⁶ Articles 114 and 115 of Act No. 3058 of 17 May 2005.

¹⁷ Approved by Supreme Decree No. 29033 of 16 February 2007.

¹⁸ Act No. 535 of 28 May 2014.

procedures and roles of the State mining entities and productive stakeholders in the mining sector.

35. In this regard, the Act establishes as one of its guiding principles the protection of highly vulnerable Indigenous, original and campesino nations and Peoples and specifically states that appropriate support and protection measures should be factored in when conducting mining activities.¹⁹

36. In article 208 of the Mining and Metallurgy Act, prior consultation is described as being “the process of free and informed intracultural and intercultural dialogue, involving a number of procedural stages and conducted in good faith between the State, with the participation of the relevant mining entity, and the parties being consulted, with respect shown for the culture, language, institutions, norms and procedures of the latter, and for the purpose of reaching agreements to sign and proceed with the relevant administrative contract for mining activities in a manner that contributes to the *Vivir Bien* of the Bolivian people in the context of sustainable mining activities”.

37. Under article 207, and in accordance with article 208 of Act No. 535, the right to prior consultation in mining is understood as being:

- A collective and fundamental right
- Mandatory
- Required prior to the signing of an administrative contract for mining activities that may directly affect collective rights
- Free
- Informed
- Conducted by the State
- The groups to be consulted are: Indigenous, original and campesino nations and Peoples
- Intercultural communities and Afro-Bolivian peoples
- Agreed
- Intercultural
- Intracultural
- In good faith
- Involving the participation of the productive stakeholder in the mining sector that has made the request

38. The Administrative Jurisdictional Authority for the Mining Sector is the body responsible for ensuring administrative compliance with the prior consultation procedure.

39. Consequently, mining-related prior consultation processes in Bolivia are conducted within the framework of the Constitution, the Mining and Metallurgy Act and the Regulations for the Granting and Termination of Mining Rights, thereby ensuring and fully guaranteeing the right to free and informed consent for Indigenous, original and campesino nations and Peoples, intercultural communities and Afro-Bolivian peoples, in line with the provisions of ILO Convention No. 169.

¹⁹ Article 5 (h) of Act No. 535 of 28 May 2014.