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### Rapport annuel de la Haut-Commissaire des Nations Unies aux droits de l'homme et rapports du Haut-Commissariat et du Secrétaire général

## Rapport de la Haut-Commissaire des Nations Unies aux droits de l'homme

### Additif

### Rapport de la Haut-Commissaire des Nations Unies aux droits de l'homme sur les activités de son Bureau dans l'État plurinational de Bolivie\*, \*\*

#### *Résumé*

En 2010, l'État plurinational de Bolivie a fait des progrès notables en ce qui concerne les nouveaux textes législatifs visant à donner effet aux nombreux droits de l'homme reconnus dans la Constitution, et a lancé d'importantes réformes juridiques, politiques et institutionnelles visant à éliminer la discrimination et l'exclusion historique des peuples autochtones, afro-boliviens et d'autres groupes vulnérables.

En ce qui concerne les peuples autochtones, des progrès majeurs ont été enregistrés dans le domaine des droits et de la représentation politiques et dans le renforcement des régions autonomes autochtones. Le droit à la consultation a joué un rôle considérable dans le processus d'élaboration du projet de loi sur les frontières judiciaires mais n'a pas été institué ou n'a été que partiellement appliqué en ce qui concerne d'autres mesures législatives et administratives qui pourraient avoir une incidence sur les intérêts des peuples autochtones. La situation du peuple guarani demeure préoccupante.

\* La soumission tardive du présent document s'explique par le souci d'y faire figurer des renseignements aussi à jour que possible.

\*\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, qui est joint en annexe au résumé, est distribué en anglais et en espagnol seulement.

Dans un contexte social toujours marqué par de fréquentes manifestations de racisme, de discrimination et d'intolérance, en particulier à l'égard des peuples autochtones, les Afro-Boliviens et les femmes, une loi contre le racisme et toutes les formes de discrimination a été adoptée, ce qui représente un progrès historique majeur dans la lutte contre le racisme et la discrimination répondant à diverses recommandations internationales. Cette loi contient des principes directeurs pour l'adoption d'une politique publique vigoureuse à cet égard. Elle prévoit toutefois quelques restrictions à la liberté d'expression et à la liberté de la presse qui devraient être définies conformément aux normes internationales.

Les indicateurs relatifs aux droits économiques, sociaux et culturels, tels que la scolarisation et l'extrême pauvreté, se sont quelque peu améliorés.

En dépit de mesures législatives et autres adoptées pour remédier aux problèmes historiques qui pèsent sur l'administration de la justice, le système judiciaire demeurerait plongé dans une crise structurelle antérieure à l'avènement du Gouvernement actuel qui risque de se traduire par des pressions politiques et économiques et un accès insuffisant à la justice. La transition vers de nouvelles juridictions supérieures, dont les magistrats seront élus, pour la première fois dans l'histoire de l'État plurinational de Bolivie, par un vote populaire, n'a pas eu lieu dans le délai initialement prévu par la loi. Quelques progrès ont été enregistrés dans les procès concernant de graves violations des droits de l'homme mais un degré d'impunité élevé perdurait pour des affaires en cours et passées.

Quelques cas de torture et d'autres traitements cruels, inhumains ou dégradants ont été signalés; dans la plupart des cas, la responsabilité a été attribuée à la police. Dans le présent rapport, la Haut-Commissaire des Nations Unies aux droits de l'homme se dit préoccupée par la violence à l'égard des femmes et analyse le phénomène du lynchage, les droits des personnes privées de liberté ou de celles qui ont été victimes de violations des droits de l'homme commises par des régimes inconstitutionnels, ainsi que la situation des défenseurs des droits de l'homme et des journalistes. En outre, le rapport donne des détails sur les principales activités menées par le Bureau de la Haut-Commissaire dans le pays et contient dix recommandations prioritaires formulées par la Haut-Commissaire.

## Annexe

### Report of the United Nations High Commissioner for Human Rights on the activities of her office in the Plurinational State of Bolivia

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## I. Introduction

1. In February 2007, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government of the Plurinational State of Bolivia signed an agreement establishing a country office (OHCHR-Bolivia). The agreement, which was initially established for a three-year period, was approved by Congress through Law No. 3713 of 13 July 2007. In May 2010 the presence of the country office in the Plurinational State of Bolivia was extended until the end of August 2013.
2. The mandate of OHCHR-Bolivia includes the provision of technical assistance to State institutions and civil society organizations; the promotion of human rights; and the monitoring of and reporting on the human rights situation in the country.

## II. National context

3. On 22 January 2010, Evo Morales Ayma was sworn in for another term as President and appointed women to 50 per cent of ministerial positions. The inaugural Plurinational Legislative Assembly also opened with increased female representation. Moreover, six indigenous deputies won seats in special indigenous constituencies, along with an Afro-Bolivian deputy for the first time in history. The Movement Towards Socialism-Political Instrument for the Sovereignty of the Peoples (MAS-IPSP) obtained two thirds of the seats, both in the Chamber of Deputies and in the Senate.
4. The Assembly approved over 80 laws during 2010, including the five fundamental laws to implement the Constitution as requested by the constitutional transitory clauses: Law No. 18 of 16 June on the Plurinational Electoral Organ; Law No. 26 of 30 June on the Electoral Regime; Law No. 25 of 24 June on the Judicial Organ; Law No. 27 of 6 July on the Plurinational Constitutional Tribunal; and Framework Law No. 31 of 19 July on Autonomous Regions and Decentralization. However, several actors expressed their concern that the tight deadlines for the passing of some laws did not always allow for an adequate period of discussion and reflection among all the concerned actors.
5. On 4 April, departmental and municipal elections were held; for the first time, these included the appointment of indigenous departmental assembly members in accordance with their own customs. The electoral campaign and the elections were held in a general climate of calm and respect for civil and political rights. Some isolated violent incidents, without major consequences, did occur in Beni, Chuquisaca, Pando, Santa Cruz and Tarija.
6. Various sectors, including some close to MAS-IPSP, staged local protests. In this context, in Caranavi, La Paz and in Potosí, roadblocks were set up to demand the implementation of regional development projects. Likewise, the Confederation of Indigenous Peoples of Bolivia (CIDOB), the main organization representing indigenous people from the Eastern, El Chaco and Amazon regions of the Plurinational State of Bolivia, held a march to demand greater recognition of their rights. While in the cases of the blockade in Potosí and the CIDOB march, negotiations took place to end those protests, in Caranavi, violent incidents broke out between the police and the demonstrators, causing two deaths and dozens wounded on both sides, and led to allegations of torture, use of excessive force, arbitrary detentions and unlawful entries into private houses, as reported by the Ombudsman's Office. These incidents are currently under investigation.
7. On 30 April, the Plurinational Legislative Assembly elected the former president of the Permanent Assembly of Human Rights of Bolivia (APDHB), Rolando Villena Villegas, as Ombudsman for the 2010-2015 term. Within the scope of his mandate, the Ombudsman delivered important reports in which he found evidence of involvement of police agents and

recommended investigations into the lynching of four policemen in Uncía, the violent incidents of Caranavi, and the death as a result of torture of David Olorio.

8. The administration of justice continued immersed in a long-standing structural crisis that precedes the current Government. In February, Law No. 3 on the Requirements for the Transition to the New Bodies of the Judicial Organ and the Public Prosecutor's Office (the so-called "Ley Corta", or "Short Law") was passed, granting President Morales the power to appoint 15 magistrates on an exceptional and ad interim basis to the vacant positions in the Supreme Court of Justice and at the Plurinational Constitutional Tribunal, along with three members to the Judicial Council, until the election of permanent members. Those elections, the first in which senior judicial officials are to be directly elected by popular vote, were initially scheduled for December 2010 but later postponed due to delays in the establishment of regional electoral tribunals. The tenures of the persons temporarily appointed by the President under the "Short Law" were extended accordingly. The State School for Judges was created by law in June.

9. In April, the Government held the World People's Conference on Climate Change and the Rights of Mother Earth in Cochabamba. The final declaration of this summit was submitted to the Secretary-General for inclusion in future negotiations on climate change. The Government also proposed a draft resolution for the recognition of the human right to drinking water and sanitation, which was adopted by the General Assembly on 28 July (resolution 64/292).

10. Following a highly participatory process, the Plurinational State of Bolivia concluded its first universal periodic review by the Human Rights Council with a Government commitment to comply with 78 of the 79 resulting recommendations.<sup>1</sup>

11. From 12 to 17 November, the High Commissioner undertook a visit to the Plurinational State of Bolivia. She met with President Morales, governmental, local and indigenous authorities, members of the Plurinational Legislative Assembly and members of the Judiciary, the Ombudsman, and representatives of indigenous, Afro-Bolivian, women's rights, human rights, and media organizations, as well as with victims of human rights violations. In September, the Subcommittee on Prevention of Torture visited the country and, in March, a special preparatory session of the Permanent Forum on Indigenous Issues took place in La Paz.

### **III. Human rights situation**

#### **A. Racism, discrimination and intolerance**

12. Racism, discrimination and intolerance in the Plurinational State of Bolivia are the result of historical domination and exclusion of indigenous peoples and Afro-Bolivians. The main victims of racial discrimination have been indigenous peoples and Afro-Bolivians, especially women in those populations.

13. Currently, manifestations of racism, discrimination and intolerance persist. Even though debates on various legal and institutional reforms have contributed to overcoming

<sup>1</sup> The Plurinational State of Bolivia did not accept the recommendation by the United Kingdom of Great Britain and Northern Ireland to support media initiatives on self-regulation, including the newly established Tribunal of Ethics for print journalists. The Government objected that "it cannot support a tribunal of ethics if it comprises only entrepreneurs and does not include all media employees" (A/HRC/14/7, para. 100).

the old patterns of stigmatization of the claims of indigenous and Afro-Bolivian leaders, often associated with “historical setbacks”, and a decrease in acts of violence has been observed in comparison with previous administrations, acts of intolerance towards indigenous and Afro-Bolivian cultural expressions still occurred.

14. On 8 October, Law No. 45 against Racism and All Forms of Discrimination was promulgated. This Law constitutes a historic breakthrough, since it establishes preventive and educational measures and responds to the repeated recommendations of the Committee on the Elimination of Racial Discrimination,<sup>2</sup> the High Commissioner for Human Rights, and the universal periodic review.

15. The Law also defines public policy guidelines in this area and criminalizes certain racist and discriminatory acts. Article 16 provides for economic sanctions, including the suspension of operating licenses of media actors that publish “racist and discriminatory ideas”, and article 23 establishes prison sentences and precludes invoking immunity or special privileges for workers and owners of media outlets responsible for the dissemination of “ideas based on racial superiority or hatred, or that promote or justify racism and any other form of discrimination ... or that incite to violence or to the persecution of persons or groups for racial or discriminatory motives”.<sup>3</sup>

16. Journalists’ associations and media owners held several protests, demanding the suppression of article 16 and the amendment of article 23 of Law 45, and collected citizen’s signatures in support of their demands. Some foreign and international journalist associations also expressed concern about the effect of such provisions on freedom of expression. In this context, the Government called for a dialogue to regulate the application of the Law, including the media and their employees. However, only a few of the latter accepted the invitation, while others argued that such participation was meaningless in view of the presidential announcement that the law would not be modified.

17. Article 16 of the Law punishes the authorization and publication of “racist and discriminatory ideas”. However, international law requires that restrictions on freedom of expression be imposed only when justified as necessary to respect the rights or reputations of others or for the protection of national security or of public order, or of public health or morals.<sup>4</sup> In this regard, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.<sup>5</sup>

18. In order to establish a public policy regarding racism and discrimination, the Vice-Ministry of Decolonization, along with departmental and regional actors, initiated a participatory process to carry out an assessment and to create a plan of action to fight racism and discrimination in the country. The National Human Rights Council embraced this initiative in the context of the implementation of the National Action Plan on Human Rights.

19. At the beginning of the assessment, the main Afro-Bolivian organizations described historical, serious and persistent patterns of racism and discrimination that this segment of the population has suffered in the fields of education and employment, where harassment, and physical and psychological violence are recurrent, especially against women. Also

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<sup>2</sup> In 1975 the Committee requested that the Plurinational State of Bolivia adopt a law criminalizing all forms of racial discrimination, as described in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (A/10018, para. 84). This recommendation was systematically reiterated in 1976, 1978, 1984, 1996 and 2003.

<sup>3</sup> Article 23 modifies article 281 quarter of the Penal Code.

<sup>4</sup> International Covenant on Civil and Political Rights, art. 19, para. 3.

<sup>5</sup> *Ibid.*, art. 20, para. 2.

noted were: discrimination in access to health services; difficulties in access to work, linked to limited access to higher education; and continuing police harassment, especially in urban areas.

20. These conditions were further aggravated by the long absence of affirmative action policies, the lack of statistical data as a basis for defining public policies, and widespread ignorance within society about the culture and history of the Afro-Bolivian people. In this context, however, the importance of the election of the first Afro-Bolivian parliamentary representative in the country's history needs to be emphasized. The decision of the National Statistics Institute to include Afro-Bolivian issues in the 2011 census is also a positive step.

## **B. Indigenous peoples' rights**

21. During 2010, significant progress was made on the implementation of indigenous rights recognized in the Constitution, including political rights and the establishment of indigenous autonomous regions.

22. For the first time, seven representatives elected in special indigenous constituencies joined the Plurinational Legislative Assembly, in addition to other indigenous representatives elected by popular vote. The election of new authorities in 11 indigenous autonomies and the appointment of 18 indigenous departmental assembly members through a procedure that respects their traditions should also be highlighted.

23. However, some indigenous representatives criticized the complexity of the procedures to access indigenous autonomy, as well as the requirement of a minimum number of indigenous members for a community to be autonomous under the Framework Law on Autonomous Regions and Decentralization. Likewise, they denounced the insufficient consultation for the adoption of this Law.

24. As for the right to consultation, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and the Constitution, this right was generally respected in the drafting of the bill on jurisdictional boundaries. Nonetheless, the final text of this bill, which was adopted on 29 December, did not incorporate important issues that emerged from such consultations. Additionally, indigenous peoples reported that they had not been consulted on the adoption of other legislative and administrative measures that could affect their rights. Domestic legislation on consultation has so far been developed only with regard to hydrocarbon exploitation. In this sense, OHCHR-Bolivia registered various complaints about the lack of prior consultation, or the implementation of consultations through inadequate procedures, regarding development projects either under way or announced, particularly in relation to extractive activities.

25. Environmental pollution causing a risk of displacement in the territories of some indigenous peoples, as a result of the harmful effects of extractive industries in the Chaco region and in the Poopó lake area, Oruro was also reported.

26. The situation of highly vulnerable indigenous peoples, in particular, the Ayoreo and Yuqui peoples, remains a concern mainly due to health problems, increasing pressures over their territories, human trafficking, and the lack of a continuing State response. In this regard, it is worth noting that the Ministry of Justice has initiated a drafting process for a bill to protect these peoples.

### **Situation of the Guaraní people**

27. The Permanent Forum on Indigenous Issues, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the High Commissioner have repeatedly called for the eradication of forced labour and the territorial

reconstitution for the Guaraní people. In this regard, the granting in December of about 24,000 hectares of land to 19 communities in Alto Parapetí should be highlighted. However, the Government should increase the efficiency and coverage of measures thus far implemented, including through the finalization of integrated development plans, and should confront resistance by landowners and departmental and municipal authorities in order to avoid the continuation of systematic violations of the rights of the Guaraní people.

28. It is a matter of concern that the Office of the Public Prosecutor in Santa Cruz is pursuing criminal proceedings against some Guaraní leaders for defamation, rooted in their complaints to various instances about their servitude. Likewise, the Office of the Public Prosecutor in Camiri, Santa Cruz, closed investigations, leaving in impunity the attacks suffered by members of the Guaraní People's Assembly, among others, in 2008.

### C. Economic, social and cultural rights

29. The large catalogue of economic, social and cultural rights recognized in the current Constitution has led to the development of several public policies and legislative measures, a process begun in the previous administration.

30. Although no comprehensive data is yet available to assess the specific impact of the various social programmes that transfer resources to households and persons in vulnerable situations,<sup>6</sup> their implementation, together with other factors such as the country's economic growth, has helped improve some indicators, for instance the extreme poverty rate, which declined from 38 to 33 per cent.<sup>7</sup> However, poverty rates, with a reduction from 60 per cent down to 59 per cent between 2006 and 2009,<sup>8</sup> continue to raise concern.

31. According to official data, the Zero Malnutrition Programme and the Juana Azurduy subsidy have contributed to reducing maternal mortality,<sup>9</sup> the latter benefiting 250,000 mothers and over 260,000 children under 2 years of age.<sup>10</sup>

32. In the field of education, after the launching of the Juancito Pinto subsidy, school dropout fell by more than 50 per cent<sup>11</sup> and literacy and post-literacy programmes facilitated the inclusion of about 400,000<sup>12</sup> people into primary education.

33. These initiatives still face structural challenges rooted in centuries of exclusion and discrimination, including striking inequalities in income distribution.<sup>13</sup> Likewise, a significant, long-standing gap remains in the enjoyment of rights between the urban and

<sup>6</sup> Juancito Pinto and Juana Azurduy programmes; Universal Mother and Child Insurance (SUMI); "Renta dignidad" subsidies; "Yo sí puedo" national literacy programme; "Yo sí puedo seguir" national post-literacy programme; Zero Malnutrition Programme.

<sup>7</sup> Between 2006 and 2010, the economy grew by an average of 4.7 per cent. United Nations Development Programme, *Los cambios detrás del cambio: desigualdades y movilidad social en Bolivia* (National Human Development Report 2010, Spanish only) (La Paz), pp. 45 and 92.

<sup>8</sup> Social and Economic Policy Analysis Unit (UDAPE) data related to the period 2006-2008; *Los cambios detrás del cambio* (note 7 above), p. 92.

<sup>9</sup> Report of the Plurinational State of Bolivia to the universal periodic review (A/HRC/WG.6/7/BOL/1), para. 62.

<sup>10</sup> Government beneficiary figures for the Juana Azurduy programme are 159,770 mothers and 268,674 children.

<sup>11</sup> Data for the period 2006-2009. *Los cambios detrás del cambio* (note 7 above), p. 15.

<sup>12</sup> Ministry of Education data for 2009.

<sup>13</sup> The Gini coefficient for the Plurinational State of Bolivia is 0.58. Economic Commission for Latin America and the Caribbean (ECLAC), *Time for Equality: Closing Gaps, Opening Trails 2010* (Santiago, 2010), p. 206.



rural populations, negatively affecting indigenous peoples and Afro-Bolivians, in particular women and girls in rural areas. This situation is exacerbated by the difficulty of providing access to basic State services and social programmes in remote and scattered rural areas.

34. In February the Plurinational State of Bolivia signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the ratification of which is still pending.

#### **D. Administration of justice and the fight against impunity**

35. Despite government efforts to reform and adopt legislation and other measures to resolve serious historical problems in the administration of justice, the weakness of the judicial system continued – access to justice and high impunity rates being the main problems. The system also remained exposed to political and economic pressures. The public defence system still faced difficulties, although the opening of eight new rural offices expanded its reach.<sup>14</sup>

36. In 2010, there were developments in some emblematic trials for grave human rights violations that occurred in previous years, such as the massacres in El Alto, La Paz in September and October 2003 and in El Porvenir, Pando in September 2008.

37. The laws on the Judicial Organ, on the Plurinational Constitutional Tribunal and the new Law on Prosecuting Senior State Officials<sup>15</sup> were passed. The first two laws included intercultural and gender-equity criteria for the selection of candidates to the highest tribunals and to the Judiciary Council, for which the first election will take place in 2011. The new post of the Defender of Litigants' Rights was also established to monitor and ensure the development of any criminal and disciplinary proceedings against judges. While this could help prevent delays in justice and reduce the rampant corruption in the judicial system, the location of his new post within the executive branch may affect the independence of the judiciary.

38. In February, under the exceptional power granted by the "Short Law", President Morales directly appointed 15 judges to the vacancies of the Plurinational Constitutional Tribunal and the Supreme Court, and three members to the Judiciary Council. The same law also extended the functions of the interim General Prosecutor. While noting the progress made in the resolution of many pending cases,<sup>16</sup> the High Commissioner considers that, in order to ensure judicial independence, it is essential to accelerate the election process of judicial authorities.

39. On the other hand, the competence granted to the Judicial Council by Law No. 7 of 18 May on Amendments to the Criminal Regulatory System to suspend judges from their duties based on an indictment, and not on a formal charge, as it was stipulated in the previous legislation of 1999, raises concerns regarding the security of tenure and the judicial career, and it may therefore affect judicial independence.

<sup>14</sup> According to official sources, there are just over 50 public defenders for a population of over 9 million. In 2009 the eight new offices increased staffing with nine public defenders and three assistant attorneys.

<sup>15</sup> Law No. 44 of 8 October 2010.

<sup>16</sup> According to data released by the President of the Supreme Court in the national press on 6 October, in nine months, the Plurinational Constitutional Tribunal resolved the 3,756 cases filed in the years preceding the entry in force of the new Constitution. Likewise, the Supreme Court resolved 2,078 of about 7,000 cases in its backlog.

40. Some decisions within the judicial system raised concern. Such is the case of the dismissal of 22 magistrates ordered by the Judicial Council on 3 May,<sup>17</sup> based on their non-participation in a call for evaluation to remain on duty, which had previously been declared invalid by the Plurinational Constitutional Tribunal.<sup>18</sup> Another example included the indictments for prevarication and other crimes against three magistrates of the Superior Court of Justice of the Pando region, after having rendered decisions in the case of the massacre of El Porvenir.

41. In the area of the fight against corruption, the adoption of Law No. 4 of 31 March 2010 on the Fight against Corruption, Illicit Enrichment and the Investigation of Fortunes (the “Marcelo Quiroga Santa Cruz” law) has provided a significant legal framework. The Public Prosecutor’s Office initiated a number of legal proceedings involving governors, mayors and current and former senior government officials. The fact that most of these were against members of the opposition prompted allegations of partiality from opposition representatives. There were also cases involving members of the ruling party, corresponding to nearly 20 per cent, according to official figures.<sup>19</sup>

42. The accumulation of legal processes against some of the leading exponents of the political opposition, even in the legitimate will to fight corruption and impunity, requires strict observance of the presumption of innocence, due process and fair trial guarantees.

### **1. Case against former President Gonzalo Sánchez de Lozada**

43. At the time of writing, the trial for the violent repression of protests that occurred between September and October 2003 and that resulted in around 60 deaths and several hundreds injured, had almost been concluded with respect to the seven defendants who had not left the country. Initially former President Sánchez de Lozada and 16 of his collaborators, ministers and members of the military high command, had been accused.

44. The development of the trial was confronted with numerous procedural and material obstacles. The public and private prosecutors presented around 400 people, including witnesses and expert witnesses, and introduced more than 1,500 pieces of evidence in what was the first trial in the country for serious human rights violations filed against a head of a constitutional Government.

45. Additionally, the proceedings filed with the United States of America, Spain and Peru for the extradition of the other indicted persons who had fled the country and had been declared in default, did not produce any results.

### **2. Case of the violent racist incidents of 24 May 2008 in Sucre**

46. In April, the Public Prosecutor’s Office filed charges of sedition, public incitement to commit a crime, ill-treatment, and torture and other crimes against 18 people, including members of the Inter-Institutional Committee of Chuquisaca, university leaders and employees of public institutions. In September, three journalists were also charged with public incitement to commit a crime and endorsement of crime.<sup>20</sup>

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<sup>17</sup> Agreement No. 33 of 3 May 2010, by which 22 judges were dismissed for failure to comply with all requirements for admission to the judicial career.

<sup>18</sup> Plurinational Constitutional Tribunal, Constitutional Decision 495/2007-R of 13 June 2007.

<sup>19</sup> Data from the Ministry of Institutional Transparency and the Fight against Corruption for the period 2006-2010.

<sup>20</sup> See also A/HRC/13/26/Add.2, paras. 41-44.

47. Among the indicted persons was the former rector of the public university, Jaime Barrón, who was elected mayor of Sucre in April, but resigned after having been suspended from office under the legislation in force since 1999.

48. On 16 November, a judge ordered the preventive detention of Mr. Barrón, which was commuted on appeal to alternative precautionary measures. Due to various procedural obstacles, the trial was set for late December; however, it was postponed due to the defendants' request for recusal of one of the judges.

49. Regarding victims, the lack of State programmes to address the consequences of abuses suffered by them and the obstacles in finding lawyers to take up their cases, continue to raise concern.

### 3. Case of the massacre in El Porvenir

50. On 19 June, almost two years after the massacre in El Porvenir, Penal Court No. 6 of La Paz began a trial against former prefect of Pando Leopoldo Fernández and 25 others, including several former public servants of the department of Pando, who were charged with terrorism, homicide, murder, injuries, and conspiracy.<sup>21</sup>

51. The Court decided to reject all the preliminary objections raised by the defendants, citing untimely submission or lack of legal basis. The request for cessation of preventive detention introduced by Mr. Fernández was also rejected, although the maximum legal period of imprisonment had expired.

52. After nearly six months, undue delays have been observed in this trial; the difficulties arising from the inherent complexity of the legal process were exacerbated by the parties' objections, which caused frequent deferrals. These circumstances affect the victims' and the defendants' right to seek prompt justice.

53. Threats and undue pressure against citizen-judges of the Court, a public prosecutor and a lawyer of the private prosecutors, as well as against some victims and witnesses, were also reported. Furthermore, OHCHR-Bolivia is concerned at the lack of State programmes on psychosocial assistance for the victims.

## E. Rights of victims of unconstitutional regimes

54. The rights to truth, justice and reparation for victims of human rights violations during the unconstitutional regimes continued to be seriously neglected. The implementation process for the reparation established in Law No. 2640 of 2004 has not yet been completed. The Technical Evaluation Committee (COMTECA) completed the first review of the 6,221 applications submitted, approving only 218. While the deadline was extended to enable the submission of petitions for reconsideration, only 40 per cent of those initially excluded availed themselves of this possibility. According to official sources, on 31 December, the evaluation of 2,500 applications was finalized. The Ministry of Justice maintained a constructive dialogue with the main victims' organizations in order to modify the overly rigorous criteria applied during the first evaluation of victims' demands. Notwithstanding these initiatives, to date the fulfilment of the right of these victims to reparation is still pending.

<sup>21</sup> See "Informe público de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en Bolivia sobre los hechos de violencia ocurridos en Pando en Septiembre de 2008" [Report of OHCHR on the violent events in Pando in September 2008], March 2009.

55. The search for the remains of guerrilla fighters killed by the army in 1970 in the town of Teoponte, La Paz continued, with the exhumations of five of them; the remains of four others, discovered late in 2009, were handed over to relatives. In October, the Inter-Institutional Council for Clarifying Enforced Disappearances (CIEDIEF) completed the recruitment of a team of consultants to investigate and systematize information on cases occurred between 1964 and 1982.

56. Within the investigations of the enforced disappearance of Renato Ticona Estrada, Marcelo Quiroga Santa Cruz, Carlos Flores Bedregal and others, the Public Prosecutor's Office made several efforts to access documents from the Armed Forces, which led to the issuance of court orders to that effect. However, as in the previous year, after the adoption of Ministerial Resolution 316 instructing the disclosure of military archives,<sup>22</sup> the Armed Forces allowed for very limited access to the files, which did not contribute to the clarification of the truth about these cases.

57. In a ruling issued in August, the Supreme Court of Justice increased the sanctions against those responsible for the torture and enforced disappearances of José Trujillo Oroza and José Luis Ibsen. In a decision of September, the Inter-American Court of Human Rights found the State responsible for the enforced disappearance of José Luis and Rainer Ibsen, and ordered compensation for the victims' families.

## **F. Right to life and integrity**

58. During 2010, OHCHR-Bolivia registered a few cases of excessive use of force resulting in possible extrajudicial deaths, torture, and cruel, inhuman and degrading treatment alleged to have occurred either during law enforcement operations or while victims were in police custody. Official investigations have reportedly been opened into these cases.

59. In May, violent incidents between the police and peasants, students and inhabitants of the urban area of Caranavi resulted in the death of two demonstrators and over 40 people wounded on both sides after police broke up a roadblock that had prevented the freedom of circulation of both persons and goods for 11 days. There were indications that the police resorted to excessive use of force. The Public Prosecutor's Office set up a special commission to investigate the cases and, on 15 December, charges against 17 protesters were filed.

60. In July, David Olorio was allegedly tortured to death in a police station in El Alto, La Paz after being arrested for his alleged involvement in a robbery that resulted in the killing of a policeman. The investigating judge ordered the preventive detention of four police officers, including a colonel. However, in November, a person who allegedly participated in the same robbery was shot to death in the maximum security prison where he was being detained.

61. In October, Alfredo Vargas died, allegedly after being beaten by police officers in El Torno, Santa Cruz, who had forced him to stop the vehicle that he was allegedly driving under the influence of alcohol. OHCHR-Bolivia also registered allegations of torture, and cruel, inhuman and degrading treatment of three women deprived of their liberty in penitentiary centres in La Paz.

62. The broadcasting of a video that showed acts of torture inflicted on a conscript by other Army members, which had occurred in 2009 in Oruro, exhibited the practice of

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<sup>22</sup> See also A/HRC/13/26/Add.2, para. 50.

violations of physical integrity within military premises. Other complaints about similar cases that occurred in Santa Cruz were also filed.

63. It should be positively noted that these allegations were followed by public condemnation by the President and senior government officials, and by the opening of criminal proceedings, which, in the cases of Mr. Olorio and Mr. Vargas, resulted in the identification and detention of those allegedly responsible.

64. The efforts of the Government and civil society to establish a national mechanism for the prevention of torture, in accordance with the commitment made by the Plurinational State of Bolivia in May 2006 after ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, should also be noted. In this regard, the Vice-Ministry of Justice and Fundamental Rights introduced a bill that was improved with contributions from other authorities and representatives of civil society.

### **Lynching**

65. According to press sources, while the number of lynching cases decreased in comparison with 2009, the number of deaths increased. During the first 10 months of the year, the press reported 45 cases of lynching or attempted lynching, resulting in at least 21 people dead and 58 injured. Most of these cases occurred in marginalized peri-urban areas, where State presence is limited. Among the victims, mostly suspected of committing non-serious crimes, three dead and nine wounded were women. Furthermore, OHCHR-Bolivia registered only four cases from past years that resulted in conviction.

66. The lynching of four policemen, reportedly perpetrated by several members of an indigenous community in the rural area of Uncía, Potosí who, for 13 days, refused to return the bodies, should also be noted. As in other cases, the media attributed this lynching incident to indigenous justice, thereby seeking to discredit the latter. This case should be thoroughly investigated to determine whether State security forces exercised due diligence in the context of their responsibility to protect.

## **G. Right to personal liberty and the penitentiary system**

67. The Government has made some efforts to reduce prison overcrowding by rehabilitating and expanding most penitentiaries. However in July 2010, the then general director of the penitentiary system reported that in January the prison population was 7,500 inmates, and six months later, 8,700, against existing prison capacity of approximately 4,700 people.

68. More than 70 per cent of the prison population is in preventive detention. This percentage may reveal a long-standing practice of using preventive detention as a rule and not as an exception, which, combined with the weaknesses of the administration of criminal justice, is likely to cause frequent violations of the right to personal liberty.

69. This trend, already seen in previous years, was aggravated in 2010 with the adoption of legislation that, on the one hand, increased the grounds for detention and its duration, and restricted the criteria required for its cessation,<sup>23</sup> and on the other, prevented the possibility of applying alternative precautionary measures, as is available for crimes such as smuggling.<sup>24</sup>

<sup>23</sup> Law No. 7 of 18 May 2010.

<sup>24</sup> Law No. 37 of 10 August 2010.

70. Regarding detention conditions, the high level of prison overcrowding and the inhuman conditions suffered mainly by detainees held in police facilities and in rural prisons known as “*carceletas*”, are of special concern.

71. According to a recent study by the Ombudsman, the vast majority of “*carceletas*” have poor infrastructure and insufficient or often nonexistent medical facilities, which significantly impair inmates’ rights to health, education and work.

72. OHCHR-Bolivia is also concerned about the presence of children of school age and adolescents living in prison with their parents deprived of liberty, or who in some cases may be themselves illegally detained with adults, being at risk of abuse and sexual exploitation.

## H. Women’s rights

73. Since 2009, the National Plan on Equal Opportunities, entitled “Women Building the New Bolivia to Live Well” has been implemented as the main public policy to achieve and ensure equal opportunities for women and eliminate gender-based violence.

74. The Ministry of Justice, through its Vice-Ministry of Equal Opportunities, worked on the elaboration of public policies in defence and promotion of women’s rights, and on designing more effective legislative proposals to counter the various forms of violence against women; these are expected to have positive results in the near future. In this context, the Law on the Judicial Organ establishes specialized courts for cases of physical, psychological and sexual violence in both the private and public spheres, as well as the competence of agro-environmental tribunals to ensure women’s rights in the property registries.

75. However, the number of reported murders of women, almost doubling last year’s figures, raises serious concern. According to non-governmental sources, during the first six months of 2010, there were 69 murders of women nationwide, over half of them in the cities of La Paz and El Alto.

76. A similar trend was observed with respect to other forms of violence against women; available official figures illustrate that an average of 14 women per day received assistance in public health care centres<sup>25</sup> for physical, psychological and sexual violence.<sup>26</sup>

77. The Government, along with the main human rights NGOs, initiated the process to draft a bill on sexual and reproductive rights, although it was later withdrawn. Another problem particularly affecting women and girls is human trafficking, which has motivated the drafting of a bill against human trafficking. The bill is currently under discussion in the Plurinational Legislative Assembly.

78. In the Government that was established in January, women hold 50 per cent of the ministerial positions. Additionally, the implementation of a gender quotas law helped increase to 42 per cent the proportion of women in municipal council posts. However, none of the governors, only 7 per cent of elected mayors, and 28 per cent of departmental assemblies’ representatives were women. Additionally, sexist and denigrating attacks on the political role of women persisted in some campaigns.<sup>27</sup>

<sup>25</sup> Data from the National Center of Statistics “*Mujeres y hombres de Bolivia en cifras*”, for 2007 and part of 2008.

<sup>26</sup> Data from the National Health Information System for 2008 and 2009.

<sup>27</sup> Coordinadora de la Mujer network.

## I. Human rights defenders

79. Some human rights defenders took part as observers in the interactive dialogue of the universal periodic review and disseminated throughout the country the recommendations addressed to the Plurinational State of Bolivia, as well as the voluntary commitments undertaken by the Plurinational State to improve the human rights situation. They also made significant contributions to the drafting of several bills.

80. During 2010, civil society and the Government maintained a fluid dialogue, and human rights organizations participated in the National Human Rights Council and other instances. However, some senior officials of the executive branch and the police publicly discredited and stigmatized on two occasions human rights defenders who had denounced human rights violations or criticized the way in which the Government had dealt with certain social protests. These were the cases of the statements made against the Permanent Assembly for Human Rights of La Paz and the Centre for Legal Studies and Social Research (CEJIS).

## J. Freedom of expression and freedom of the press

81. Unlike in the previous two years, where OHCHR-Bolivia had recorded significant numbers of both physical and verbal attacks against media and media workers, in 2010 the number and the seriousness of such allegations decreased.<sup>28</sup> Nevertheless, concern remains regarding the impunity for cases that occurred in the previous two years. For instance, the killing of the journalist Carlos Quispe in 2008 is still to be clarified.

82. In her 2009 report, the High Commissioner recommended that the Plurinational Legislative Assembly eliminate the crime of contempt for being contrary to freedom of expression.<sup>29</sup> However, during 2010 at least six new cases were initiated based on this crime.

## IV. Main office activities

83. In the context of strengthening indigenous peoples' rights, in March and November respectively, OHCHR-Bolivia organized two meetings with the main five indigenous organizations in order to coordinate joint actions and, at the same time, to conduct a shared assessment of the activities previously implemented.

84. OHCHR-Bolivia supported the Vice-Ministry of Justice for Indigenous Aboriginal and Farming Peoples in the consultation process for the bill on jurisdictional boundaries, at the stage of prior information as well as in the implementation of the process and in the incorporation of the observations made to the legislative proposal. In this context, it also organized several trainings on the rights of indigenous peoples and, in particular, on the right to consultation in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. One of these trainings, resulting from an inter-agency initiative, was addressed to members of United Nations agencies.

85. OHCHR-Bolivia provided technical assistance to various round tables that resulted in the bill against racism and all forms of discrimination, and issued legal opinions on various versions of the proposed law. It also delivered a legal opinion recommending that

<sup>28</sup> National Media Observatory (ONADEM), "Agresiones a Periodistas y Medios 2010: Insumos para un Debate".

<sup>29</sup> See also A/HRC/13/26/Add.2, para. 117.

article 16 of the bill be modified in accordance with international standards, so that limitations to freedom of expression be included in a clear and precise manner in the same law, and be applied by an independent body. These suggestions were not taken into account in the final version of the Law. Likewise, OHCHR-Bolivia has supported the Vice-Ministry of Decolonization in the elaboration of an assessment and a plan of action on racism and discrimination, through workshops to gather information, and a study on racism and discrimination in the field of education.

86. A joint work plan with the Guaraní People's Assembly was also established, which included a capacity-building workshop on human rights that was attended by over 100 Assembly authorities, and two workshops on the participation and rights of indigenous women. At the preparatory session of the Permanent Forum on Indigenous Issues held in the Plurinational State of Bolivia, OHCHR-Bolivia organized a meeting with several representatives of the Guaraní people. In addition, follow-up was undertaken in cases of land distribution for redressing servitude and forced labour among communities of the Captaincy of Alto Parapetí that were before either the National Institute of Agrarian Reform (INRA) or the National Agrarian Tribunal.

87. The Andean Programme for the Promotion of Afro-descendants concluded in April after holding a workshop, which notably led to the creation of the National Afro-Bolivian Council.

88. In terms of legislative technical assistance, comments on various bills, noting the need to adapt the new legislation to international human rights law, were provided to different authorities, members of the Plurinational Legislative Assembly, and the Specialized Legal Unit for Constitutional Development. At the same time, OHCHR-Bolivia promoted debates and participated in technical meetings, as in the case of the bills on the national mechanism for the prevention of torture and on jurisdictional boundaries.

89. In order to obtain detailed information from primary sources on the human rights situation, OHCHR-Bolivia conducted 28 missions for a total of 111 days to the nine departments of the country. It also observed the development of elections in April, and undertook the judicial monitoring of some emblematic trials through the attendance of its staff at hearings, the study of procedural documents, and interviews with justice officials, victims and defendants.

90. OHCHR-Bolivia, along with the Ombudsman's Office and the Comunidad de Derechos Humanos network, held five trainings on national and international human rights protection mechanisms, addressed to human rights defenders in La Paz, Cochabamba, Pando, Santa Cruz and Tarija.

91. OHCHR-Bolivia also organized a workshop on Economic, Social and Cultural Rights and the Rights of Users and Consumers, in collaboration with the Ombudsman's Office, the Vice-Ministry of Defence of the Rights of Users and Consumers and some NGOs. Around 75 persons, including State authorities and civil society representatives, participated in the event. Moreover, in coordination with the Ombudsman, OHCHR-Bolivia conducted two training sessions on the Convention on the Rights of Persons with Disabilities and its Optional Protocol aimed at persons with disabilities. The office published these documents and the Universal Declaration of Human Rights in Braille, and produced a DVD with the Convention and its Optional Protocol in audio and sign language.

92. OHCHR-Bolivia, in coordination with the coalition of civil society organizations, organized, through videoconference, the live broadcast from Geneva of segments of the seventh and fourteenth sessions of the Human Rights Council concerning the universal periodic review of the Plurinational State of Bolivia in 2010. In this context, and continuing the work begun in 2009, OHCHR-Bolivia disseminated to civil society the main



recommendations to the State and its voluntary commitments. The entire process was highly participatory.

## V. Follow-up on the implementation of recommendations

93. The recommendations previously formulated by the High Commissioner have been implemented to varying degrees. In some cases, the level of implementation is quite high, such as the development of complementary legislation to the Constitution.

94. State efforts to combat racism and discrimination, as well as social programmes in health care and education, should also be highlighted. Additionally, attacks against human rights defenders and journalists decreased, although investigations on attacks reported in 2008 and 2009 did not make any progress, and impunity continued in those cases.

95. On the other hand, some efforts undertaken to implement other recommendations regarding various persisting problems, have not yet yielded results. These include, for example, the implementation of the right of indigenous peoples to consultation in some cases, the worrying situation of the Guaraní people despite progress in distribution of land, and the obstacles faced by victims of unconstitutional regimes to enjoy their rights to truth, justice and reparation.

96. Considering the weaknesses that affect the justice administration system, some trials for serious human rights violations made some progress. The investigation into the alleged terrorist group reportedly active in Santa Cruz during 2009 has resulted in the Public Prosecutor's Office filing charges for terrorism and armed insurrection against 39 people, including some alleged financial sponsors. However, in this case, as well as in others mentioned in previous reports, the investigations of allegations of excessive use of force by the police produced no results.

97. According to an assessment by the Vice-Ministry of Justice and Fundamental Rights, 36 per cent of the National Human Rights Action Plan was implemented during the first two years of its five-year cycle. Non-governmental sources questioned the validity of this implementation rate and criticized the methodology used for that calculation. The Ministry of Justice organized several meetings at the departmental level in order to foster the implementation of the Action Plan, which led to the establishment of ad-hoc committees in Chuquisaca, Cochabamba and Tarija. Nevertheless, in 2010 several governmental bodies did not allocate resources in their annual operating programmes for the Action Plan's activities. According to the National Human Rights Council, entrusted with the implementation of the Action Plan, a wider dissemination of its content, along with greater coordination among the various ministries concerned should be ensured. The Ministry of Education led the creation of a commission to prepare a plurinational plan on human rights education, which initiated an assessment of the current situation in this matter.

98. Lastly, OHCHR-Bolivia did not observe any progress on the elimination of the crime of contempt for legally constituted authorities, nor the adoption of a plan to prevent and sanction lynching.

## VI. Conclusions and recommendations

**99. During 2010, the human rights situation in the Plurinational State of Bolivia showed some progress, particularly with regard to the legislative development of the rights enshrined in the Constitution, and specifically the five fundamental laws. Other positive aspects included the efforts of the Plurinational State aimed at eliminating racism and discrimination, as well as progress regarding certain economic and social**

rights. Nonetheless, the United Nations High Commissioner for Human Rights is especially concerned about the persistent problems that affect the administration of justice. With respect to the situation analysed in the present report, the High Commissioner makes the following 10 priority recommendations.

100. The High Commissioner reiterates her previous recommendations that have not yet been implemented, as well as the recommendations resulting from the universal periodic review and from other universal and regional human rights protection mechanisms. In this regard, she encourages the Government and civil society to set up an effective system to monitor the implementation of these recommendations.

101. The High Commissioner urges the Plurinational Legislative Assembly to ensure that all laws adopted fully respect international human rights norms and principles, and to amend those provisions already adopted when found to affect such principles. The High Commissioner also calls upon the Government and the Plurinational Legislative Assembly to address existing perceptions and ensure transparency and adequate time for dialogue, consultation and analysis of all legislative proposals.

102. The High Commissioner encourages the State, the private sector, the media and civil society as a whole to carry out consistent and diversified programmes and actions to eliminate all forms of racism and discrimination, which should also include dialogue initiatives to overcome differences. She also encourages the international community to support those efforts. The High Commissioner calls on the Plurinational State of Bolivia to strike an appropriate balance between the right to freedom of expression and the prohibition of disseminating ideas based on racial superiority or hatred, incitement to racial discrimination or acts of violence.

103. The High Commissioner recommends that the Government and the Plurinational Legislative Assembly expand the existing legislation to ensure the right to consultation of indigenous peoples regarding the adoption of laws and administrative decisions that may affect their rights.

104. The High Commissioner urges the Ministries of the Interior and Defence to adopt measures to eradicate the excessive use of force, torture and cruel, inhuman and degrading treatment by security officials. She also recommends strengthening human rights protection mechanisms, and revising internal disciplinary procedures and the curricula of training courses in order to incorporate sound human rights provisions and control within the chain of command.

105. The High Commissioner encourages the competent authorities to increase their efforts to hold, as soon as possible, elections of the new judicial authorities. Within this framework, she recommends that the Plurinational Legislative Assembly guarantee a merit-based and transparent process for the selection of candidates. She also urges the election of the new Attorney General according to the same principles.

106. The High Commissioner reiterates her call to investigate, prosecute and sanction those responsible for human rights violations. In this respect, she recommends that the capacity of the Public Prosecutor's Office to investigate human rights violations by security officials be strengthened. As to ongoing trials initiated recently and in previous years, she invites the Public Prosecutor's Office and the judiciary to intensify their efforts to enforce law within a reasonable time and with full respect for victims' rights and due process guarantees of the defendants.

107. The High Commissioner calls upon the Government, the Public Prosecutor's Office and the judiciary to ensure strict compliance with presumption of innocence, due process, and fair trial guarantees in all cases, including cases of corruption.

108. The High Commissioner calls on the Government and the judiciary to implement effective and urgent measures to improve access to justice throughout the country. These should include measures to advance in the establishment and coordination of indigenous justice on an equal footing with ordinary justice, and to strengthen the capacities of justice operators in both systems by ensuring full respect of human rights.

109. Finally, the High Commissioner recommends that the State implement effective measures to prevent violence against women, and particularly to investigate, prosecute and sanction those responsible for such crimes.

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