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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

## Annual report of the United Nations High Commissioner for Human Rights

### Addendum

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

#### *Summary*

The present report provides an overview of the human rights situation in the Plurinational State of Bolivia and the work undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Bolivia during 2012. OHCHR conducted monitoring activities and provided advisory and technical assistance to State institutions and civil society to contribute to the implementation of the country's international human rights obligations and the recommendations contained in previous reports.

During 2012, progress was registered in relation to the enjoyment of economic, social and cultural rights, in good measure thanks to cash transfer and other social programmes. In particular, levels of poverty and of extreme poverty and school dropout rates continued to gradually decline. Bolivia completed the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Progress was also noted in public policies to prevent and punish the prevailing practice of racism. Important laws were passed in support of women's rights, persons with disabilities and refugees, and against human trafficking. Furthermore, the Plurinational Constitutional Court declared that the offence of defamation against civil servants (*desacato*) was unconstitutional.

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\* The summary of the present report is being circulated in all official languages. The report itself, which is annexed to the summary, is being reproduced in English and Spanish only.

\*\* The present document is submitted late in order to reflect the most recent information.

While the Government began a participatory process towards drafting a legal framework on the right to consultation of indigenous peoples, the consultation on the proposed highway construction in the Isiboro Sécure National Park and Indigenous Territory (TIPNIS) led to protracted tension between the Government and some indigenous communities. Two marches relating to the TIPNIS controversy and several other social protests were staged throughout the year. The positive steps and measures taken by the new high-level judicial authorities have thus far been insufficient to resolve the longstanding crisis in the criminal justice system, which continues to be prone to corruption, lack of access, delays and a serious deterioration in the situation of prisons. The high rates of violence against women and a rise in the cases of lynching reported by the press were also cause for concern.

## Annex

[English and Spanish only]

### 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 Bolivia signed an agreement establishing a country office (OHCHR-Bolivia); the agreement was approved by Congress on 13 July 2007. As per the agreement, which was renewed in May 2010 to extend to August 2013, the office provides technical assistance to State institutions and civil society organizations, promotes human rights and monitors and reports on the human rights situation in the Plurinational State of Bolivia.

## **II. National context**

2. In January 2012 new high-level judicial authorities took up their posts, and in October the Plurinational Legislative Assembly elected a new Attorney General.

3. The Primer Encuentro Plurinacional para Profundizar el Cambio (the “Social Summit”) in Cochabamba finished in January. Over 400 representatives of social organizations, trade unions, universities and the private sector and legislators contributed to defining strategies for State policy on production, food security, social policies and public security, as well as to legislative reforms.

4. In January, the Development Assistance Framework for 2013-2017 was signed between the United Nations and the Plurinational State of Bolivia, focusing on four categories of rights: civil and political; social and cultural; economic; and environmental.

5. Throughout the year, there were protests concerning demands for salary improvements, local-impact projects, demarcation of territorial boundaries and the exploitation of natural resources, among others. Some, due to their violent nature and to prolonged roadblocks, affected other people’s rights to work, health, physical integrity and freedom of movement in the main cities and highways. In almost all cases, the Government and the protesters reached agreements.

6. The Ombudsman’s Office played a positive role as mediator in some of these disputes, such as the march organized by persons with disabilities in January and the violent incidents between indigenous peoples and police forces in Mallku Khota, Potosí, in July. It also defined its strategic five-year plan. However, the lack of budget increase by the State limited its institutional strengthening to some extent.

7. In July, the Government began an unprecedented consultation process on the construction of a highway through the Isiboro Séure National Park and Indigenous Territory (TIPNIS) and the principle of the inviolability of those territories. The process culminated in December and, according to preliminary official figures, 58 of 69 communities residing in the TIPNIS participated, while the remaining 11 did not, as an expression of their opposition to the governmental initiative.

8. In August, President Evo Morales launched a strategic agenda up to 2025, laying out five State policy priorities: eradication of extreme poverty, industrialization of natural resources, food security with sovereignty, universal access to basic services and technological sovereignty.

9. The Law on the National System of Citizen Security, adopted 31 July, defined a new structure of institutional responsibilities for public security at the national, departmental, regional and municipal levels, as well as for autonomous indigenous territories. Furthermore, it established reforms and measures to strengthen the police and the penitentiary system.

10. The national population and housing census in November was conducted in line with relevant national legislation. It had higher levels of participation than the 2001 census and was more inclusive regarding indigenous peoples, Afro-Bolivians, migrants and persons with disabilities.

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

#### **A. Racism and discrimination**

11. In 2012 progress was observed in the implementation of measures to prevent and punish racism, racial discrimination and all forms of discrimination. Of particular relevance was the adoption in February of the first plan of action on these matters. It consists of 17 programmes under the responsibility of 17 ministries and the legislative, judicial and electoral branches. The plan's full implementation will depend on adequate funding. The system for registering and monitoring reported cases of racism and discrimination was further developed by the Vice-Ministry of Decolonization which, at September 2012, had registered 130 cases, for a total of 287 cases since October 2010.

12. Thanks to allocated public funds, the National Committee against Racism and All Forms of Discrimination increased its institutional capacity. It was able to oversee the participative process for the elaboration of the plan of action and its approval, as well as to maintain its intercultural and diverse composition of over 60 representatives from civil society, indigenous peoples' organizations and vulnerable groups, along with officials from State institutions.

13. Several media developed advocacy and dissemination campaigns against racism and all forms of discrimination. The Ministry of Cultures publicly acknowledged the contribution of 84 national and local media outlets to the prevention of racism and all forms of discrimination in their programmes and publications.

14. In September, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Bolivia. In his preliminary remarks, he positively highlighted legal and institutional measures adopted by the Government, which constitute an adequate framework for eliminating racism and all forms of discrimination. Nevertheless, he drew attention to the insufficient resources to implement the measures; the slowness and high cost for victims with respect to access to justice; the ongoing practice of servitude suffered by some indigenous peoples; and racist attacks and insults in daily life.

15. Representatives of the Afro-Bolivian community reiterated concerns about the continued use of stereotypes that undermine the dignity of their cultural and historical expressions. Although the adoption of the 2010 Law against Racism and All Forms of Discrimination has reduced such behaviours, they persist, particularly in work and education. An international expert conference on the education of people of African descent in November positively contributed to the process of shaping education policy, which is currently underway through a joint initiative of the Ministry of Education and the National Council of Afro-Bolivians (CONAFRO).

16. The new General Law for Persons with Disabilities was enacted in March 2012 in response to demands for recognition of the rights of persons with disabilities to equal conditions and opportunities under a comprehensive protection system. The law provides for the adoption of measures for protecting the human rights of persons with disabilities in the areas of health, education, employment, and economic and social development and

establishes payment of an annual income to those with very serious disabilities. Implementing regulations have not yet been adopted.

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

17. The rights of indigenous peoples continued to be at the top of the public agenda, as shown by the initiation of discussions about a legal framework on the right to consultation of indigenous peoples, the two marches staged by indigenous peoples from the TIPNIS and the implementation of an unprecedented consultation process in the territory. Plurinational Constitutional Court judgement No. 300 concerning the TIPNIS consultation and the efforts of the Government and Guaraní representatives to implement previous agreements to protect their rights also contributed to keeping the issues in the public agenda.

18. Communities of the TIPNIS, led by the Indigenous Council of the South (CONISUR), a member of the Confederation of Indigenous Peoples of the East of Bolivia (CIDOB), led a march to La Paz in January 2012 to demand the derogation of Law No. 180, which had, in 2011, established the inviolability of the TIPNIS and stopped the highway construction planned by the Government. At the end of the march, CONISUR presented a proposal to a parliamentary commission and met with President Morales. This led to the adoption of Law No. 222 in February 2012, which called for a consultation with all concerned indigenous communities of the TIPNIS on the inviolability of the territory, the construction of the highway and development plans for the area.

19. The enactment of Law No. 222 generated new tensions between the Government and some indigenous groups from the TIPNIS and from other regions of the country. Between April and July, the Ninth Indigenous March was organized, primarily by sectors of the CIDOB opposed to the highway construction. It had limited indigenous participation, and a few incidents of violence between demonstrators and police at the end of the march in La Paz were registered. The marchers called for the repeal of Law No. 222, the full application of Law No. 180 and the suspension of the TIPNIS consultation. However, the Government contested the representativeness of the leaders behind the march and instead called the representatives of TIPNIS indigenous communities to a meeting. Of these, about 70 per cent attended the meeting with the Government. They reached an agreement to start the consultation in July and discussed and approved a protocol to regulate the process.

20. In response to legal actions contesting the constitutionality of Law No. 222, the Plurinational Constitutional Court ruled that the law was constitutional, but should be implemented through agreement between the Government and the TIPNIS indigenous communities. This constitutes a significant ruling on the right to consultation, describing the nature and scope of the right, the applicable principles, and the steps to ensure the enjoyment of this and other intertwined rights, such as the right to self-determination, all in accordance with international standards.

21. On 7 December, the Government made the results of the consultation process public. According to preliminary official information, 58 of the 69 communities residing in TIPNIS participated. However, on 17 December, the Episcopal Conference and the Permanent Human Rights Assembly of Bolivia challenged the official figures based on findings from an observation mission to the TIPNIS. Similarly, the Ombudsman criticized the consultation process. The Plurinational Electoral Organ accompanied the process as an observer according to law and presented its report on 7 January 2013. The results of the consultation may be examined by the Plurinational Constitutional Court, to rule on the conformity of the process with its June ruling and with international standards.

22. At the time of writing, OHCHR-Bolivia was concerned that the consultation was not able to include all the communities living in the TIPNIS, as some of them opposed the

consultation. As no agreement was possible with all resident communities, the constitutional judgement could not be fully implemented. OHCHR-Bolivia repeatedly stated that the realization of a consultation in the TIPNIS, in accordance with international standards and conducted through a permanent dialogue, was the most appropriate solution to meet the demands of all parties.

23. In February 2012, with the establishment of a national commission, the Government opened a participatory process to draft framework legislation on the consultation of indigenous peoples. While the process has met the expectations of some indigenous representatives, others declined to participate, as a way to express their disagreement with the TIPNIS consultation and with some Government policies on indigenous peoples' rights.

24. The investigation of the Public Prosecutor's Office into the excessive use of police force against an indigenous march in Chaparina, Beni, in September 2011 has progressed slowly and is still within the legal time limit of the pretrial stage. A former Vice Minister of the Interior and one high-ranking police commander have been under investigation; the latter is currently under house arrest.

25. Progress was registered regarding the mechanism to access autonomy for indigenous peoples. Of the 11 municipalities undergoing conversion to indigenous autonomy, 5 have completed the participatory drafting of their autonomous statutes, and have presented them to the Plurinational Constitutional Court for constitutional review.

26. In 2012, Guaraní representatives denounced delays in carrying out consultations and in complying with agreements reached through previous consultations. Relevant efforts are currently under way between Government authorities and Guaraní representatives to implement existing agreements about land titling, waste recovery, assistance to indigenous autonomies, and a new governmental plan to eradicate the forced labour and servitude that still affects numerous Guaraní families in the Chaco region.

27. The situation of highly vulnerable indigenous peoples who are at risk of disappearing has not improved; they do not have access to comprehensive health policies, food or territorial security. A number of these indigenous peoples suffer from endemic illnesses for which treatment is expensive, thus increasing their mortality rate. The draft law to protect these peoples remains under technical revision within the executive and has not yet been presented to the Legislative Assembly.

28. No action appears to have been taken to bring Law No. 73 on Demarcation of Jurisdiction, which regulates the scope of application of the ordinary and the indigenous justice systems, into line with both the Constitution and international law, in accordance with the recommendation made by the Committee on the Elimination of Racial Discrimination (CERD/C/BOL/CO/17-20, para. 22).

### C. Economic, social and cultural rights

29. Confirming a trend registered over the past few years, macroeconomic indicators evolved positively. Official sources<sup>1</sup> reported a prospect of growth of about 5 per cent in the gross domestic product and an increase in planned public investment, which in 2012 rose to over double the average recorded between 2006 and 2010. This tendency, coupled with the continuation of cash transfer programmes, had a positive impact on the enjoyment of

<sup>1</sup> Central Bank of Bolivia, *Informe de política monetaria: enero 2012*, available from [www.bcb.gob.bo/webdocs/2012/Publicaciones/InformePoliticaMonetaria/IPM%20enero2012.pdf](http://www.bcb.gob.bo/webdocs/2012/Publicaciones/InformePoliticaMonetaria/IPM%20enero2012.pdf), and Ministry of Economy and Public Finance, "Reservas internacionales netas del BCB", available from [www.economiayfinanzas.gob.bo/index.php?opcion=com\\_indicadores&ver=indicadores&idc=561](http://www.economiayfinanzas.gob.bo/index.php?opcion=com_indicadores&ver=indicadores&idc=561).

human rights, as indicated by a further reduction in indicators of poverty and extreme poverty,<sup>2</sup> and the steady rise in minimum wage, among others.

30. Important progress was made regarding the human right to water, particularly in access to safe drinking water in rural areas, due to the presidential programmes Mi Agua and Mi Agua II. The World Health Organization (WHO) and the United Nations Children's Fund (UNICEF)<sup>3</sup> had predicted that access to improved drinking-water sources would amount to 88 per cent in 2010 (96 per cent for the urban population and 71 per cent in the rural area, with a gap remaining in both areas). Official data from the end of 2012 indicates that 500 drinking water projects had been completed, while 125 were under way.

31. Literacy and post-literacy programmes continued, and new initiatives, such as the Bolivia Lee campaign, were created to provide reading materials through community libraries. These initiatives fostered further literacy among young people and adults, particularly women living in poor and remote regions.

32. In October, the Juancito Pinto benefit for students registered in the education system was expanded to include students until the third year of secondary school, thus reaching more beneficiaries. The programme contributed to reducing school dropout rates, which, according to the Ministry of Education, in 2011 were at 1.82 per cent at the primary level. A difference was noted between rural (2.49 per cent) and urban (1.46 per cent) areas.

33. In August, in an effort to guarantee the right to education by improving the protection of students against violence and other abuse by teachers and school staff, Supreme Decrees No. 1302 and No. 1320 for the eradication of violence, ill-treatment and abuse in schools came into force.

34. In November, the National Human Rights Council approved the Plurinational Plan on Human Rights Education prepared by the Ministry of Education with the support of OHCHR-Bolivia. The Plan focuses, in particular, on providing strategic guidelines for the incorporation of human rights education into school syllabuses and also contemplates human rights training programmes for civil servants, the police and the Armed Forces.

35. Since the end of 2011, the Ministry of Justice and the National Institute for Statistics, with technical support from OHCHR-Bolivia, have developed, in a participatory manner, human rights indicators for six rights they have prioritized: food, education, health, work, housing and women's right to a life free from violence. This initiative constitutes an important step to more closely monitor human rights and the impact of public policies.

36. On 13 January, Bolivia completed the final stage of ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights through its incorporation into the domestic legal framework. In November Bolivia ratified International Labour Organization Convention No. 189 (2011) concerning Decent Work for Domestic Workers; in December it ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

## **D. Women's rights**

37. For the first time in Bolivian history, two women parliamentarians became presidents of the two chambers of the Plurinational Legislative Assembly. They promoted

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<sup>2</sup> According to the Social and Economic Policy Analysis Unit, in 2010 the rate of extreme poverty in Bolivia was 25.4 per cent (15.5 per cent urban and 44.7 per cent rural), compared to 26.1 per cent in 2009 (16.1 per cent and 45.5 per cent in urban and rural areas, respectively).

<sup>3</sup> UNICEF/WHO, *Progress on Drinking Water and Sanitation: 2012 Update*, p. 39.



the passing of important laws for women's rights: the Law on Harassment and Political Violence against Women (Law No. 243) on 28 May; and the Comprehensive Law against Trafficking in Persons (Law No. 263), on 31 July.

38. The adoption of the Law on Harassment and Political Violence against Women responds to demands from women's organizations and women in public and political positions for greater protection from gender-based harassment and violence in the exercise of their duties. According to the Bolivian Association of Female Municipal Authorities (ACOBOL), every year many women in political or public positions suffer such types of violations.<sup>4</sup> Two elected female municipal authorities were killed this year: Juana Quispe Apaza of Ancoraimes municipality, La Paz, in March, and Daguimar Rivera Ortiz of Guayaramerín municipality, Beni, in June. In the former case, the Public Prosecutor's Office indicted two members of the Municipal Council suspected of being the intellectual authors of the crime; and in the latter, one of the alleged perpetrators has been indicted. According to preliminary information, both crimes are allegedly connected to the political activity of the victims, and the fact that they were women exacerbated the level of violence against them.

39. Similarly, the adoption of the Comprehensive Law against Trafficking in Persons was a response to demands of women's organizations concerned about the growing number of disappeared women and female teenagers. The law's regulation is under revision by the National Council for Economic and Social Policy (CONAPES). Between January and August 2012, the Public Prosecutor's Office recorded the cases of 63 girls and 23 adult women who were victims of trafficking

40. With regard to women's right to health, Law No. 252 was passed in July, granting one day's leave from work per year for all women employed in the public or private sector in order to enable them to undergo medical examinations for the early detection of breast and cervical cancer.

41. According to official data, during the first semester of 2012, 61,251 complaints of violence against women were registered, more than 90 per cent of the total for 2011<sup>5</sup> (64,450 complaints). The police recorded 137 cases of violent killings of women during the first semester of 2012. The Information and Development Centre for Women (CIDEM), based on press monitoring and other sources, recorded 97 cases of violent deaths during the first nine months of 2012. Of these, 62 were femicides and the remaining 35 were classified as murders due to public insecurity.<sup>6</sup> In an October report, the Ombudsman's Office indicated that only 27 out of 335 cases of femicide reported between 2008 and 2011 had resulted in a conviction. The draft law to make femicide a crime is under consideration by the legislative assembly and the draft law for a plurinational service for the defence of victims is under technical review by the executive.

42. The lack of progress in updating the data in the Domestic Violence Information System managed by the Vice-Ministry for Equal Opportunities was a cause of concern. It is hoped that the incorporation of this system into the new comprehensive system elaborated by the Vice-Ministry in 2012 for addressing gender violence will permit the future updating of data.

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<sup>4</sup> According to ACOBOL, between 2000 and 2011, 283 reports of harassment and political violence against women were received. These ranged from pressure to resign and arbitrary freezing of salaries to physical, psychological and sexual attacks, in some cases leading to death.

<sup>5</sup> Data from the National Department for Statistics of the Bolivian Police.

<sup>6</sup> See the database of the CIDEM "Manuela" Observatory on Violence, Femicide and Women at Risk, La Paz, September 2012.

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

43. The Plurinational Constitutional Court approved its Institutional Strategic Plan 2012-2016. Its budget nearly tripled in relation to 2011, unlike that of other judicial bodies. This has allowed the Court to reform its organizational structure to better assume its new mandate in the areas of indigenous justice and constitutional oversight of the statutes and organic charters of the autonomous territorial entities. In July the Plurinational Legislative Assembly approved the Constitutional Procedural Code, which establishes clear rules and procedures and creates, *inter alia*, the Plurinational Academy of Constitutional Studies dedicated to the study and research of constitutional matters.

44. In order to tackle the serious long-term crisis in the administration of justice, the new high-level judicial authorities who took up their posts in January took steps to address judicial independence, the fight against corruption, institutional transparency, access to justice and delays in justice. However, the impact of such measures also depends on the implementation of other long-term reforms.

45. With regard to judicial independence and the fight against corruption, the Council of Magistrates and the School for Judges began reviewing the regulations for the development of the judicial career. In July, the Council appointed the competent authorities and approved the regulations governing the exercise of a disciplinary system for members of the judiciary. In the area of transparency, the new authorities of the Plurinational Constitutional Court, the Supreme Court of Justice and the Council of Magistrates carried out public accountability activities covering their first six months of office; these were well received overall and exempt from public criticism. They also created their respective Transparency Units.

46. Access to justice continued to be affected by serious limitations. According to data from the Council of Magistrates, in 2012 the number of judges and their geographic coverage has not increased from 2011 levels,<sup>7</sup> although the budget for the creation of 29 new courts was approved. By June, the Council of Magistrates had designated 119 judges to cover vacancies.

47. With regard to the backlog of cases before the judiciary, the Supreme Court of Justice, the Agro-Environmental Court and the Plurinational Constitutional Court each set up internal panels of judges to address cases accumulated during past administrations. However, a national policy to reduce the judicial backlog in capital cities and El Alto – which according to the most recent official data available<sup>8</sup> is 55 per cent, and in criminal law 71 per cent – has yet to be defined.

48. A study conducted by the CONSTRUIR Foundation with the support of OHCHR-Bolivia, published in October, revealed that in the cities of La Paz and El Alto, 72 per cent of the hearings regarding application of precautionary measures were suspended due to the absence of one of the parties or of judicial personnel, and 17 per cent of hearings took place without the presence of the prosecutor. The office is concerned that the above-mentioned situation systematically affects the presumption of innocence, the right to an effective remedy and the right to personal liberty of those in pretrial detention.

49. Jacob Ostreicher, a citizen of the United States of America detained on 3 June 2011 in the framework of a criminal investigation for alleged money laundering, was granted conditional house arrest on 18 December 2012. He claimed to have been a victim of extortion by officials of the Ministry of the Interior acting on the behalf of this institution in

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<sup>7</sup> In 2011 the Judicial Organ covered only 47.6 per cent of the municipalities in Bolivia.

<sup>8</sup> Council of Magistrates data for 2011.

the proceedings against him. In November, an extortion ring involving officials from the executive and judiciary was uncovered by the Government. By the end of the year, seven of those officials had been arrested and were in custody. The existence of an extortion ring within the judiciary constitutes a serious threat to the credibility of the administration of justice. President Morales made a commitment that the current investigation would be in-depth and identify all those involved, so as to eradicate such practices from State institutions.

50. In July, the new Organic Law of the Public Prosecutor's Office was approved, and on 20 October the Plurinational Legislative Assembly elected the new Attorney General. The selection process of candidates was carried out in a transparent and participatory manner.

51. Several years ago, the Public Prosecutor's Office suspended the implementation of the professional career management system. In this regard, as provided for in the Organic Law of the Public Prosecutor's Office, a new code of conduct and disciplinary regulations for prosecutors is being drafted. Its finalization is all the more urgent in the wake of the discovery of the above-mentioned extortion ring. The Public Prosecutor's Office published new directives and created specialized units to prosecute trafficking in persons, crimes against sexual liberty and gender-based violence. However, the number of prosecutors and forensic physicians of the Public Prosecutor's Office remains limited, further contributing to delays in the administration of justice.

52. The Government persisted in its efforts to fight corruption, notwithstanding the death threats and other pressures faced by civil servants involved in those activities, particularly within the Ministry of Transparency, and by their relatives. According to official figures, between 2007 and September 2012, 62 sentences were issued in cases relating to corruption against both current and former civil servants, including 7 in 2012.

53. Of particular note was the decision handed down in August by the Plurinational Constitutional Court, in which the Court reaffirmed that the penal provisions contained in the Anticorruption Law No. 4 can be applied retroactively only when this is more favourable to the defendant. This constitutional ruling rectifies the practice implemented by prosecutors and in some instances by judges to apply more severe sanctions for offences linked to corruption than those established at the time when the illicit conducts were committed.

54. The accumulation of judicial complaints against some members of the political opposition and other high-level public figures was observed. Most are related to alleged breaches of the anticorruption law, while others involve public statements found offensive by constituted authorities and prosecuted under defamation against public servants (*desacato*), libel, denigration, slander or sedition charges. While *desacato* was declared unconstitutional and the cases related to this offence thereby terminated, most other cases remain in the preparatory phase, even though the investigations were initiated years ago in some cases. OHCHR-Bolivia believes that, in the absence of judicial decisions, this accumulation of cases and delays in handling them could affect the rights to the presumption of innocence and due process of law for the concerned individuals.

55. Opposition senator Roger Pinto denounced the fact that he faced several criminal prosecutions. In May, when one of the judicial proceedings was about to conclude, he sought and obtained asylum at the Embassy of Brazil. He was still there at the end of the year, since the Government of Bolivia has not granted safe passage out of the country, arguing that he is being prosecuted for the crimes of alleged corruption and irregular administration of public funds.

### **Trials of emblematic cases**

(a) *Massacre of El Porvenir*

56. The trial for the violent incidents of September 2008 in Pando, which left 13 people dead and more than 50 injured, continued. Six of the 27 individuals initially charged for terrorism, homicide, assassination, injuries, illicit association and conspiracy, including former prefect Leopoldo Fernández, are still in preventive detention. One defendant died, and the other 20 were declared in default. With a calendar of only two court hearings per week, recurrent suspensions of hearings continued to delay the process, even though, unlike previous years, the suspensions were mostly caused by the Court. This situation continued to harm the rights of victims, whose association received threats and criticized the slow pace of the process.

57. Five of the accused have been in pretrial detention, without a sentence, for approximately four years. The sixth has been arbitrarily deprived of his liberty since December 2010, with an arrest warrant which has not been endorsed by a judge.

(b) *Alleged terrorist group dismantled in 2009 in Santa Cruz*

58. Following the November 2011 closure of the preparatory phase of the criminal case, when 39 people were charged of armed uprising and terrorism, the public oral trial opened on 30 May 2012. However, the First Tribunal of La Paz decided to relocate to the city of Tarija in October, on health grounds, since some of the accused had difficulty adapting to the altitude of La Paz. At the time of writing, the trial continued with the presence of 19 of the accused and the remaining 20 were declared in default.

59. In the case of Hungarian citizen Előd Tóásó, detained since April 2009, in November 2011 the Working Group on Arbitrary Detention found his detention to be arbitrary, recommended reparations for the harm caused and called for precautionary measures alternative to detention. Different judges held hearings to review the application of precautionary measures after the opinion of the Working Group and all confirmed the initial decision on his pretrial detention.

(c) *Violent racist events of May 2008 in Sucre*

60. Regarding the trial for the violent racist attacks against approximately 60 indigenous persons in Sucre on 24 May 2008, the court failed to reach a quorum following the resignation of one of the citizen judges. Prior to that, the president of the court, who faced accusations of delaying justice, had resigned. On 12 September, the public oral hearing started anew before a new court in the Padilla municipality, Chuquisaca, a rural area 200 kilometres from Sucre. The previous 15 months of hearings had been marked by repeated adjournments due to absence of the parties and to numerous objections brought by defence lawyers.

(d) *Proceedings against former President Sánchez de Lozada for the tragic incidents of October 2003*

61. Following the historic Supreme Court judgement of August 2011, condemning two former ministers of the President Sánchez de Lozada Government to three years in prison and five former high level military officials to sentences of between 10 and 15 years in prison for their responsibility in the deaths of over 60 persons and more than 400 injured during social protests in 2003 – the greatest number of victims registered during a democratic regime in Bolivia – not all necessary measures have yet been implemented to guarantee adequate reparation for victims and their relatives. Furthermore, the Government's démarches before the authorities of the United States of America to extradite

former President Sánchez de Lozada and two former ministers, who fled the country following the events, were unsuccessful given that the petition was denied by the United States' executive branch.

## **F. Rights of victims of unconstitutional regimes**

62. The rights of the victims of human rights violations committed during the de facto regimes remained largely unaddressed. Law No. 238, which stipulates that the State settle a one-off definitive payment equivalent to 20 per cent of the total exceptional reparations, was promulgated in April. The aforementioned legislation follows on Law No. 2640 of 2004, which foresees soliciting the remaining 80 per cent of the funds from international donors, notwithstanding that it is the duty of the State to provide reparations for victims of human rights violations. Bilateral donors have never provided funds for such a programme in Bolivia. Ministry of the Presidency figures indicate that by December, 1,418 of the 1,714 approved beneficiaries had collected their compensation.

63. Some victims' organizations reached a prior agreement regarding these payments, while others expressed their opposition through a vigil outside the Ministry of Justice, which was ongoing at the end of the year. This reflects the high level of dissatisfaction among a significant number of victims due to the high percentage of rejected cases (around 70 per cent)<sup>9</sup> or to the reduced amount of money approved as administrative reparation.

64. In January, the remains of three victims of enforced disappearance were given to relatives and in July the remains of another victim were identified. The whereabouts of the majority of those subjected to enforced disappearance during the period from 1964 to 1982 are still unknown. The Armed Forces continued to deny the existence of archives that could shed light on these events. Throughout 2012, only two people were charged for such crimes, in the case of the forced disappearance of Rainer Ibsen Cárdenas and José Luis Ibsen Peña. The Inter-Institutional Council for Clarifying Enforced Disappearances revised the draft bill to create a truth commission, which has been promoted by civil society organizations.

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

65. Excessive use of force by the police was observed in a limited number of public protests, notwithstanding official orders to avoid the use of lethal weapons. In January, in Yapacani, Santa Cruz, there were violent clashes between a large police contingent charged with enforcing a judicial order to reinstate the local mayor to his post, and demonstrators opposed to this decision. Three demonstrators were killed and several others wounded. In addition, a number of policemen were the object of physical aggression and gunshots. The Public Prosecutor's Office has initiated an investigation.

66. In May, in the context of violent incidents between the police and health workers and medical students demonstrating against the increase in working hours in public hospitals from 6 to 8 hours, a nurse was arbitrarily detained by police officers on suspicion of throwing a stone at the Vice-Minister of the Interior. She was reportedly subjected to ill-treatment while in custody and later released. Some demonstrators used children to recreate a crucifixion, while university students resorted to the use of dynamite and other violent actions.

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<sup>9</sup> Report of the High Commissioner on the activities of her office in the Plurinational State of Bolivia (A/HRC/19/21/Add.2), para. 64.

67. In July, in Mallku Khota, Potosí, violent incidents between a group of indigenous people who claimed exploitation and ownership rights of a mine and policemen deployed to the area resulted in the shooting death of a demonstrator, José Mamani, and 13 people were wounded. Three policemen were kidnapped and physically attacked by protestors.

68. In September, during a protest in La Paz rooted in a conflict between miners who are employees and those belonging to a cooperative, miner Héctor Choque was killed by an exploding dynamite charge. This led to the adoption of a Supreme Decree prohibiting and setting out sanctions for the use of dynamite in protests. It is of the utmost importance to conduct exhaustive criminal investigations into these cases in order to identify those responsible for such crimes.

### **Lynching**

69. According to press sources, during the first nine months of the year, there was an increase of lynching cases compared to 2011, although it did not reach levels registered in previous years. By September, 28 lynchings and attempted lynchings had been reported, resulting in 12 deaths and 30 people wounded. Of particular note is the case of an adolescent in El Alto, La Paz, who survived after being seriously beaten and burned by his neighbours, who erroneously confused him with a criminal in March. Two men and a woman are under investigation in relation to this case.

70. Even though the Public Prosecutor's Office has opened some investigations, only one conviction, for a 2007 lynching in El Alto, has been reported.

## **H. Right to personal liberty and the situation in prisons**

71. The deterioration of the situation in prisons became more acute over the past years, due to higher levels of overcrowding. The prison population increased by approximately 4,000 people in the past two years, while the institutional capacity of the existing installations remained basically the same.<sup>10</sup> This situation stems in large part from the massive use of pretrial detention, which, at the beginning of October, amounted to 84 per cent of all inmates. Other reasons are obstacles to access to justice for most low-income inmates, as well as the systematic delays in the administration of justice and the large-scale practice of corruption within the penitentiary and judicial systems.

72. The control of the internal organization of inmates within the prisons is systematically delegated to the inmates themselves. This has frequently led to abuses among inmates, such as torture and inhuman, cruel and degrading treatment, which are tolerated by the authorities. In addition, 629 boys and 531 girls<sup>11</sup> live in detention centres with their detained parents, a long-standing problem. In September, the Ministry of the Interior approved an internal regulation for all prisons, granting, inter alia, their management to civilian personnel and transferring the power to decide on the inmates' situation from the prison's governor to a professional board.

73. On 19 December, President Morales presented to the Plurinational Legislative Assembly a law on pardon, which was adopted on 22 December. According to official sources, this law would benefit approximately 2,000 inmates, including 500 held in preventive detention, who must undergo a summary procedure during the first three months following the adoption of the law in order to benefit from the programme. The Law on the

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<sup>10</sup> According to figures from the Directorate-General of the Prison System, as of September there were 12,666 detainees; overall prison capacity was under 5,000.

<sup>11</sup> Data from the Directorate-General of the Prison System.

National System of Citizen Security, adopted in July, established that henceforth the police should deploy and train specialized personnel to be permanently appointed as prison officers.

## **I. Human rights defenders and freedom of expression**

74. Between January and August, the National Media Observatory reported 63 incidents of different kinds against media workers, mainly during the covering of public demonstrations. This represents a one-third decrease compared to 2011. Few serious incidents were registered throughout the year.

75. Nevertheless, in a brutal attack against a radio station, a journalist and his assistant were set alight in Yacuiba, Tarija, in October. Four people were arrested and indicted in relation to this crime. The journalist publicly blamed local political figures from the National Autonomous Power party of having orchestrated the attack. Also of concern were attacks by groups of individuals on four radio stations in Beni and Oruro, in the context of social conflicts. The stations were obliged to suspend their broadcasting. A journalist who had publicly denounced alleged corruption among police authorities relating to the illicit enrolment of trainees to the National Police Academy also reportedly received threats. The Mayor of Santa Cruz continued to be involved in the alleged commission of verbal offences against journalists.

76. In September, as per Law No. 45 against Racism and All Forms of Discrimination, the Government presented a lawsuit for alleged incitement to racism against three national mainstream media outlets<sup>12</sup> that had reportedly published distorted excerpts from a speech by President Morales. Media and journalists' organizations criticized the decision and requested that the allegations be examined by the existing ethical-media instance based on the media's code of conduct.

77. Some human rights defenders and indigenous leaders opposed to the construction of the highway through the TIPNIS reported having been stigmatized and subjected to smear campaigns by Government authorities.

78. In October, the Plurinational Constitutional Court, in a landmark decision, found the offence of defamation against public servants (*desacato*) to be unconstitutional, arguing that it hampers freedom of expression. This decision is in conformity with the country's international human rights obligations and came after repeated recommendations from the High Commissioner to remove that offence from the Criminal Code. After the illegal arrest of senator Carmen Eva González Lafuente in February in the context of a complaint for *desacato* and statements by OHCHR-Bolivia raising its concern about the crime of *desacato*, some high-level public authorities dropped their complaints and publicly stated that they would no longer use this legal mechanism to defend themselves.

## **IV. Main activities of the office**

79. OHCHR-Bolivia continued to provide technical assistance to the Vice-Ministry of Decolonization and to the National Committee against Racism and All Forms of Discrimination, as well as to initiatives against racism and all forms of discrimination in the departments of Chuquisaca and Tarija.

<sup>12</sup> The FIDES news agency and the *Página Siete* and *El Diario* newspapers.

80. Regarding the right to consultation of indigenous peoples, the office provided support to two events on relevant international law and comparative experiences, with the participation of roughly 1,100 representatives of State institutions, civil society and indigenous peoples' organizations. Training on relevant international standards was also provided for public officials and representatives of indigenous peoples' organizations in the context of the participatory drafting process of framework legislation on the right to consultation of indigenous peoples.

81. The office provided technical assistance to the Ministry of Justice and to the National Institute for Statistics to develop human rights indicators on economic, social and cultural rights, as well as on the right of women to be free of violence, with the participation of more than 240 representatives of State institutions and civil society.

82. The office continued to provide technical assistance to the Ministry of Education to finalize the Plurinational Plan for Human Rights Education and to promote its approval.

83. The office provided technical assistance to the Vice-Ministry for the Defence of User and Consumer Rights to carry out an assessment of the legal and institutional framework for the protection of consumer rights and to formulate a proposal for the creation of a national system to protect these rights. Input was also provided to the final version of a law on the matter.

84. Regarding women's rights, the office provided technical assistance to the Alliance for the Legislative Agenda for Women to revise the Criminal Code from a gender perspective and also assisted in the drafting processes of the Law on Harassment and Political Violence against Women, the Comprehensive Law against Trafficking in Persons and the comprehensive bill to guarantee women a life free of violence. The first two laws were adopted by the Plurinational Legislative Assembly and disseminated by OHCHR-Bolivia in coordination with the Assembly and the Union of Women Parliamentarians of Bolivia. Furthermore, a report on the International Seminar on Violence and Femicide in Bolivia, held at the end of 2011, was published with the support of OHCHR-Bolivia in conjunction with the Presidency of the Chamber of Deputies and the regional ComVoMujer Programme of the German Agency for Technical Cooperation, with the aim of promoting public debate on the proposal to make femicide a criminal offence.

85. In the area of administration of justice, the office provided technical assistance to the Plurinational Constitutional Court, including training on legal pluralism, indigenous jurisdiction and international law, and supported its first public accountability activity. The office also assisted in the Council of Magistrates' process to revise the judiciary's internal regulations, performance review system and disciplinary framework. Furthermore, the office published a study on the reform of criminal procedures and preventive detention, jointly with the CONSTRUIR Foundation and with the support of the Justice Studies Centre of the Americas, the Peace Window Programme, authorities, and students and faculty of the Católica Boliviana "San Pablo", Salesiana and Mayor de San Andrés universities.

86. The office organized in a database the recommendations made to Bolivia by international human rights mechanisms. These were provided to the National Human Rights Council, in order to facilitate their access, use and follow up.

87. As part of its human rights monitoring activities, the office carried out 25 missions over 62 days to different departments in the country, including to rural areas. This included monitoring several emblematic criminal trials, the CONISUR march and the Ninth Indigenous March and two days of the TIPNIS consultation. The office also monitored the situation of detainees through visits to prisons in four departments, conducted jointly with the Ombudsman's Office.



## V. Follow-up to previous recommendations

88. With regard to the recommendations that the High Commissioner formulated in her previous annual reports, notable progress was made in relation to the adoption of a normative framework, especially regarding the protection of women, including the Law on Harassment and Political Violence against Women and the Comprehensive Law against Trafficking in Persons. Another positive development was the implementation of a first consultation process for the TIPNIS, even though it was not exempt from criticism, as well as initiation of a participatory process to develop a legal framework on the right of indigenous peoples to consultation. Plurinational Constitutional Court Decision No. 300 on consultation represents a milestone for indigenous peoples' rights. In addition, steps were taken to develop indicators for an initial core group of selected human rights so as to enable actors to better assess progress in the future. The adoption of the Plan of Action to Combat Racism and All Forms of Discrimination by the National Committee, as well as the Plurinational Plan for Human Rights Education by the National Human Rights Council, represent fundamental steps towards the consolidation of human rights promotion and protection in Bolivia. The Plurinational Constitutional Court declared the crime of desacato unconstitutional.

89. On the other hand, the High Commissioner continues to be concerned by the persistence of the serious long-standing crisis of the judicial system, including the possible existence of an extortion ring involving officials and the accumulation of criminal cases against some members of the political opposition and other high-level public figures. The high number of detainees in preventive detention, as well as the serious situation of overcrowding and dire living conditions in prisons, are also cause for concern. The national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was not established. In December, the Ministry of Justice initiated procedures to present the draft law to the legislative assembly.

90. The Plurinational Constitutional Court judgement 2540/2012, which was made public on 21 January 2013, regarding the 2011 death of sublieutenant Grover Poma Guanto as a result of a beating by military officers in Sanandita, Tarija, establishes the inapplicability of military jurisdiction for cases of human rights violations and settles the case in favour of the ordinary justice system. Notwithstanding this significant step, the lack of progress in several other trials for human rights violations involving the security forces and mentioned in earlier reports is another matter for concern. These include: the violent incidents between police and demonstrators in Caranavi, La Paz, in 2010; and the deaths of Alfredo Vargas in El Torno, Santa Cruz, in 2010 and of Marco Antonio Gálves Salvatierra in Trinidad, Beni in 2011, both possibly caused by excessive use of force.

## VI. Recommendations

91. **In order to assist national authorities from all branches of government, State institutions and civil society, in addition to reiterating previous recommendations which have not yet been implemented, the High Commissioner wishes to make the following recommendations:**

**(a) The Government should allocate adequate resources to implement the Plan of Action against Racism and All Forms of Discrimination;**

**(b) The Government and the Plurinational Legislative Assembly should step up efforts to adopt a legal framework on the constitutional right to consultation of indigenous peoples, in accordance with international standards and through a**

participatory process; the Government and concerned indigenous communities should open space for a permanent dialogue conducive to building durable agreements on the development of the Isiboro Sécure National Park and Indigenous Territory (TIPNIS);

(c) The executive and legislative branches should urgently put in place effective measures to implement laws adopted to put an end to violence against women, as well as continue efforts to strengthen legislation to promote women's rights, particularly by criminalizing femicide;

(d) The judiciary should implement the professional career system and the disciplinary regime foreseen in the Constitution and in the Law of the Judiciary, define a national institutional policy to reduce the backlog of cases at the level of the Departmental Courts of Justice and increase the coverage of justice services, including the conciliation procedures, across the country;

(e) The executive, the judiciary, the Public Prosecutor's Office and the Public Defender Service (SENADEP) should draw up and urgently implement a comprehensive policy to reduce the rate of preventive detention, keeping this measure as an exception, and to improve prison conditions, while allocating necessary funds to these aims;

(f) The Plurinational Legislative Assembly should implement its recommendation to amend Law No. 73 on Demarcation of Jurisdiction in conformity with the Constitution and the concluding observations issued to the Plurinational State of Bolivia in 2011 by the Committee on the Elimination of Racial Discrimination (CERD/C/BOL/CO/17-20, para. 22);

(g) The Public Prosecutor's Office should conduct an urgent, in-depth and thorough investigation to identify all the participants of an alleged extortion ring within the executive and the judiciary in order to eradicate this grave and illegal practice from State institutions;

(h) The Public Prosecutor's Office should ensure the prompt drafting of a new code of conduct and disciplinary regulations for prosecutors, so as to prevent the participation of members of the Public Prosecutor's Office in extortion activities;

(i) The Government should adopt a plan of action to investigate the large-scale practice of corruption within the penitentiary and judicial systems and take measures to prevent such practice in the future;

(j) The Government should adopt a plan of action to combat the practice of lynching, including, among others, a national campaign to prevent lynchings and specific measures to strengthen the intervention of the police and Public Prosecutor's Office in the prevention, investigation and penal prosecution of these crimes;

(k) The Government should adopt relevant regulations for the General Law for Persons with Disabilities and take steps for its implementation;

(l) The Government and the legislative branch should adopt legislative and administrative measures for the effective realization of the rights to truth, justice and reparation for all victims of human rights violations during the unconstitutional regimes, such as the legislative proposal promoted by civil society organizations to establish a truth commission to shed light on those violations and to ensure reparation in accordance with international standards for all victims.