



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

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**Committee on Enforced Disappearances**

**Report submitted by the Plurinational State of  
Bolivia under article 29 (1) of the Convention, due  
in 2012\***

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## I. General information

### A. Introduction

1. The Plurinational State of Bolivia, in accordance with article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (“the Convention”), hereby submits to the Committee on Enforced Disappearances (“the Committee”) its initial report on the measures adopted to give effect to the provisions of the Convention.

2. The Constitution, approved by referendum on 25 January 2009 and promulgated on 7 February 2009, established Bolivia as a unitary, social, plurinational, and communitarian State governed by the rule of law, which is free, independent, sovereign, democratic, intercultural and decentralized, with autonomous entities, and which is founded on political, economic, legal, cultural and linguistic pluralism, and guarantees the self-determination of the native indigenous campesino nations and peoples.<sup>1</sup>

3. It adopts a democratic, participatory, representative and community-based form of government that establishes equal conditions for men and women and participatory mechanisms such as referendums, citizens’ legislative initiatives, the removal of public officials from office, assemblies, local councils and prior consultation.

4. The State is organized and structured through the legislative, executive, legal and electoral bodies, which function independently and on the basis of the separation of powers, but in coordination and cooperation. The country is divided into departments, provinces and municipalities, and native indigenous campesino territories are being established. The autonomy of departments, regions and municipalities, and native indigenous campesino autonomous entities is defined in the “Andrés Babiñez” Framework Act on Autonomous Entities and Decentralization (No. 031 of 19 July 2010).

5. The Plurinational Legislative Assembly is made up of two chambers, the Chamber of Deputies (130 members) and the Chamber of Senators (36 members), whose main function is to approve and pass laws.

6. The executive branch of government is made up of the President of the State, the Vice-President and the ministers of State.<sup>2</sup> The first two are elected by universal suffrage, in accordance with article 166 (I) of the Constitution.<sup>3</sup>

7. The judiciary is a single entity. Ordinary jurisdiction is exercised by the Supreme Court of Justice, the departmental courts of justice, the trial courts and judges; agricultural and environmental jurisdiction is exercised by the agricultural and environmental courts and judges; native indigenous campesino jurisdiction is exercised by the indigenous communities’ own authorities. There are also special courts that are regulated by law. Constitutional justice is exercised by the Plurinational Constitutional Court.

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<sup>1</sup> Constitution, art. 1. Bolivia is a unitary, social, plurinational and communitarian State, governed by the rule of law, that is free, independent, sovereign, democratic, intercultural and decentralized, with autonomous entities. Bolivia is founded on plurality and political, economic, legal, cultural and linguistic pluralism, in line with measures to promote inclusion in the country.

Article 2. Given that the native indigenous campesino nations and peoples, and their ancestral domain predate the colonial period, their self-determination is guaranteed within the framework of the unity of the State through their right to autonomy, self-government, the maintenance of their culture, recognition of their institutions and the consolidation of their territorial entities under this Constitution and the law.

<sup>2</sup> Constitution – art. 165 (I). The executive branch is made up of the President of the State and the Vice-President of the State, and the ministers of State.

<sup>3</sup> Constitution – art. 166 (I). The President and the Vice-President of the State shall be elected by universal, compulsory, direct, free and secret vote. The candidates who receive 50 per cent plus one of the valid votes cast or who receive at least 40 per cent of the valid votes cast, with a difference of at least 10 per cent in relation to the second-placed candidate, shall be claimed President and Vice-President of the State.

## B. Legal framework for the protection of human rights

8. The Constitution enshrines a broad range of rights contained in universal and inter-American instruments for the protection of human rights. It includes rights classed as fundamental rights, civil and political rights, the rights of native indigenous campesino nations and peoples, social and economic rights, the rights of children, adolescents and young persons, the rights of families, the rights of older persons, the rights of persons with disabilities, the rights of persons deprived of liberty, the rights of persons of different sexual orientation, the rights of persons living with HIV/AIDS, the rights of women, the rights of users and consumers, and educational, intercultural and cultural rights.

9. The Constitution establishes that rights and duties are to be interpreted in accordance with the international human rights treaties ratified by Bolivia.<sup>4</sup> At the same time, the principles of the inviolability, universality, interdependence, indivisibility and progressive realization of human rights are recognized.

10. The Constitution establishes legal safeguards and remedies, including habeas corpus, *amparo*, the action for the protection of privacy, the writ of mandamus, *actio popularis* and the application for constitutional review.

11. With regard to the enforceability of rights, the Plurinational Constitutional Court has been established to uphold the supremacy of the Constitution, carry out constitutionality reviews and ensure that constitutional rights and guarantees are respected and enforced. Appointments to the Court are made by direct universal suffrage in accordance with the principle of plurinationality.

12. The Ombudsman's Office is the institution responsible for overseeing the observance, promotion, dissemination and enforcement of the individual and collective human rights established in the Constitution, legislation and international instruments.

13. The executive establishes institutions responsible for protecting human rights, including the Ministry of Justice and Institutional Transparency, which in turn includes the Office of the Deputy Minister for Justice and Fundamental Rights, the Office of the Deputy Minister for Native Indigenous Campesino Justice, the Office of the Deputy Minister for Equal Opportunities, the Office of the Deputy Minister for the Rights of Users and Consumers and the Office of the Deputy Minister for Institutional Transparency and the Fight against Corruption. These bodies have the power to formulate, execute, promote and implement policies for the protection, promotion and defence of human rights.

14. The two chambers of the Plurinational Legislative Assembly include the Human Rights Commission, which is a multiparty body with a rotating presidency.

## II. Treaty-specific document

### A. General legal framework under which enforced disappearances are prohibited

15. Article 15 (IV) of the Constitution states that "No person shall be subjected to enforced disappearance for any reason or under any circumstances". Article 114 (I) of the Constitution establishes that all forms of torture, disappearance, confinement, coercion, extortion or other forms of physical or mental violence are prohibited.<sup>5</sup> It should be noted that, prior to the entry into force of the 2009 Constitution, the State had incorporated the

<sup>4</sup> Constitution – art. 13 (I). The rights recognized by this Constitution are inviolable, universal, interdependent, indivisible and progressive. The State has the duty to promote, protect and respect them.

<sup>5</sup> Constitution – art. 114 (I). All forms of torture, disappearance, confinement, coercion, extortion or other forms of physical or mental violence are prohibited. Public servants or public authorities who commit, instigate or consent to such acts shall be dismissed without prejudice to the penalties established by law.

offence of enforced disappearance into the Criminal Code through Act No. 3326 of 18 January 2006.

16. Likewise, article 256 of the Constitution states that: “I. International human rights treaties and instruments signed, ratified or acceded to by the State, where they confer more favourable rights than those contained in the Constitution, shall take precedence over the latter.” Article 410 of the Constitution provides that “II. ... The body of constitutional law consists of international human rights treaties and covenants.” In this regard, Bolivia is a party to all international, universal and regional human rights instruments, including the International Bill of Human Rights (annex I).<sup>6</sup>

17. The present document was drafted using information provided by institutions representing the executive, judicial, legislative and electoral branches. The drafting process was coordinated by the Plurinational System for Follow-up, Monitoring and Gathering Statistics on Recommendations relating to Human Rights in Bolivia.<sup>7</sup>

## **B. Information relating to each article of the Convention**

### **Prohibition of enforced disappearance – article 1**

18. As mentioned above, Act No. 3326 of 18 January 2006 incorporated the offence of enforced disappearance into the Criminal Code.<sup>8</sup> This prohibition has had constitutional status since the Constitution<sup>9</sup> was adopted in 2009.

19. Article 13 of the Constitution establishes that:

“IV. International treaties and agreements ratified by the Plurinational Legislative Assembly that recognize human rights and prohibit their restriction in states of emergency shall take precedence over domestic legislation. The rights and duties set out in the Constitution shall be interpreted in accordance with international human rights treaties ratified by Bolivia.”

20. Furthermore, article 137 of the Constitution provides that:

“In no case may the declaration of a state of emergency suspend guarantees of rights, fundamental rights, the right to due process, the right to information or the rights of persons deprived of their liberty.” Perpetrators will be prosecuted in accordance with the provisions of the Constitution.<sup>10</sup>

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<sup>6</sup> Annex I. Act No. 2119 of 11 September 2000.

<sup>7</sup> The System is an inter-agency human rights mechanism for the drafting of periodic State reports that was established through the signing of an inter-agency cooperation agreement by what is now known as the Ministry of Justice and Institutional Transparency, the Ministry of Foreign Affairs and the Counsel General’s Office on 1 December 2015.

<sup>8</sup> Act No. 3326 of 18 January 2006 – art. 292 bis (Enforced disappearance). Anyone who, with the authorization, support or acquiescence of any State body, deprives one or more persons of their liberty and deliberately conceals or refuses to disclose information on or to acknowledge that deprivation of liberty or to disclose the whereabouts of the person or persons, thereby preventing the exercise of remedies and procedural safeguards, shall be liable to 5 to 15 years’ imprisonment. If, as a result of the act, the victim suffers serious physical or psychological harm, the penalty shall be from 15 to 20 years’ imprisonment. If the perpetrator of the act is a public official, the maximum penalty shall be increased by one third.

<sup>9</sup> Constitution – art. 15 (IV). No person shall be subjected to enforced disappearance for any reason or under any circumstances. Art. 114 (I). All forms of torture, disappearance, confinement, coercion, extortion or other form of physical or mental violence are prohibited. Public servants or public authorities who commit, instigate or consent to such acts shall be dismissed without prejudice to the sanctions set out in law.

<sup>10</sup> Constitution – art. 139 (II). Any person who violates the rights established in this Constitution shall be subject to criminal proceedings for infringement of rights.

## Definition of enforced disappearance – article 2

21. The definition of enforced disappearance contained in the Criminal Code<sup>11</sup> is in accordance with that provided for in article 2 of the Convention, as shown in the table below:

<i>Criminal Code – article 292 bis (enforced disappearance)</i>	<i>Elements of enforced disappearance established in the Convention – article 2</i>
<p>Anyone who, with the authorization, support or acquiescence of any State body, deprives one or more persons of their liberty and deliberately conceals or refuses to disclose information on or to acknowledge that deprivation of liberty or to disclose the whereabouts of the person or persons, thereby preventing the exercise of remedies and procedural safeguards, shall be liable to 5 to 15 years' imprisonment. If, as a result of the act, the victim suffers serious physical or psychological harm, the penalty shall be from 15 to 20 years' imprisonment.</p> <p>If the perpetrator of the act is a public official, the maximum penalty shall be increased by one third.</p> <p>If the act results in the death of the victim, the penalty shall be 30 years' imprisonment.</p>	<p>Any form of deprivation of liberty.</p> <p>The work of State officials or persons acting with their authorization or acquiescence.</p> <p>Refusal to acknowledge the deprivation of liberty.</p> <p>Refusal to acknowledge the concealment or whereabouts of the person.</p> <p>Preventing a person from enjoying the protection of the law.</p>

22. Therefore, the criminal offence of enforced disappearance, as defined in Bolivian legislation, contains all the elements established in the Convention, in accordance with international standards.

## Measures for investigating enforced disappearance – article 3

23. Offences committed by persons or groups of persons acting without the authorization, support or acquiescence of the State are public order offences, defined in the Criminal Code, such as abduction and the trafficking and smuggling of persons.<sup>12</sup>

<sup>11</sup> Article 292 bis, incorporated through Act No. 3326 of 18 January 2006.

<sup>12</sup> Such offences were incorporated into the Criminal Code through Act No. 263 on Trafficking in Persons as follows: article 281 bis (Trafficking in human beings). A punishment of 8 to 12 years' imprisonment shall be handed down to any person who, whether acting alone or through a third party, employs any form of deception, coercion, threat, force and/or situation of vulnerability, even with the consent of the victim, in order to cause, carry out or contribute to the transfer, recruitment, deprivation of liberty, confinement or reception of human beings, inside or outside the national territory, for any of the following purposes: (a) sale or other transactions undertaken for profit; (b) unlawful sale or disposal of organs, tissues, cells or bodily fluids; (c) reduction of a person to a state of slavery or similar state; (d) unlawful guardianship or adoption; (e) commercial sexual exploitation (pornography, paedophilia, sex tourism, commercial sexual violence); (f) labour exploitation; (g) forced marriage; or (h) any other form of exploitation in unlawful activities. The penalty shall be increased by one quarter when the victim is a child or adolescent; when the perpetrator is the father, mother, guardian or any person charged with the child's or adolescent's care, supervision or authority; when the perpetrator or participant belongs to a criminal organization or criminal association; and when the perpetrator or participant is a public authority or official responsible for protecting the rights of children and adolescents. If death is caused by culpable acts or omissions, the penalty shall be increased by one half.

Article 281 ter (Trafficking of migrants). Any person who, for his own benefit or the benefit of a third party, uses any means to bring about, promote, favour, finance or facilitate a person's entry into, or exit from, the country in a manner that is unlawful or in breach of the legal provisions on migration shall be liable to 4 to 8 years' imprisonment. If an intentional act or omission results in the death of

#### **Definition of enforced disappearance – article 4**

24. The offence of enforced disappearance was incorporated into article 292 bis of the Criminal Code through Act No. 3326, and defined in the following terms:

“Anyone who, with the authorization, support or acquiescence of any State body, deprives one or more persons of their liberty and deliberately conceals or refuses to disclose information on or to acknowledge that deprivation of liberty or to disclose the whereabouts of the person or persons, thereby preventing the exercise of remedies and procedural safeguards, shall be liable to 5 to 15 years’ imprisonment. If, as a result of the act, the victim suffers serious physical or psychological harm, the penalty shall be from 15 to 20 years’ imprisonment. If the perpetrator of the act is a public official, the maximum penalty shall be increased by one third. If the act results in the death of the victim, the penalty shall be 30 years’ imprisonment.”

#### **Enforced disappearance as a crime against humanity – article 5**

25. With regard to the definition of enforced disappearance as a crime against humanity, the Rome Statute establishing the International Criminal Court, an instrument ratified by the Bolivian State through Act No. 2398 of 23 May 2002, establishes that the enforced disappearance of persons is a crime against humanity and is therefore not subject to any statute of limitations; these international standards are contained in article 111 of the Constitution.<sup>13</sup>

#### **Measures for the establishment of criminal responsibility for the offence of enforced disappearance – article 6**

26. With regard to the regime of criminal responsibility for enforced disappearance, article 110 of the Constitution provides that:

I. Persons who violate constitutional rights are subject to the jurisdiction of the Bolivian authorities.

II. The instigators and perpetrators of constitutional rights violations shall be held accountable for their actions.

III. The immediate perpetrators of assaults on the security of the person shall be held accountable for their actions, irrespective of whether they were acting on the orders of a superior.”

27. In addition, article 115 of the Constitution provides that every person must be protected, in a timely and effective manner, by judges and courts in the exercise of their rights and legitimate interests. The State also guarantees the right to due process, the right to a defence and the right to a system of justice that is pluralistic, swift, timely, free, transparent and administered without delay.

28. Both instigation and complicity are regulated by the Criminal Code, articles 22 and 23 of which establish that “an accessory before the fact is any person who wilfully causes another to commit a wilful unlawful act” and that “he or she shall be liable to the penalty established for the perpetrator of the offence”. The Criminal Code further provides that:

“An accomplice is any person who wilfully facilitates or cooperates in the perpetration of the wilful unlawful act in such a way that, even without such help, the act would have been committed or who, on the basis of earlier promises, lends

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the victim, the penalty for the crime of murder shall be handed down. If the death is caused by culpable acts or omissions, the penalty shall be increased by one half.

Article 334 (Abduction). Anyone who abducts a person for the purpose of obtaining a ransom or other improper advantage or concession for himself or herself or others as a price of the victim’s freedom shall be liable to 5 to 15 years’ imprisonment. If, as a result of the act, the victim suffers serious physical harm and the perpetrator achieves his or her goal, the penalty shall be from 15 to 30 years’ imprisonment. If the act causes the victim’s death, the penalty for murder shall be applied.

<sup>13</sup> Constitution – art. 111. Genocide, crimes against humanity, treason and war crimes are not subject to a statute of limitations.

assistance or help subsequent to the act. An accomplice shall be liable to the penalty established for the offence, mitigated in accordance with article 39.”

29. Attempts to commit unlawful acts are regulated by article 8 of the Criminal Code, which establishes that “any person who, by carrying out relevant or unequivocal acts, starts to commit an offence and does not complete it for reasons beyond his or her control, shall be liable to two thirds of the penalty established for the completed offence.”

30. Article 20 of the Criminal Code, on perpetrators, states that “perpetrators are persons who commit an act alone, jointly, or through another person, or who wilfully provide such cooperation without which an intentional unlawful act could not have been committed. An intermediary is a person who wilfully uses another person as an instrument for the commission of an offence.”

31. Article 13 bis of the Criminal Code on commission by omission provides that:

“Offences that give rise to a particular result shall be understood to have been committed by omission only when the failure to avoid them, through the violation of a special legal duty of the perpetrator that places him or her in the position of guarantor, is equivalent, within the meaning of the law, to its causation.”

The offence of concealment, defined in article 171 of the Criminal Code, establishes that:

“Any person who, after an offence has been committed, without having made a previous promise, helps someone to evade justice or omits to report the act when he or she is required to do so, shall be liable to a term of imprisonment of between 6 months and 2 years.”

In addition, article 154 of the Criminal Code contains the following definition of non-fulfilment of duties:

“Any public official who unlawfully omits or refuses to carry out, or delays carrying out, any duty pertaining to his or her office shall be liable to a term of imprisonment of between 1 and 4 years. The penalty shall be increased by one third when the offence causes economic damage to the State.”

Failure to report an offence is defined in article 178 of the Criminal Code, which provides that:

“A judge or public official who fails to encourage the reporting or prosecution of offences and offenders, despite being required to do so by virtue of his or her office, shall be liable to a term of imprisonment of between 3 months and 1 year or a fine of 60 to 240 days. If the offence is committed against children or adolescents, the penalty shall be a custodial sentence of 1 to 3 years, unless it can be shown that the omission was due to an insuperable cause.”

32. Enforced disappearance is an offence defined in the Criminal Code and therefore dealt with under the Code of Criminal Procedure and Organic Act No. 260 of 11 July 2012 on the Public Prosecution Service.<sup>14</sup> Publicly actionable offences, for which the Public Prosecution Service is entitled to initiate criminal proceedings, are subject to standard or ordinary proceedings. In that regard, the Public Prosecution Service may order the initiation of investigations or bring formal charges or accusations, with the judicial authorities (investigating judges, trial judges, trial courts, departmental courts etc.) ensuring that safeguards are upheld by conducting hearings and procedures established in law, holding oral proceedings, and handing down sentences and settling appeals and incidents.

33. Superiors are held accountable under military regulations governing military misdemeanours or offences; therefore, if they know that a subordinate has committed an offence and fail to report or punish that offence, they are held liable for concealment or

<sup>14</sup> Organic Act No. 260 of 11 July 2012 on the Public Prosecution Service – art. 8. (I) (Promotion of public criminal proceedings). The prosecutors, under their own responsibility and initiative, shall exercise the public right of action whenever they are aware of a punishable act or when perpetrators are caught in the act of committing an offence.

complicity. In addition, military regulations, known as the “Regulations on Misconduct and its Punishments No. 23”,<sup>15</sup> provide for the possibility that a verbal or written objection to orders received may be expressed if they are considered to have been wrongfully given. Articles 14 and 110 of the Constitution<sup>16</sup> state that no one shall be obliged to do what is not ordered by the Constitution or the law and that, when attacks against personal safety are committed, they cannot be justified on the basis that they were committed on the orders of a superior. Article 19 (II) of Act No. 101 of 4 April 2011 on the Disciplinary Regime of the Bolivian Police states that “a police officer who refuses to comply with an order that constitutes an attack on personal security shall be exempt from responsibility under the Constitution and the law.”

34. Consequently, Bolivian law does not permit orders or instructions from superiors to be invoked as grounds for exemption from criminal responsibility under any circumstances.

35. Where jurisprudence is concerned, the judgment issued in the “Black October” case of 30 August 2011 established that:

“In this context, it is also necessary to bear in mind that, in our legal system, due obedience is not grounds for justification or exculpation because, in a State governed by the rule of law, in which the Constitution, international human rights treaties and conventions, and lesser laws and norms, in that order, take precedence over a superior’s order to carry out acts of repression against the civilian population, the persons concerned had the duty to express an objection to that instruction in a manner that would safeguard the life, health and safety of the population.

It must also be said that, although the presidential directive was given and received by the Commander-in-Chief, the latter could have expressed an objection to it because the content of that directive and its execution were likely to lead to injuries and deaths. The same applies to the other force commanders.”

#### **Proportionality of the penalty to the offence of enforced disappearance – article 7**

36. Bolivian legislation, in accordance with article 292 bis of the Criminal Code, establishes a penalty of 5 to 15 years’ imprisonment for the offence of enforced disappearance. If, as a result of the act, the victim suffers serious physical or psychological harm, a penalty of from 15 to 20 years’ imprisonment is imposed. If the perpetrator of the act is a public official, the maximum penalty shall be increased by one third. If the act results in the death of the victim, a penalty of 30 years’ rigorous imprisonment is imposed, the maximum penalty permitted under Bolivian law.

37. Furthermore, article 27 of the Criminal Code establishes that:

“The most serious offences shall be punishable by 1 to 30 years’ rigorous imprisonment. Where more than one sentence is available, the maximum term of imprisonment may not, in any case, exceed 30 years. Ordinary imprisonment of between 1 month and 8 years shall be imposed for less serious offences. ... If either of these sanctions may be imposed, the judge may apply one or the other in accordance with article 37.”

38. Article 37 of the Criminal Code states that:

“It is incumbent on the judge, taking into account the character of the perpetrator, the degree of seriousness of the act, and the circumstances and consequences of the offence: (1) to acquire direct knowledge of the defendant, the victim and the

<sup>15</sup> Supreme Resolution No. 181303 of 1976 – chap. 1. Offences, art. 10 (2). Failure to comply strictly with the orders of a superior or their amendment, and provided that an objection to those orders has not been expressed, either orally or in writing, depending on the circumstances.

<sup>16</sup> Constitution – art. 14 (IV). In the exercise of rights, no one shall be obliged to do what is not ordered by the Constitution or the law, or to forfeit what they do not prohibit. Art. 110 (II). The instigators and perpetrators of constitutional rights violations shall be held accountable for their actions. III. The immediate perpetrators of assaults on the security of the person shall be held accountable for their actions, irrespective of whether they were acting on the orders of a superior.”

circumstances of the act, to the extent required for each case; (2) to determine the penalty applicable to each offence, within the legal limits.”

The circumstances to be considered include those set out in article 38 of the Criminal Code, which states that:

“(1) In assessing the character of the perpetrator, the following shall be taken into account: (a) the individual’s age, education, habits and previous and subsequent conduct, the motives that drove him or her to commit an offence and his or her financial and social circumstances; (b) the special conditions applicable to him or her when the offence was committed, other personal background information and circumstances ... and other circumstances of a subjective nature. The following shall also be taken into account: premeditation, antisocial motives, treachery and cruelty. (2) In assessing the seriousness of the act, account shall be taken of the nature of the action, the means employed, the extent of the damage caused and the danger involved.”

39. Article 40 of the Criminal Code provides that the penalty may be mitigated: “(3) When the perpetrator has demonstrated remorse through his or her actions, and especially by redressing the damage done, to the extent that it has been possible for him or her to do so.”

#### **Non-application of the statute of limitations for enforced disappearance – article 8**

40. As noted above, the Constitution<sup>17</sup> establishes that genocide, crimes against humanity, treason and war crimes are not subject to a statute of limitations. In addition, Bolivia acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity through Act No. 2116 of 11 September 2000.

41. The Inter-American Convention on Forced Disappearance of Persons defines the offence of forced disappearance as “continuous or permanent as long as the fate or whereabouts of the victim has not been determined”.<sup>18</sup> That Convention also states that it is a specific and separate offence that constitutes a complex form of human rights violation. In Bolivia, the non-applicability of statutory limitations has been established for enforced disappearance because it is a continuous offence. The unlawful deprivation of liberty and the fact that the victim has not regained his or her liberty establish the ongoing nature of the offence. Accordingly, the statute of limitations does not apply because the statutory period of limitations begins to run from the time when the commission of an offence ceases. The Constitutional Court ruled along these lines in Constitutional Decision No. 1190/01-R of 12 November 2001, in which it held, *inter alia*, that:

“Unlawful deprivation of liberty or unlawful detention, as uniformly understood in the writings of jurists and comparative jurisprudence, is a continuous offence because, in committing the criminal act, the perpetrator or perpetrators have the power to continue or cease the unlawful action (unlawful deprivation of liberty) and, while such action persists, the offence is reproduced at each moment that it is being consummated.”

42. In this regard, victims can initiate the relevant criminal, civil or administrative proceedings in the ordinary courts and can seek all ordinary remedies within those proceedings. Furthermore, within the constitutional justice system, they have at their disposal various remedies such as habeas corpus,<sup>19</sup> *amparo*,<sup>20</sup> application for constitutional

<sup>17</sup> Constitution – art. 111. Genocide, crimes against humanity, treason and war crimes are not subject to the statute of limitations.

<sup>18</sup> Art. III of the Inter-American Convention on Forced Disappearance of Persons.

<sup>19</sup> Constitution – art. 125. Any person who considers that his or her life is in danger or that he or she is being unlawfully prosecuted or wrongly tried or detained may file a petition of habeas corpus and, either orally or in writing, in person or through any other person acting on his or her behalf, without the need for procedural formalities, bring the case before any judge or court competent in criminal matters and request that his or her life be protected, that the wrongful prosecution cease, that legal formalities be re-established or that his or her right to liberty be restored.

review<sup>21</sup> and the writ of *mandamus*,<sup>22</sup> as established in the Constitution, the Plurinational Constitutional Court Act and the Code of Constitutional Procedure.

43. The Supreme Court issued a decision in which it stated, in accordance with the jurisprudence established by the Inter-American Court of Human Rights,<sup>23</sup> that “enforced disappearance is held to be a continuous or permanent offence for as long as the fate or whereabouts of the victim or the circumstances of his or her death remain unknown; the person in question must be considered to be a detained/disappeared person, as affirmed by the Inter-American Commission on Human Rights in its report 93/08.”

44. In compliance with international commitments, steps are being taken to develop a new Bolivian criminal justice system, known as the Criminal Justice System Code, that complies with constitutional rules, international conventions and treaties and, above all, with the new social, political and economic circumstances. The Code will consist of a compilation of substantive and procedural rules and rules on the enforcement of custodial sentences.

#### **Exercise of jurisdiction over enforced disappearance – article 9**

45. Article 110 of the Constitution states that: “I. Persons who violate constitutional rights are subject to the jurisdiction of the Bolivian authorities. II. The instigators and perpetrators of constitutional rights violations shall be held accountable for their actions. (...)”

46. Article 1 of the Criminal Code, on its territorial application, provides that it shall apply to:

- “(1) Offences committed on Bolivian territory or in places under the Bolivian State’s jurisdiction;
- (2) Offences committed outside Bolivia whose effects have been felt, or were intended to be felt, on Bolivian territory or in places under the Bolivian State’s jurisdiction;
- (3) Offences committed outside Bolivia by a Bolivian national, provided that he or she is present in Bolivian territory and has not already been punished in the place where the offence was committed;
- (4) Offences committed outside Bolivia that jeopardize State security, the public interest or the national economy. These provisions are also applicable to foreigners extradited to Bolivia or present in Bolivian territory;
- (5) Offences committed on Bolivian ships, aircraft or other means of transport in a foreign country if the offender is not prosecuted in that country;
- (6) Offences committed by Bolivian public officials outside Bolivia in the performance of their duties or assignments;
- (7) Offences that Bolivia is required to suppress under the terms of a treaty or convention, even if they were not committed in its territory.”

<sup>20</sup> Constitution – art. 128. The constitutional remedy of *amparo* is the constitutional remedy against unlawful or wrongful acts or omissions by public servants or by a natural or legal person that in any way restrict, suppress or threaten to restrict or suppress the rights recognized by the Constitution and other laws.

<sup>21</sup> Constitution – art. 132. Any natural or legal person affected by a law that is incompatible with the Constitution shall have the right to file an application for constitutional review in accordance with the procedures established by law.

<sup>22</sup> Constitution – art. 134 (I). A writ of *mandamus* may be brought to ensure compliance with the Constitution or other laws when public officials fail to comply therewith. II. The action must be brought before a competent judge or court by the natural or legal person affected, or by another duly authorized person, and must be dealt with in the same manner as the constitutional remedy of *amparo*.

<sup>23</sup> Supreme Court Decision No. 247 of 16 August 2012.

47. In addition, the second additional provision of the Act on the Children and Adolescents Code (No. 548 of 17 July 2014), amending article 5 of the Criminal Code, provides that:

“Article 5. (With regard to persons). No personal exemptions or privileges are recognized under criminal law but its provisions shall apply to persons aged over 14 years at the time of the act. The criminal responsibility of adolescents aged 14 years and above but under 18 shall fall under the special regime established by the Children and Adolescents Code.”

48. With regard to extradition, article 21 of the Criminal Code provides that:

“No one subject to the jurisdiction of Bolivian law may be extradited to another State unless an international treaty or reciprocity agreement provides otherwise. The Supreme Court (now the Supreme Court of Justice) shall decide whether or not extradition is admissible. If a reciprocity agreement is in force, extradition may not take place unless the act for which extradition is requested is an offence under the laws of the requesting and requested States.”

49. In addition, article 138 of the Code of Criminal Procedure provides that “maximum attention shall be granted to requests issued by foreign authorities, provided that the requests are made in accordance with the Constitution, the international conventions and treaties in force and the provisions of this Code.”

50. Thus, responsibility for the fulfilment, execution or processing of requests for international legal assistance and/or international legal cooperation in criminal matters falls on: (a) the Supreme Court of Justice, whose powers in that area, which are provided for under article 38 of the Judiciary Act (No. 25 of 24 June 2010), include determining whether “8. (...) to accept or reject requests issued by foreign authorities”; and (b) the Attorney General’s Office, in accordance with article 12 of the Organic Act on the Public Prosecution Service, which states that the Office may “(...) 9. Provide judicial, administrative or investigative international cooperation in accordance with the international laws, treaties and conventions in force.”

#### **Legal safeguards and precautionary measures – article 10**

51. Article 23 of the Constitution states that “everyone has the right to personal freedom and security. Personal freedom may be restricted only within the limits prescribed by law, to ensure that historical truth is revealed in the proceedings of judicial bodies.”

52. Article 7 of the Code of Criminal Procedure establishes that “the application of the precautionary measures provided for in this Code shall be applied only exceptionally. Where there is doubt about whether to apply a precautionary measure or other provisions that restrict the rights or capacities of the defendant, whichever outcome is most favourable to the defendant shall be chosen.”

53. With regard to the procedures in place to ensure access to consular assistance for persons investigated for allegedly committing acts of enforced disappearance, article 36 of the Vienna Convention on Consular Relations, ratified by Bolivia,<sup>24</sup> states that:

“Communication and contact with nationals of the sending State (...) (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph.”

<sup>24</sup> The Vienna Convention on Consular Relations of 24 April 1963 was ratified through Supreme Decree No. 09384 of 10 September 1970. It was incorporated into law by Act No. 456 of 14 December 2013. Bolivia deposited the instrument of ratification on 22 September 1970.

54. The consular assistance to nationals is provided by the consular office or embassy of the country of origin as part of its consular functions. The Ministry of Foreign Affairs must act only as a valid interlocutor.<sup>25</sup>

55. The Supreme Court of Justice<sup>26</sup> has ordered judges to observe article 36 (1) (b) of the Vienna Convention to ensure that consular posts are informed immediately of any foreign detainees requesting consular assistance.

56. The Attorney General has ordered:

(a) Pursuant to Instruction RJGP/DGFSE No. 073/2013 of 18 November 2013, that representatives of the Public Prosecution Service should contact the appropriate consular post when a national of another State is deprived of his or her liberty, in accordance with article 36 of the Vienna Convention;

(b) Pursuant to Instruction FGE/RJGP/UNEEPCPRI No. 002/2014 of 30 January 2014 that, in the event that an accused foreign detainee has expressed a desire to request consular assistance, the prosecutors, in addition to informing the Ministry of Foreign Affairs, must:

(i) Contact any consular or diplomatic representatives of the foreign national within the national territory;

(ii) Facilitate direct contact with any foreign national facing criminal proceedings, particularly if he or she has been detained or arrested, except in cases of incommunicado detention established under article 231 of the Code of Criminal Procedure;

(iii) Provide all requested information, with the exceptions established under article 9 of the Organic Act on the Public Prosecution Service;

(iv) Make a record of these actions, either in records or in other media or written documents;

(c) Pursuant to Instruction FGE/RJGP No. 270/2015 of 20 August 2015, that, in accordance with the Vienna Convention,<sup>27</sup> when a foreign national is arrested, detained or prosecuted, the prosecutors must immediately inform that person of his or her right to receive consular assistance and must inform the diplomatic or consular representation of the foreign citizen's legal status.

57. The protocol of the Plurinational Public Defender Service<sup>28</sup> establishes that public defenders must request that the prosecutor inform, and request the presence of, the diplomatic legation of the country of origin in order to protect the right to consular assistance and ensure the presence of an interpreter to assist the foreign national in the different stages of the proceedings and when making a statement (annex II).<sup>29</sup>

### **Criminal procedure and due process – article 11**

58. As enforced disappearance is an offence defined in the Criminal Code, standard or ordinary proceedings apply to it. Such proceedings are conducted by the Public Prosecution Service, which may order the initiation of investigations or bring formal charges or accusations, with the judicial authorities (investigating judges, trial judges, trial courts, departmental courts etc.) ensuring that safeguards are upheld.

59. Article 115 of the Constitution establishes that:

<sup>25</sup> The Vienna Convention on Diplomatic Relations of 18 April 1961 was ratified through Supreme Decree No. 10529 of 13 October 1972 and incorporated into law by Act No. 456 of 14 December 2013. Bolivia acceded to the Convention on 28 December 1977.

<sup>26</sup> Instruction No. 26/2016 of 12 October 2016.

<sup>27</sup> Adopted through Act No. 456 of 14 December 2013.

<sup>28</sup> Approved through Administrative Decision No. 039/2017 of 27 July 2017.

<sup>29</sup> Annex II. Procedural Protocol for Public Defenders, approved through Administrative Decision No. 039/2017 of 27 June 2017.

“I. Everyone has the right to the timely and effective protection of the judges and courts in the exercise of their rights and legitimate interests. II. The State guarantees the right to due process, the right to a defence and the right to a system of justice that is pluralistic, swift, timely, free, transparent and administered without delay.”

60. Article 178 of the Constitution<sup>30</sup> and the Judiciary Act<sup>31</sup> provide that the Plurinational State’s power to administer justice emanates from the Bolivian people and is exercised through the judiciary. In addition, the power to exercise jurisdiction in a particular matter is vested in a magistrate, an examining officer or a judge.

61. Article 3 of the Code of Criminal Procedure provides that “judges shall be impartial and independent, subject only to the terms of the Constitution, the international conventions and treaties in force and the law.”

62. Article 5 of the Code of Criminal Procedure provides that:

“A defendant is considered to be any person believed to have committed an offence who is brought before a body responsible for criminal prosecution. The defendant may exercise all the rights and guarantees afforded to him or her under the Constitution, the international conventions and treaties in force, and this Code from the first act of the proceedings to their completion. The first act in the proceedings shall be understood to be any charge brought before a judicial or administrative body against a person presumed to have committed or participated in the commission of an offence. Any person believed to have committed an offence has the right to be treated with due respect for his or her dignity as a human being.”

In addition, article 6 of the Code of Criminal Procedure provides that “every defendant shall be presumed innocent and be treated as such at all times until declared guilty in an enforceable judgment. The defendant may not be obliged to testify against him or herself and his or her silence shall not be used against him or her.”

63. Article 8 of the Code of Criminal Procedure provides that:

“The defendant, without prejudice to expert defence, shall have the right to defend him or herself, to intervene in all acts of the proceedings that involve evidence, and to make such requests and comments as he or she may deem fit.”

Article 9 of the Code provides that:

“Every defendant has the right to be assisted and defended by a lawyer from the first act in the proceedings until the sentence has been served. This right may not be waived. Defence counsel shall be appointed without any delay or formality at the time of arrest or detention or before the defendant begins to make a statement. If the defendant, when consulted, does not choose a lawyer or if the lawyer chosen does not immediately accept the brief, a defence counsel shall be appointed by the court.”

64. Under Act No. 463 of 19 December 2013, the Plurinational Public Defender Service was established as a service provided by the Bolivian State that establishes the right to defence as a fundamental right and an expression of justice, based on principles, safeguards and values and founded on plurality and legal pluralism, whose purpose is:

“(1) To guarantee the inviolability of the right to defence and access to a system of justice that is pluralistic, prompt, timely and free by providing legal assistance and State-funded expert criminal defence to all persons who have been accused, charged or prosecuted and who lack sufficient means and to those who have not designated a defence lawyer;

(2) To exercise its functions with the aim of achieving an alternative solution to the dispute, taking every possible measure to avoid delaying justice;

<sup>30</sup> Constitution – art. 178 (I). The power to administer justice emanates from the Bolivian people and is based on the principles of independence, impartiality, legal certainty, public disclosure, probity, promptness, cost-free access to justice, legal pluralism, interculturality, equity, service to society, citizen participation, social harmony and respect for rights.

<sup>31</sup> Judiciary Act – art. 11 (Jurisdiction) and art. 12 (Competence).

(3) To carry out its functions in the national territory in order to provide expert defence from the first act of the criminal proceedings until the execution of the sentence; and

(4) To act in support of accused persons who have been declared in contempt of court, providing expert defence in full compliance with the principle of probity; older persons and persons under the age of 18 years shall have direct access to the Service.”

65. Article 10 of the Code of Criminal Procedure provides that:

“Any defendant who does not understand Spanish shall have the right to choose a translator or interpreter to assist him or her in all acts necessary for his or her defence. If the defendant does not exercise this right or does not have the means to do so, a translator or interpreter shall be appointed by the court.”

66. Under articles 5 and 7 of the Organic Act on the Public Prosecution Service, the Public Prosecution Service, in exercising its functions and powers, is governed by the principles of legality, timeliness, objectivity, responsibility, unity, hierarchy, promptness and transparency. Likewise, prosecutors must act in accordance with the criteria of justice, transparency, efficiency and effectiveness, guaranteeing that members of the public enjoy equitable and timely access to the Public Prosecution Service.

67. In compliance with articles 114 and 116 of the Constitution, and articles 1, 2, 4, 5, 6, 7, 8, and 84 of the Code of Criminal Procedure, among others, the following mandatory guidelines and directives have been issued, through general instructions, with the aim of harmonizing the rules on the exercise of prosecutors’ functions to ensure the effective application of the Code of Criminal Procedure (annex III):<sup>32</sup>

(a) Instruction FGE/RJGP/DGFSE No. 006/2013, on general guidelines to avoid undue interference in the work of the Public Prosecution Service; Instruction FGE/RJGP/DGFSE No. 019/2013, on measures against the undue adjournment of hearings; Instruction FGE/RJGP/DGFSE No. 051/2013, on the application of effective precautionary measures; and Instruction RJGP/DGFSE No. 078/2013, on guidelines relating to dismissal, timely announcements at the preliminary stage and the broadening of scope for new unlawful acts and acts against other persons;

(b) Instruction FGE/RJGP No. 005/2014, on pretrial detainees and the execution of probation orders and arrest warrants, provides that prosecutors should prioritize cases involving pretrial detainees, exhaust the mechanisms necessary for the effective execution of arrest warrants and probation orders and attend sentence enforcement hearings;

(c) Instruction FGE/RJGP/DGFSE No. 0024/2014, on monitoring the duration of preliminary investigations, the broadening of the scope of proceedings and cases and the extension of preliminary investigations;

(d) Instruction FGE/RJGP/DGFSE No. 033/2014, on the implementation of alternative outcomes and dealing with the backlog in the criminal justice system;

(e) Instruction FGE/RJGP/DGFSE No. 042/2014, on due diligence in the exercise of public criminal proceedings in cases handled by commissions and work teams;

(f) Instruction FGE/RJGP/DGFSE No. 063/2014, on the criteria governing the appropriate legal characterization of unlawful acts;

(g) Instruction FGE/RJGP/DGFSE/No. 192/2014, on guidelines and directives concerning the application of the Act on Streamlining and Reducing the Workload in the Criminal Justice System (No. 586 of 30 October 2014) to the operations of the Public Prosecution Service, among others, mainly in relation to the guiding principles governing

<sup>32</sup> Annex III, Report/FS/JMGV No. 004/2017 of 13 April 2017, submitted by the Attorney General. Paragraph 11 refers to existing measures to ensure fair treatment of alleged perpetrators at all stages of the proceedings, including the right to legal assistance, the right to be presumed innocent until proven guilty, the right to equality before the courts etc., as well as practical examples of the application of the above-mentioned measures.

the exercise of public criminal prosecution, the principle of material truth, the principle of minimum intervention of criminal law, the cessation of pretrial detention, the duration of preliminary investigations, the broadening of the scope of police proceedings, the scope of alternative outcomes, the merits of the charges, and the application of summary proceedings;

(h) Memorandum OF.CITE: FGE/DGFSE No. 1601/2016, on the Office of the Prosecutor for Analysis and guidelines for effective dismissal;

(i) Memorandum OF.CITE: FGE/DGFSE No. 1621/2016, on guidelines concerning the appropriateness of, and rationale behind, the broadening of the scope of police proceedings;

(j) Memorandum OF.CITE: FGE/DGFSE No. 291/2017, on guidelines for compliance with articles 285, 290 and 298 of the Code of Criminal Procedure, with respect to the identification and location of the home of the victim, the complainant and the accused.

68. Enforced disappearance is defined in the Criminal Code and, in accordance with the protected legal right, the Corporate Prosecutor's Offices are responsible for examining, processing and taking legal action against such unlawful acts. The Corporate Prosecutor's Office forms part of the new prosecutorial management model, which has been gradually implemented in the Public Prosecution Service since January 2015. These Offices examine and prosecute offences that violate the legal right to human life, integrity, dignity, freedom and other related rights. The prosecutors that belong to these Offices maintain operational control of the investigation of offences and initiate public criminal proceedings before the judicial authorities.

69. In conceptual terms, the prosecutorial management model can be described as a new way of exercising public criminal proceedings in a uniform, strategic and intelligent manner within the framework of an adversarial criminal justice system and in accordance with the constitutional and legal system governing the work of the Public Prosecution Service. In possessing its own role and identity, the Service enables strategic institutional goals to be achieved in order to guarantee, under conditions of material equality, the effective enjoyment of the right of access to criminal justice.

70. The aim of the prosecutorial management model is to contribute to improving the exercise of criminal proceedings in the high-calibre, effective and timely handling and processing of cases, through the development of uniform, standardized procedures and the optimization of the resources of the Public Prosecution Service. The model is aimed at resolving disputes through the functional supervision of strategic, intelligent investigations that enables more timely, efficient and effective access to criminal justice and ensures that due process serves justice rather than giving rise to impunity. The expected results include the following:

- Cases distributed and processed according to protected legal right, in accordance with the nature and complexity of the offence;
- Cases resolved within a reasonable time frame;
- Separation of roles within prosecutors' offices;
- Establishment of common services for providing assistance, issuing notifications, conducting investigations, attending hearings and resolving cases.

## **Investigation, prevention and training – article 12**

### *Investigation*

71. The offence of enforced disappearance is subject to public criminal action, in connection with which the Public Prosecution Service is entitled to conduct criminal prosecutions and initiate criminal investigations on its own initiative. So-called

investigation expenses are used for this purpose, in accordance with article 135<sup>33</sup> of the Organic Act on the Public Prosecution Service. In addition, a specific department for all offences related to serious human rights violations will be established within the Secretariat for Prosecutorial Analysis.

72. Any person may report an enforced disappearance since it is a publicly actionable offence,<sup>34</sup> subject to the procedure set out in article 55<sup>35</sup> of the Organic Act on the Public Prosecution Service (Admission or dismissal).

73. The Bolivian police force, through the Crime Squad, is authorized to receive complaints and conduct investigations under the supervision of the Public Prosecution Service.

74. With regard to conclusive decisions or requests issued by prosecutors, the Code of Criminal Procedure and the Organic Act on the Public Prosecution Service establish the various types of appeal that may be filed by persons involved in judicial proceedings, as summarized in the table below:

<i>Type of decision</i>	<i>Appeal</i>	<i>Legal basis</i>
Dismissal	Objection to dismissal	Art. 55 (II) of the Organic Act on the Public Prosecution Service SCP No. 0092/2014 S3
of the complaint or police actions	Objection to the rejection of the complaint or police actions	Art. 305 of the Code of Criminal Procedure <sup>36</sup>
of the proposal for proceedings	Objection to the rejection of the proposal for proceedings	Art. 306 of the Code of Criminal Procedure <sup>37</sup>

<sup>33</sup> Organic Act on the Public Prosecution Service – art. 135 (Allocation of resources). A dedicated line, funded from the Service’s own resources, will be established within the budget that can be allocated only to:

- I. Institutional strengthening in relation to:
  1. Infrastructure and equipment for the institution, irrespective of what is provided by the State;
  2. The training of prosecutors and public servants;
  3. The development of studies and research;
- II. Maintaining support and protection programmes for victims, witnesses, prosecutors, public servants, and persons who have participated in a criminal prosecution.

<sup>34</sup> Code of Criminal Procedure – Act No. 1970 of 25 March 1999 – art. 158 (Complaint). Any person who learns of the commission of a publicly actionable offence may report it to a prosecutor’s office or the national police. In places where there is no prosecutor’s office or police station, it may be submitted to the sub-prefect or district governor, who should duly inform the nearest prosecutor’s office within 24 hours.

<sup>35</sup> Organic Act on the Public Prosecution Service – art. 55 (Execution of public criminal proceedings). I. In carrying out their duties with a view to exercising public criminal proceedings, prosecutors shall undertake all the necessary procedural acts in a prompt and timely manner, complying with procedural deadlines within a reasonable time frame.

<sup>36</sup> Code of Criminal Procedure – art. 305 (Proceedings and effects). The parties may file an objection to a rejection decision, within five days of its issuance, to the prosecutor who issued it. That prosecutor shall refer the case to his or her superior within 24 hours. Within 10 days of receiving notification of the proceedings, the superior prosecutor shall rule on the application for review, order the continuation of the investigation and, in the event that it is ratified, file his or her observations.

<sup>37</sup> Code of Criminal Procedure – art. 306 (Proposal for proceedings). The parties may propose actions or proceedings at any time during the preparatory stage. The prosecutor may admit them if he or she deems them to be lawful, relevant and useful. Refusals must be substantiated. When the prosecutor rejects a proposal for proceedings that are deemed essential, the parties may bring an objection to the

<i>Type of decision</i>	<i>Appeal</i>	<i>Legal basis</i>
Decision to stay proceedings	Challenge to the decision to stay proceedings	Art. 324 of the Code of Criminal Procedure <sup>38</sup>

75. Within the framework of criminal investigations, the State has established measures to protect persons participating in criminal proceedings. Thus, the Act on the Protection of Complainants and Witnesses (No. 458 of 19 December 2013) was promulgated with the aim of establishing a system for their protection.

76. It should also be noted that the Public Prosecution Service, in overseeing the senior prosecutors in charge of coordinating the investigations of cases of enforced disappearance that took place during the dictatorship (from 4 November 1964 to 10 October 1982), has established a workplan for the cases of enforced disappearance of Marcelo Quiroga Santa Cruz, Juan Carlos Flores Bedregal, José Carlos Trujillo Oroza, José Luis Ibsen Peña and Renato Ticona Estrada. The plan provides that the Argentine Forensic Anthropology Team will provide technical support in tracing, exhuming and identifying mortal remains<sup>39</sup> (annex IV).<sup>40</sup>

#### *Prevention*

77. Article 11 of the Organic Act on the Public Prosecution Service provides that:

“I. The Public Prosecution Service, in coordination with the Bolivian police, State bodies and public institutions, shall protect persons who are at risk of harm because they have cooperated with the justice system. To that end, it shall arrange ongoing programmes for the protection of witnesses, complainants, experts, victims and its own officials. II. This protection shall be provided, in particular, in the case of offences related to organized crime, corruption, drug trafficking, offences against women, children and adolescents, trafficking and smuggling of persons and/or violations of fundamental rights.”

78. In accordance with the aforementioned article, the institutional framework of the Public Prosecution Service includes the Department for the Protection and Assistance of Victims, Witnesses and Officials, which is the body responsible for protecting and supporting victims of crime, witnesses, persons who cooperate with criminal prosecutions and officials of the Public Prosecution Service. This department has adopted, as an institutional policy, the use of Gesell chambers for conducting interviews with victims and thereby avoiding their revictimization. It has also promoted the development of guides to the exercise of these new functions, which are collectively known as the integrated service access point model.<sup>41</sup>

79. In addition, continuing in the line of its institutional work, the Attorney General’s Office, through an official instruction, has issued guidelines on activating mechanisms to protect victims, complainants and witnesses in accordance with article 11 of the Organic Act on the Public Prosecution Service, which regulates the protection of victims,

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rejection before the prosecutor’s superior, who shall decide on the appropriate action within a maximum period of 72 hours.

<sup>38</sup> Code of Criminal Procedure – art. 324 (Challenge to a decision to stay proceedings). The prosecutor shall inform the parties of the decision to stay the proceedings, which may be challenged within five days of being issued.

<sup>39</sup> Information taken from Report FSC/No. 011/2018 of 6 April 2018 (Attorney General’s Office).

<sup>40</sup> Annex IV. Report/FSC/No. 008/2018 of 6 April 2018, issued by the senior prosecutors in respect of cases of missing persons.

<sup>41</sup> The model for the protection and assistance of victims, witnesses and complainants is a guide to concepts and procedures used for training, informing, directing and providing comprehensive care to victims, witnesses and complainants by officials of the Public Prosecution Service. It consists of four key components: information, support, protection and follow-up.

complainants, witnesses and other persons who might be at risk of harm because they have cooperated with the justice system (annex V).<sup>42</sup>

80. In order to protect and support victims of crime, witnesses, complainants, prosecutors and officials of the Public Prosecution Service, the following initiatives are applied:

- Support: With the aim of responding to urgent and immediate needs, and facilitating the rehabilitation and family reintegration of direct and indirect victims, witnesses and complainants, measures will be taken to promote the referral of such persons to legal, psychological, social, health-care, educational and other necessary services through inter-agency coordination, from the first point of contact until contact is complete.
- Protection: In order to promote the right to security, protect the physical integrity of victims, witnesses and complainants and ensure equal access to justice, on the basis of an assessment of risk levels, protective measures are implemented from the point when the complaint is made until the completion of the process.
- Follow-up: The aim of follow-up is to check the effectiveness of, compliance with and identification of emerging needs in relation to the support and protection measures implemented.

81. Aside from the initiatives mentioned, individual precautionary measures are implemented as alternatives to pretrial detention, including home detention, prohibitions on approaching victims and complainants and other similar restrictions.

#### *Training*

82. The State Prosecutor Training College offers initial and ongoing training in investigating cases of alleged enforced disappearance.

83. With regard to initial training, the State Prosecutor Training College began its first initial training programme on preparing for a career as a prosecutor on 17 October 2016; the final module was completed on 28 January 2017. The final assessment of new entrants took place on 12 February 2017. The programme included a module on human rights for prosecutors. With regard to skills-based training, content directly related to the duties of professional prosecutors was incorporated with the aim of strengthening training in human rights and international instruments and transmitting knowledge to prosecutors within the framework of the Constitution and the Convention. The content of the module was developed through the learning guide, which contains the learning units.

84. Where ongoing and specialist training is concerned, the School of State Prosecutors has conducted training programmes in enforced disappearance from a human rights perspective that promoted interaction between the universal and the inter-American systems.

85. As part of preventive measures, plans are in place for the academic curricula of the military training institutes of the armed forces to incorporate curricular programmes in human rights and international humanitarian law, in accordance with article 105 of the Armed Forces Organic Act (No. 1405 of 30 December 1992) and Ministerial Decision No. 261 of 15 April 2011, which governs the treatment and incorporation of the study plans of the military training institutes.

86. Statistical data on the number of reports of enforced disappearance submitted between 1 January 2012 and 13 April 2017, obtained from the I4 system,<sup>43</sup> are set out in the tables below. However, it should be noted that all open cases that are currently active are related to complaints of enforced disappearance that took place in Bolivia during the dictatorship (4 November 1964 to 10 October 1982).

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<sup>42</sup> Annex V, Report/FS/JMGV No. 004/2017 of 13 April 2017, issued by the Attorney General's Office. Paragraph 15 refers to existing mechanisms for the protection of complainants, their representatives, witnesses and other persons involved in investigations, examinations and trials against all kinds of intimidation or ill-treatment (art. 12).

<sup>43</sup> I4 is a software system used by the Office of the Attorney General for reporting cases at the national level.

Statistical data disaggregated by sex, age, geographical location, among other items, on the number of complaints of enforced disappearance submitted and the results of the investigation  
(period 01.01.2012–13.04.2017)

Department (site of the complaint)	Number of cases entered	Outcomes							
		Pretrial stage	Rejection	Formal charges	Alternative outcomes	Decision to stay proceedings	Accusation	Conviction	Acquittal
Cochabamba	0	0	0	0	0	0	0	0	0
Chuquisaca	1	0	1	0	0	0	0	0	0
Tarija	7	0	6	1	0	0	0	0	0
Pando	0	0	0	0	0	0	0	0	0
Beni	25	6	19	0		0	0	0	
Santa Cruz	5	3	1	1	0	0	0	0	0
La Paz	7	6	1	0	0	0	0	0	0
Oruro	1	1	0	0	0	0	0	0	0
Potosí	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>46</b>	<b>16</b>	<b>28</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Source: Attorney General's Office.

Number of cases by sex and age of registered victims\*

	Under 18 years of age	From 18 to 35 years of age	From 35 to 60 years of age	Over 60 years of age	Age not recorded
Men	1	2	0	0	11
Women	0	0	0	0	9

Source: Attorney General's Office.

\* There is no record of the age and/or sex of 20 of the 31 victims registered in the I4 system.

<i>No.</i>	<i>Case No.</i>	<i>Start date or date of complaint</i>	<i>Department</i>	<i>Offence</i>	<i>Name reported</i>	<i>Name of complainant</i>	<i>Victim</i>	<i>Age of victim</i>	<i>Sex</i>	<i>Geographical location</i>	<i>Current status</i>
1	ZSR1302550	27/02/2013	La Paz	Enforced disappearance art. 292 bis	Perpetrator or perpetrators	Public Prosecution Service	Juan Carlos Cuba Galviz	49	Male	Unknown	Missing person under investigation
2	ZSR1302360	03/12/2013	La Paz	Enforced disappearance art. 292 bis	Yerson Condori	Lujan Laura Zenteno	Jairo Lujan Laura Ticona	20	Male	Unknown	Missing person under investigation
3	LPZ1009466	12/10/2010	La Paz	Enforced disappearance art. 292 bis and murder	Perpetrator or perpetrators	Tito Ibsen Castro	Mario Ibsen, Rainer Ibsen Castro, José Luis Ibsen Peña	22 47	Male	Disappeared in Santa Cruz during the dictatorship of General Hugo Banzer Suárez	At an intermediate stage, awaiting the conclusive hearing; responsibility attributable to jurisdictional supervision and the sentencing court
4	Teoponte case		La Paz	Enforced disappearance of persons art. 292 bis		Celima Torrico Rojas	Luis Renato Pires de Almeida Francisco Imaca Rivera, Norberto Domínguez Silva, Antero Calpiña Hurtado, Carlos Aguedo Cortes Rueda, Herminio Villca Colque, Gonzalo Rojas Paredes, Emilio Quiroga Bonadona, Ricardo Oscar Puente Gonzales, Julio Cesar Pérez López, Filiberto Parra Rojas, Carlos Navarro Lara, Tirso	Between 22 and 28	Male	Teoponte, Larecaja Province, September 1970	Under investigation

No.	Case No.	Start date or date of complaint	Department	Offence	Name reported	Name of complainant	Victim	Age of victim	Sex	Geographical location	Current status
							Montiel Martínez, Eloy Mollo Mamani, Delfín Mérida Vargas, Benito Mamani, Efraín Lizarazu Cabrera, Ricardo Imaca Rivera, Jorge Fernández Meana, Clemente Fernández Fuentes, Rubén Cedat Acuña, Evaristo Bustos Aranibar, Luis Barriga Luna, Fabián Barba, Hilario Ampuero Ferrada, Julio Zambrano Acuña, Carlos Suarez Coímbra, Federico Argote, Carlos Brain Pizarro				
5	Case No. 218, known as the Trujillo case – Ibsen IANUS 14222		Santa Cruz	Enforced disappearance of persons art. 292 bis			José Luis Ibsen Peña, Juan Carlos Trujillo Oroza	47 not known	Male	Santa Cruz	

Source: Attorney General's Office.

### **Extradition within the framework of international conventions and treaties – article 13**

87. Under article 150 of the Code of Criminal Procedure, extradition may be sought for acts classified as offences in the legislation of both States that carry a penalty of at least 2 years of deprivation of liberty and, in the case of nationals, when the minimum penalty is greater than 2 years. Accordingly, in view of the minimum penalty applicable in any of the possible circumstances, the offence of enforced disappearance is an extraditable offence in Bolivia.

88. Article 151 of the Code of Criminal Procedure establishes that extradition does not apply when:

- “1. There are justifiable grounds for presuming that the extradition has been requested in order to prosecute or punish a person because of his or her political opinions, race, sex, religion, nationality or ethnic origin or that he or she will be subjected to cruel, inhuman or degrading treatment or punishment;
2. In the Republic, an enforceable judgement has been handed down in respect of the offence for which extradition is requested; and
3. In accordance with the laws of the requested or the requesting State, the offence for which extradition is requested is statute-barred, or has been amnestied, or the requested person has been pardoned.”

89. As there is no limited or exclusive set of extraditable offences, national legislation has not established a list of the offences giving rise to extradition. For that reason, it is possible to invoke any bilateral or multilateral instrument that facilitates extradition for the requesting State and the requested State and is binding on those States. At present, there are no records of extradition requests in which the Convention has been invoked.

90. In accordance with the national legislation in force, the power to rule on the admissibility of a request for the passive extradition of a citizen lies exclusively with the Supreme Court of Justice<sup>44</sup> and the criteria for its decision are subject to the requirements set out in the treaty invoked by the requesting State and by national legislation.

91. In line with article 2 of the Convention, international instruments that expressly define the offence of “abduction” (in the sense of enforced disappearance) as a ground for extradition have been identified. The majority of those instruments refer to the criminal sanctions imposed by each State party:

- (i) Article 1 (11), of the extradition treaty between the Republic of Bolivia and the Kingdom of Belgium, signed on 24 July 1908,<sup>45</sup> states that:

“The Government of Belgium and the Government of Bolivia undertake to surrender to each other individuals who, being accused or convicted in one of the two countries of perpetrating or acting as an accomplice in one of the offences listed below, have taken refuge in the other: Abduction of persons.”

- (ii) Article 2 of the extradition agreement between Bolivia and Brazil, signed on 25 February 1983, states that:<sup>46</sup>

“Extradition is authorized for offences for which the law of the requested State imposes a penalty of 1 year or more of imprisonment, both for perpetrators and collaborators and for accomplices and persons attempting to commit such offences.”

<sup>44</sup> Code of Criminal Procedure – Act No. 1970 of 25 March 1999 – art. 158 (Procedure). When a request for extradition reaches the Supreme Court of Justice, the relevant dossier shall be transmitted to the Office of the Attorney General of the State in order that he or she may within 10 days make a decision on its admissibility or inadmissibility. The Supreme Court of Justice shall within 20 days of receipt of that decision decide whether to grant or refuse the extradition requested.

<sup>45</sup> Ratified by law on 24 November 1908.

<sup>46</sup> Ratified by law on 18 April 1941.

(iii) Article 2 of the extradition treaty between the Republic of Argentina and the Plurinational State of Bolivia, signed on 22 August 2013,<sup>47</sup> states that:

“An offence shall be an extraditable offence if it is punishable under the laws of the Requesting Party and the Requested Party by deprivation of liberty of more than 2 years.”

(iv) Article II of the extradition treaty between the Republic of Bolivia and the Republic of Peru, signed on 27 August 2003,<sup>48</sup> states that:

“An offence shall be an extraditable offence if it is punishable under the laws of both contracting States by deprivation of liberty for a maximum period of more than 2 years, or by a more severe penalty.”

(v) Article 2 of the extradition treaty between Chile and Bolivia, signed on 15 December 1910 and approved by decree on 9 October 1911, provides that “extradition shall be granted for any of the following serious or ordinary offences ... abduction or kidnapping of persons.”

(vi) Article 2 of the extradition treaty between the Republic of Bolivia and the Republic of Ecuador, signed on 21 July 1913,<sup>49</sup> provides that “extradition shall be granted for any of the following serious or ordinary offences: abduction or kidnapping of persons ... abduction, concealment, sequestration, substitution or assumption of the parentage of children.”

(vii) Article 2 (1) of the extradition treaty between the Republic of Bolivia and the Government of the Republic of Paraguay, signed in La Paz on 11 July 2000,<sup>50</sup> provides that:

“An offence shall be an extraditable offence, regardless of its designation, if it is punishable under the laws of the Requesting State and the Requested State by deprivation of liberty for a maximum duration of not less than 6 months.”

(viii) Article 2 (1), of the extradition treaty between the Republic of Bolivia and the United Mexican States, signed on 6 May 2006,<sup>51</sup> provides that

“Extradition shall be admissible when it is sought in respect of wilful or culpable offences punishable under the laws of both parties by deprivation of liberty for a maximum period of more than 1 year.”

(ix) Article II (1) of the extradition treaty between the United States of America and the Republic of Bolivia, signed on 27 July 1995 and ratified by Act No. 1721 of 6 November 1996, provides that:

“An offence shall be an extraditable offence if it is punishable under the laws in both Parties by deprivation of liberty for a maximum period of more than one year or by a more severe penalty.”

(x) Article 2 of the extradition treaty between Bolivia and Spain, signed on 24 April 1990 and ratified by Act No. 1614 of 31 January 1995, provides that:

“An offence shall be an extraditable offence if it is punishable under the laws of both parties by deprivation of liberty or a detention order for a maximum period of more than 1 year and 1 day.”

(xi) Article 8 of the extradition treaty between Bolivia and Italy, signed on 18 October 1890 and ratified on 7 January 1901, provides that:

“Acts for which accused persons are extraditable include: (1) With respect to alleged offenders, offences that, under the criminal law of the requesting

<sup>47</sup> Ratified by Act No. 773 of 24 August 2015.

<sup>48</sup> Ratified by law on 7 July 2004.

<sup>49</sup> Ratified by law on 16 December 1914.

<sup>50</sup> Ratified by Act No. 3397 of 23 May 2006.

<sup>51</sup> Ratified by Act No. 322 of 18 December 2012.

nation, are punishable by deprivation of liberty for a maximum period of more than 2 years or an equivalent; (2) With regard to convicted persons, those who have been punished with deprivation of liberty of at least 1 year.”

(xii) Article II (23) of the extradition treaty between the Republic of Bolivia and the United Kingdom of Great Britain and Ireland, signed on 22 February 1892,<sup>52</sup> provides that

“Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.”

(xiii) Article 2 (1) of the agreement on extradition between the MERCOSUR member States, signed on 10 December 1998,<sup>53</sup> provides that

“An offence shall be an extraditable offence, regardless of its denomination, if it is an offence under the laws of the Requesting State and the Requested State punishable in both States by deprivation of liberty for a maximum period of more than 2 years.”

(xiv) Article II (6) and (24) of the extradition agreement of the Bolivarian Congress of Caracas, signed on 18 July 1991,<sup>54</sup> establishes that:

“The following serious and ordinary offences are extraditable ... abduction, concealment, sequestration, substitution and assumption of the parentage of children ...

Attacks on individual freedom and the inviolability of the home, committed by individuals.” (annex VI)<sup>55</sup>

92. The Ministry of Foreign Affairs does not have any records of extradition procedures enacted within the framework of the Convention.

#### **International judicial cooperation – article 14**

93. The Special Unit for Extradition, Cooperation in Criminal Matters and International Relations was established under the Attorney General’s Office in 2008. It currently has no record of any requests for active or passive international cooperation in relation to enforced disappearance having been processed.<sup>56</sup>

94. Pursuant to article 17 of Supreme Decree No. 29894 of 7 February 2009 on the Organizational Structure of the Executive Branch of the Plurinational State, it falls to the Ministry of Foreign Affairs to: “(x) Act as the central authority in matters of international legal cooperation.” Pursuant to its duties as the central authority in matters of international legal cooperation, the Ministry reports that its records contain a request for international assistance submitted by the Office of the Attorney General of the Nation of the Republic of Colombia in note verbale No. 9765 of 9 October 2012 asking the Bolivian State to open an investigation into the reported enforced disappearance of a Colombian citizen named Carlos Alberto Vélez Cardona. The request was submitted for processing to the Attorney General’s Office, which reported that it had consequently opened a criminal investigation into the disappearance of the Colombian citizen concerned.

95. Certain international treaties and conventions expressly recognize “abduction” (this being understood as the designation of the offence of “enforced disappearance”) as grounds for extradition, including the extradition treaty between the Republic of Bolivia and the

<sup>52</sup> Approved by law on 30 October 1887 and ratified by Supreme Decree on 30 December 1897.

<sup>53</sup> Ratified by Act No. 2830 of 3 September 2004.

<sup>54</sup> Adopted by law on 24 October 1912.

<sup>55</sup> Annex VI. Internal Note GM-DGAJ-UAJI-Ni-235/2017 of 8 March 2017, issued by the Director General for Multilateral Relations of the Ministry of Foreign Affairs, paragraph 6. Refers to any treaty or arrangement for legal cooperation between States parties that is applicable to enforced disappearance. Specific example of the above-mentioned cooperation (art. 14).

<sup>56</sup> Information provided by the Attorney General’s Office in Communication FGE/RJGP/DGFSE No. 006/2014 of 17 February 2014.

Kingdom of Belgium, the extradition treaty between Chile and Bolivia, the extradition treaty between the Republic of Bolivia and the Republic of Ecuador and the extradition agreement of the Bolivarian Congress of Caracas.

96. The bilateral or multilateral conventions, treaties and agreements on international judicial assistance in criminal matters in force and ratified by the Bolivian State provide that the general application and scope of such assistance extend to criminal investigations, trials and proceedings relating to offences falling within the jurisdiction of the requesting State when a request for assistance is made, provided that this is not contrary to domestic law or the established public order.

97. In the absence of a treaty, convention or international agreement, the principle of international reciprocity and comity applies, this being understood as the custom according to which States should afford one another equal treatment in the interests of international cooperation.

#### **Cooperation between States – article 15**

98. The Public Prosecution Service and the Forensic Investigation Institute take measures to recover and identify the mortal and/or skeletal remains of victims of enforced disappearance.

99. In accordance with the provisions of the Constitution<sup>57</sup> and article 3 of the Organic Act on the Public Prosecution Service, the above-mentioned bodies process all requests for international cooperation in criminal matters submitted to them for the purposes of advancing investigations and collecting further evidence to clarify the events that occurred during the dictatorial period between 1964 and 1982.

100. The work of the Public Prosecution Service and the Forensic Investigation Institute is conducted in compliance with the mandatory, binding judgment of the Inter-American Court of Human Rights<sup>58</sup> requiring the Bolivian State to locate and identify the remains of disappeared persons and return them to their relatives after expert study.<sup>59</sup> To that end, legal cooperation on the part of the Argentine Republic was requested in the following terms:

“Requests the competent authorities of the Argentine Republic to ensure that Ms. Silvana Turner of the Argentine Forensic Anthropology Team based in the city of Buenos Aires provides the biological or encoded genetic data of Ms. Gladys Oroza, mother of the university student José Carlos Trujillo Oroza, whose anthropological and genetic examination using skeletal remains exhumed from La Madre Cemetery was requested of the Forensic Investigation Institute by the Argentine Forensic Anthropology Team; for the purposes of using the results to conduct a genetic and anthropological verification of the identity of the disappeared José Carlos Trujillo Oroza,<sup>60</sup> these data are required by the Forensic Investigation Institute in La Paz.”

101. The relevant request for international legal cooperation was submitted on 20 March 2014 to the competent authority of the Argentine Republic on behalf of Dr. Pura Cuellar Ortiz, the public prosecutor at the Santa Cruz district prosecution service assigned to Case No. 14222/2006 – Trujillo Oroza.<sup>61</sup>

<sup>57</sup> Constitution – art. 225 (I). The Public Prosecution Service shall safeguard the legal system and defend the interests of society at large and shall initiate public criminal proceedings. The Public Prosecution Service has functional, administrative and financial autonomy.

<sup>58</sup> Judgment of the Inter-American Court of Human Rights in the case of *Trujillo Oroza v. Bolivia* of 26 January 2000.

<sup>59</sup> Act No. 1430 of 11 February 1993 – art. 3. Recognizes as automatically binding, unconditionally and indefinitely, the jurisdiction and competence of the Inter-American Court of Human Rights, in accordance with article 62 of the Convention.

<sup>60</sup> Case of enforced disappearance that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime (the military dictatorship of Hugo Banzer Suárez from 1971 to 1978).

<sup>61</sup> Case of enforced disappearance that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime (the military dictatorship of Hugo Banzer Suárez from 1971 to 1978).

102. The Inter-Agency Council of Inquiry on Enforced Disappearances was established pursuant to Supreme Decree No. 27089 of 18 June 2003 to resolve cases of enforced disappearances in Bolivia. It has the following duties:

- (a) Coordinating measures with the Ministry of Foreign Affairs and Worship to promote the adoption of an international convention on enforced disappearance in Bolivia, in the light of work undertaken by the United Nations in that regard;
- (b) Following up on decisions of the Inter-American Court of Human Rights of the Organization of American States and other international bodies relating to Bolivia;
- (c) Processing information that may lead to the discovery of the remains of victims of enforced disappearance;
- (d) Organizing technical cooperation at the national and international levels to facilitate the exercise of its duties.

103. On 5 November 2007, a memorandum of understanding on technical cooperation was concluded between the Ministry of Justice and Human Rights of the Argentine Republic and the Ministry of Justice of the Republic of Bolivia (pursuant to its presiding role within the Inter-Agency Council of Inquiry on Enforced Disappearances) to coordinate and implement joint activities with regard to, and the analysis and identification of, the remains of disappeared persons and persons killed for political reasons laid to rest in the mausoleum of the Asociación de Familiares de Detenidos y Desaparecidos y Mártires por la Liberación Nacional (Association of Relatives of the Detained, the Disappeared and Martyrs for National Liberation in Bolivia) in the General Cemetery in La Paz.

104. In 2008, skeletal remains<sup>62</sup> were exhumed from the mausoleum by the Argentine Forensic Anthropology Team and later transferred to the Forensic Investigation Institute in La Paz for analysis; 5 of the 17 sets of remains exhumed from the mausoleum have been identified through scientific analysis as being the skeletal remains of Rainer Ibsen Cárdenas, Agustín Carrillo Carrasco, Oscar Pérez Betancourt, Jaime Virrueta Aramayo and Rodolfo Abel Elguero Suarez. The unidentified remains were submitted to the Forensic Investigation Institute by the Public Prosecution Service for analysis. The Forensic Investigation Institute published a poster calling for members of the families of persons subjected to enforced disappearance between 1964 and 1982 to present themselves at the Institute's offices to have samples taken for the purpose of establishing a gene bank.

#### **Grounds for extradition – article 16**

105. Article 38 of the Judiciary Act provides that the Supreme Court of Justice, sitting in plenary and acting as a court of sole instance, has the power to hear, rule on and order extradition proceedings.

106. The extradition procedure is regulated by articles 149, 150, 151, 152, 153, 154, 155, 156, 157, 158 and 159 of the Code of Criminal Procedure. The power to order extradition falls to the Supreme Court of Justice, sitting in plenary.<sup>63</sup>

107. The Plurinational State of Bolivia provides protection for persons seeking refuge on its territory who have submitted applications “because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order.”<sup>64</sup> For this reason, extradition,<sup>65</sup> expulsion<sup>66</sup> and refoulement<sup>67</sup> are prohibited or inadmissible.

<sup>62</sup> Enforced disappearances that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime.

<sup>63</sup> Judiciary Act No. 025 of 24 June 2010 – art. 38. (Powers of the plenary session). The Supreme Court of Justice, sitting in plenary, has the following powers: (2) As court of sole instance, hearing, ruling on and ordering extradition proceedings.

<sup>64</sup> Act No. 251 on the protection of refugees of 20 June 2012 – art. 15. (Definition).

I. The term “refugee”, as used herein, applies to all persons who:

108. The Supreme Court of Justice is the authority competent to rule on the admissibility or inadmissibility of requests for extradition.<sup>68</sup> Only the Ministry of the Interior, through the General Directorate of Migration, has the power, subject to an administrative hearing, to enforce the mandatory departure of a citizen to his or her country of origin.<sup>69</sup>

#### **Detention procedure – article 17**

109. Article 23 of the Constitution establishes that:

“V. Any person who is deprived of his or her liberty shall be informed, at the time of the arrest, of the reasons for the detention and the charges against him or her” and that “VI. The authorities in charge of places of detention shall maintain a register of persons deprived of liberty. Such authorities may not admit any person without entering in the register a copy of the respective order. Failure to do so shall result in prosecution and penalties as provided by law.”

110. Secret detention is not permitted in Bolivia, since no one may be detained, arrested or imprisoned in penitentiary establishments except in the cases and in accordance with procedures established by law. Detention orders may only be executed if they are issued by a competent authority and served in writing.<sup>70</sup>

(a) Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their nationality and are unable or, owing to such fear, are unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, are unable or, owing to such fear, are unwilling to return to it.

(b) Have fled from their country of nationality or who, not having a nationality, have fled from their country of habitual residence because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order.

II. The term “refugee” also applies to all persons who did not meet the aforementioned criteria when they left their country of nationality or habitual residence but who, because of events having occurred since their flight, now qualify under the grounds established in sections (a) and (b) of the present article.

<sup>65</sup> Act No. 251 on the protection of refugees of 20 June 2012 – art. 5. (Inadmissibility of extradition).

I. The recognition of refugee status shall render inadmissible all extradition requests made or procedures initiated against the person concerned. II. The submission of an application for refugee status shall stay the enforcement of the extradition of the applicant until the application procedure has concluded by way of the issuance of a definitive decision.

<sup>66</sup> Act No. 251 on the protection of refugees of 20 June 2012 – art. 6. (Non-expulsion). I. No refugee or person seeking refugee status may be expelled from the country. II. Expulsion shall be carried out only in the interests of State security or public order, subject to due process, in accordance with the Convention relating to the Status of Refugees of 1951 and the domestic legal order.

<sup>67</sup> Act No. 251 on the protection of refugees of 20 June 2012 – art. 4. (Non-refoulement). No refugee or person seeking refugee status whose application is pending a definitive resolution may be returned to his or her country of origin or to another country where his or her life, safety or freedom is endangered for any of the reasons that led to the recognition of or application for refugee status. II. Under the present article, refusal of entry at the border and extradition are considered forms of refoulement.

<sup>68</sup> Code of Criminal Procedure – Act No. 1970 of 25 March 1999 – art. 158. (Procedure). When a request for extradition reaches the Supreme Court of Justice, the relevant dossier shall be transmitted to the Office of the Attorney General of the State in order that he or she may within 10 days make a decision on its admissibility or inadmissibility. The Supreme Court of Justice shall within 20 days of receipt of that decision decide whether to grant or refuse the extradition requested.

<sup>69</sup> Act No. 370 on migration of 8 May 2013.

<sup>70</sup> Sentence Enforcement and Supervision Act No. 2298 of 20 December 2001 – art. 2. (Principle of legality). No one may be subjected to imprisonment, confinement or pretrial detention in penitentiary establishments except by virtue of a written order issued by a competent judicial authority, in accordance with legal formalities and on grounds previously defined by law. Deprivation of liberty may be carried out pursuant to the execution of a sentence or as a personal precautionary measure

111. Persons arriving in prison are registered and a file is opened listing the reason for their detention, complete with supporting legal documentation, and the status of their case, along with the name of the court, the date of detention and the stage reached in the proceedings. Inmates have the right to provide the names and addresses of relatives. The register is kept up to date with the progress of each inmate's sentence and any changes in the status of his or her case.<sup>71</sup>

112. The Directorate General of Prisons records the details of all persons deprived of liberty at the national level using a system powered by Microsoft Excel. The system is used to generate statistics that are updated on a monthly basis.

113. Article 129 of the Code of Criminal Procedure establishes the following in relation to the conditions under which orders of deprivation of liberty may be given:

“The judge or the court may issue the following orders: (1) A summons inviting the accused, a witness or an expert to make a statement, which shall contain a warning that failure to comply shall result in the issuance of a bench warrant; (2) a bench warrant for failing to comply with or resisting court orders; (3) an order of pretrial detention; (4) a sentencing order; (5) an arrest warrant; (6) an order of conditional release; (7) an order of release of persons whose case has been dismissed or who have been acquitted or whose sentence has been served in full; (8) an order of seizure; (9) a writ of attachment; and (10) a warrant for search and entry or requisition.”

114. Article 296 of the Code of Criminal Procedure provides that:

“In circumstances where arrest is authorized according to the terms of the Code of Criminal Procedure, police officers must abide by the following basic rules:

- (1) Use force only when strictly necessary;
- (2) Do not use arms except in the event of:
  - (a) Resistance that endangers a person's life or physical safety;
  - (b) Flight, should less extreme measures to make the arrest prove ineffective and only after warning has been given;
- (3) Do not inflict, instigate or tolerate any act of harassment, torture or other cruel, inhuman or degrading treatment or punishment, either at the time of the arrest or during detention;
- (4) Do not allow persons who have been arrested to be presented to the media without their express consent, which is to be granted in the presence of defence counsel and documented in the record of the proceedings;
- (5) Identify yourself as a police officer by showing your police badge at the time of the arrest. Give your full name and verify the identity of the person or persons who are being arrested;

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ordered in accordance with the law. The only limitations on the rights of inmates are those that result from sentencing and those provided for in the present Act; no other limitations are applicable.

<sup>71</sup> Sentence Enforcement and Supervision Act No. 2298 of 20 December 2001 – art. 21 (Registry of arrivals). Upon arrival, inmates must be registered and a numbered personal file containing the following information must be opened: (1) The reason for their detention complete with supporting legal documentation; and (2) The status of their case, along with the name of the court, the date of detention and, where appropriate, the stage reached in the proceedings. Inmates must be informed of their right to provide the names and addresses of family members and other parties close to them so that they may be kept apprised of the inmates' state of health and any decisions regarding their transfer. This information must appear in the register. The register must be continuously updated to include all decisions issued while a sentence is being served. The information contained in the personal file may be provided to third parties only upon presentation of a court order or a written request from the inmate.

- (6) Inform suspects at the time of their arrest of the charges against them and of the fact that they have the right to remain silent without this being used against them and to name a defence lawyer;
- (7) Inform relatives or others close to the accused that he or she has been arrested and where he or she will be taken;
- (8) Enter the place, day and time of the arrest in a permanent record.

Failure to observe the rules of the present article shall incur corresponding administrative and criminal liability.”

115. Under Sentence Enforcement and Supervision Act No. 2298, the Director General of the Penitentiary System and the National Director of Prison Security, at the national level, and departmental directors of the penitentiary system, at the departmental level, must periodically inspect all prisons.<sup>72</sup>

116. In 2016, the head of the Administrative Unit of the Directorate General of Prisons conducted 33 visits to and 49 inspections of prisons in eight departments throughout the country. The National Director of Prison Security conducted 16 prison inspections at the national level.<sup>73</sup>

117. The administration of each prison is responsible for providing information on foreign inmates to their diplomatic or consular representatives, informing them of the status of their detention. Inmates without diplomatic or consular representatives may communicate with the diplomatic representative of the State responsible for their interests.<sup>74</sup>

118. One of the measures taken by the Directorate General of Prisons to ensure the effective and independent monitoring of detention centres was the adoption of the General Prison Regulations through Ministerial Resolution No. 190/2012 of 10 September 2012. The Regulations are designed to facilitate the execution and completion of custodial sentences and to ensure the overall security of persons deprived of liberty in prison. The Regulations also specify the obligations, rights and duties of all persons involved in prison administration and security.

119. The Service for the Prevention of Torture was established pursuant to Act No. 474 of 30 December 2013. It is a decentralized public institution whose mission is to prevent torture and other cruel, inhuman or degrading treatment or punishment in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified through Act No. 3298 of 12 December 2005.

120. In 2016, the Service for the Prevention of Torture undertook the following activities:

<i>Activities undertaken</i>	<i>Number</i>
Unannounced visits	51
Follow-up to investigations and proceedings involving possible cases of torture and other cruel, inhuman or degrading treatment or punishment	7
Preventive recommendations	3
Promotion, information and training workshops for public servants	8
Training for public servants, civil society and social organizations	416 persons
Medical reports	
Psychological reports	17

*Source:* Service for the Prevention of Torture.

<sup>72</sup> Arts. 48 (8), 49 (5) and 54 (1) of Sentence Enforcement and Supervision Act No. 2298.

<sup>73</sup> Source: DGRP/DLC Report No. 048/2017 issued by the Directorate General of Prisons.

<sup>74</sup> Art. 30 of Supreme Decree No. 26715 of 26 July 2002.

121. In 2017, the Service for the Prevention of Torture undertook the following activities:

<i>Activities undertaken</i>	<i>Number</i>
Unannounced visits	92
Follow-up to investigations and proceedings involving possible cases of torture and other cruel, inhuman or degrading treatment or punishment	5
Preventive recommendations	7
Promotion, information and training workshops for public servants	21
Training for public servants, civil society and social organizations	940 persons
Medical reports	
Psychological reports	25

*Source:* Service for the Prevention of Torture.

122. With regard to the training of personnel responsible for supervising persons deprived of liberty and internal and external security officers, various seminars and lectures on the human rights of persons deprived of liberty have been conducted.

123. Sentence Enforcement and Supervision Act No. 2298 and its implementing regulations<sup>75</sup> provide for and protect the rights and guarantees of inmates in the country's prisons. The National Directorate of Prison Security of the Bolivian police force has issued standing directives and memorandums in that regard, such as General Memorandum No. 004/2013 instructing all members of its personnel responsible for security and safety in prisons to ensure that they respect human rights and the current regulatory framework, including the International Convention for the Protection of All Persons from Enforced Disappearance, at all times.

#### **Right to petition and to information – article 18**

124. Article 24 of the Constitution establishes that:

“Everyone has the right to petition individually or collectively, orally or in writing, and to receive a formal and prompt reply. The exercise of this right shall be subject to no other requirement than the identification of the petitioner.”

125. In accordance with the above-cited provision of the Constitution, Judgment No. 0338/2012 of 18 June 2012 of the Plurinational Constitutional Court established that:

“... the right to petition may be exercised orally or in writing, without need for the completion of procedural formalities, the identification of the petitioner being sufficient; the petition shall merit a formal and prompt reply, it being understood that this shall be provided in writing, in other words that it shall be a physical reply to the request, whether positive or negative, delivered in the time period prescribed by the applicable provisions in each case, or, in the absence of a specifically applicable provision, within a reasonable and brief time.”

126. Furthermore, Judgment No. 0090/2011-R of 21 February 2011 of the Constitutional Court specified that:

“Everyone has the right to petition individually or collectively, orally or in writing, and to receive a formal and prompt reply. The exercise of this right shall be subject to no other requirement than the identification of the petitioner.”

127. The right to petition is a constitutional guarantee that allows all persons to make petitions, individually or collectively, orally or in writing, and, whether the petition is submitted to a public or private entity, to obtain a prompt, appropriate and complete formal reply to the matter raised, which must be brought to the attention of the petitioner in physical format, whether positive or negative.

<sup>75</sup> Supreme Decree No. 26715 of 26 June 2012.

128. All activities undertaken in prisons are regulated by Sentence Enforcement and Supervision Act No. 2298 and its implementing regulations (Supreme Decree No. 26715 of 26 July 2002), which protect all persons who find themselves detained in prison.

129. In accordance with Sentence Enforcement and Supervision Act No. 2298<sup>76</sup> and its implementing regulations,<sup>77</sup> an official register of persons deprived of liberty containing necessary and accurate information is kept in the archives and on the index files maintained by every prison. Each individual's information is safely stored on prison grounds in full compliance with Sentence Enforcement and Supervision Act No. 2298. Information requested by third parties may be provided pursuant to a judicial order from a competent authority indicating the legal justification for the request, in accordance with article 21 of the above-mentioned Act.

#### **Confidentiality of information used for investigative purposes – article 19**

130. Medical and genetic data are obtained by personnel assigned to a case in compliance with international standards, such as those set by the International Criminal Police Organization (INTERPOL) or the AMPM Database of the International Committee of the Red Cross,<sup>78</sup> pursuant to a specific application by the public prosecutor or a judicial order. The data are encoded by the Forensic Investigation Institute for safekeeping and to avoid contamination. They are only used in the case under investigation, in accordance with article 19 (1) of the Convention and the regulations applicable to the chain of custody within the Forensic Investigation Institute.

131. The medical and genetic data of members of the family of persons subjected to enforced disappearance are used only for investigations into the relevant case. Through forensic anthropology, data obtained ante-mortem are compared with data obtained post-mortem during the examination of skeletal remains. The genetic laboratory compares the biological samples obtained from members of the family of disappeared persons with the skeletal samples in its possession. The results are sent in a sealed envelope to the requesting authority only. Reports containing the results are stored in physical format by the Evidence Division of the Forensic Investigation Institute. Magnetically recorded data are preserved in the corresponding genetic anthropology laboratory.

#### **Right to information – article 20**

132. The Constitution<sup>79</sup> provides for the right to information. In addition, Supreme Decree No. 28168 of 17 May 2005 establishes and guarantees the administrative procedures for accessing information held by the executive branch of government and all its subsidiary, decentralized, departmental and self-governing institutions and businesses and other entities.

133. All investigations conducted by the Public Prosecution Service are subject to the principle of confidentiality in accordance with article 9 of the Organic Act on the Public Prosecution Service, which states that:

“I. The Public Prosecution Service shall ensure that any information it discloses does not violate the rights of the parties as established pursuant to the Constitution and the law, particularly the right to dignity and the presumption of innocence, and does not undermine investigations under way or endanger persons named therein.

II. In no event may the Public Prosecution Service reveal the identity or publish the image of children or adolescents.

<sup>76</sup> Supreme Decree No. 26715 – arts. 20, 21 and 22.

<sup>77</sup> Supreme Decree No. 26715 – art. 2 (8).

<sup>78</sup> The *Ante-Mortem/Post-Mortem* Database of the International Committee of the Red Cross, an information technology tool for the management of forensic data.

<sup>79</sup> Constitution – art. 21. All Bolivians have the right to: 6. Access, interpret, analyse and communicate information freely, whether individually or collectively.

III. Police investigators are prohibited from sharing information regarding an ongoing investigation with third parties not involved in the investigation, except in the cases explicitly specified in the Constitution and the law.”

134. Article 281 of the Code of Criminal Procedure regulates the confidentiality of investigative proceedings. It establishes that, where necessary for the purposes of carrying out an effective investigation, the judge may decree, at the request of the prosecutor, that investigative proceedings may be kept confidential, including from the parties, once and for no longer than 10 days. In cases involving offences linked to organized crime, the confidentiality of investigative proceedings may be decreed twice for the same period of time. At all times, the guarantees afforded to the accused under the Code of Criminal Procedure, the Convention and all relevant international treaties and agreements are respected.

135. Article 24 of the Constitution is also applicable, since in exercising the right to petition individuals may submit requests to the judge responsible for judicial oversight<sup>80</sup> or, in extreme cases, the sitting judge. Any defence action provided for under the Constitution may also be raised.

#### **Necessary measures to ensure release – article 21**

136. Article 39 of Sentence Enforcement and Supervision Act No. 2298 establishes that:

“Inmates shall be released on the same day that their sentence is served in full, they are granted conditional release or they cease to be held under pretrial detention, without any further processing. Any public official who fails to comply with this provision shall incur criminal liability, without prejudice to the application of corresponding disciplinary sanctions.”

137. The authorities competent to hear and rule on petitions of habeas corpus are trial judges, where such petitions are submitted to them in accordance with article 53 of the Code of Criminal Procedure, or, if no trial judges have jurisdiction, examining magistrates, where such petitions are submitted to them in accordance with article 54 of the Code of Criminal Procedure. However, if the accused is under investigation, the competent authority, in this case the Public Prosecution Service, shall continue its investigation and proceed with public prosecution in the courts.

138. The Constitution also provides for the petition of habeas corpus<sup>81</sup> whereby, in extraordinary circumstances, the release of persons wrongly detained may be requested. In addition, the Ombudsman’s Office has the power<sup>82</sup> to file for constitutional remedies to defend the rights of persons subjected to the offence defined in article 292 bis of the Criminal Code.

139. During sentence enforcement, the judicial authority competent to oversee release is the enforcement and oversight judge.<sup>83</sup> With regard to the verification of the release of persons deprived of liberty, each prison strictly complies with article 39 of the Sentence Enforcement and Supervision Act No. 2298, which provides that:

<sup>80</sup> Constitution – art. 24. Everyone has the right to petition individually or collectively, orally or in writing, and to receive a formal and prompt reply. The exercise of this right shall be subject to no other requirement than the identification of the petitioner.

<sup>81</sup> Constitution – art. 125. Any person who considers that his or her life is in danger, or that he or she is being unlawfully prosecuted or wrongly tried or detained, may file a petition of habeas corpus and, either orally or in writing, in person or through any other person acting on his or her behalf, without the need for procedural formalities, bring the case before any judge or court competent in criminal matters and request that his or her life be protected, that the wrongful prosecution cease, that legal formalities be re-established or that his or her right to liberty be restored.

<sup>82</sup> Constitution – art. 222. The Ombudsman’s Office, in addition to the competencies established pursuant to the Constitution and the law, has the power to: 1. File applications for constitutional review, habeas corpus, *amparo*, the protection of privacy, *actio popularis* and writ of mandamus or a direct petition for annulment, without the need for a mandate.

<sup>83</sup> Sentence Enforcement and Supervision Act No. 2298 of 20 December 2001 – art. 19. (Jurisdiction of enforcement judges). Enforcement judges are authorized to implement and oversee: 3. Fulfilment of the conditions attached to stays of proceedings and conditional release arrangements.

“Inmates shall be released on the same day that their sentence is served in full, they are granted conditional release or they cease to be held under pretrial detention, without any further processing. Any public official who fails to comply with this provision shall incur criminal liability, without prejudice to the application of corresponding disciplinary sanctions.”

140. However, although the above-cited legal provision provides for the immediate release of persons deprived of liberty, the Plurinational Constitutional Court ruled in Plurinational Constitutional Decision No. 1306/2014 of 30 June 2014 and Constitutional Decision No. 0323/2003-R of March 2003 that prison officials must verify the authenticity of all release orders before they may proceed with their implementation.

141. For this reason, the prison administration has a legal duty to take the necessary steps to prevent the release of persons who have other orders pending against them or whose release order may contain some form of material or ideological misrepresentation. This means that the administration must verify and request relevant information. This should not be understood as a restriction on the exercise of rights since, in addition to ensuring that the rights and guarantees of detainees are respected, officials have a legal obligation to prevent persons detained on the orders of other authorities from evading the law, which gives rise to additional responsibilities.

### **Measures to prevent and sanctions irregularities during detention – article 22**

142. Before a person enters prison for the first time, whether for pretrial detention or to serve a sentence, prisons director must verify that a corresponding order is held on file and that the order was issued by a competent judicial authority.<sup>84</sup>

143. In relation to the mechanisms set out in Bolivian law to prevent wrongful deprivation of liberty, as mentioned above, a petition of habeas corpus may be filed by persons who consider that their life is in danger, or that they are being unlawfully prosecuted or wrongly tried or detained, either orally or in writing or through any other person acting on their behalf without any procedural formalities.

144. The proceedings of the Public Prosecution Service are subject to judicial oversight. This means that prosecutors may not take jurisdictional action that would compromise their impartiality, nor may judges take investigative action that would compromise their impartiality. Article 55 of the Organic Act on the Public Prosecution Service establishes that:

“Prosecutors may reject written complaints, criminal charges and police incident reports whose description of the facts is inconsistent, which fall under the remit of private criminal prosecution, which do not meet relevant legal requirements, where there is no clear narrative or where there is insufficient evidence to make a decision. In the latter three cases, a period of 24 hours shall be granted for the rectification of the submission, otherwise it shall be discounted.”

145. Reform of the prison system has been under way since 2015 as part of the strategic prison reform programme initiated by the General Directorate of Prisons. One of the programme’s cornerstones is institutional capacity-building, which includes training for prison officials and prison security personnel. Accordingly, since last year, personnel have undergone training on topics such as national prison legislation, prison health care, the use of force, the Nelson Mandela Rules and the Bangkok Rules. Training has continued this year, covering topics such as international law as it relates to deprivation of liberty.

<sup>84</sup> Sentence Enforcement and Supervision Act No. 2298 of 20 December 2001 – art. 2 (Principle of legality). No one may be subjected to imprisonment, confinement or pretrial detention in prison except by virtue of a written order issued by a competent judicial authority, in accordance with legal formalities and on grounds previously defined by law. Deprivation of liberty may be carried out pursuant to the execution of a sentence or as a personal precautionary measure ordered in accordance with the law. The only limitations on the rights of inmates are those that result from sentencing and those provided for in the present Act; no other limitations are applicable.

**Training of public servants – article 23**

146. The Bolivian police force ensures the internal and external security of prisons. Police instructors specializing in human rights and accredited by the National Human Rights Directorate offer training courses on the human rights of persons deprived of liberty for officials serving in the National Directorate of Prison Security.

147. In addition, the Ministry of the Interior, the National Police Command and the International Committee of the Red Cross concluded an inter-agency agreement on the provision of training in human rights and prison security for personnel working in Bolivian prisons from 2012 to 2015 to improve police procedures, techniques, training and practice and to bring them into line with international standards on the use of force and firearms.

148. The following is a breakdown at the national level of the police personnel who undertook training in human rights in 2012:

*Bolivian police personnel who undertook training in human rights (2012)*

Month	La Paz		Santa Cruz		Cochabamba		Sucre		Potosí	
	No. of police personnel	No. of events	No. of police personnel	No. of events	No. of police personnel	No. of events	No. of police personnel	No. of events	No. of police personnel	No. of events
January										
February										
March										
April	41	1	165	3			30	1		
May										
June			65	2						
July					25	1				
August			85	1	61	1			225	2
September	63	2			29	1			50	1
October										
November										
December										
<b>Total No. of participants</b>	<b>104</b>		<b>315</b>		<b>115</b>		<b>30</b>		<b>275</b>	
<b>Total No. of events</b>		<b>3</b>		<b>6</b>		<b>3</b>		<b>1</b>		<b>3</b>

*Bolivian police personnel who undertook training in human rights (2012)*

Month	Oruro		Tarija		Beni		Pando	
	No. of police personnel	No. of events	No. of police personnel	No. of events	No. of police personnel	No. of events	No. of police personnel	No. of events
January								
February		21		1				
March		105		5				
April		153		4				
May								
June				98		2		
July				33		1		
August		56		1				
September				66		1		
October								

*Bolivian police personnel who undertook training in human rights (2012)*

Month	Oruro		Tarija		Beni		Pando	
	No. of police personnel	No. of events	No. of police personnel	No. of events	No. of police personnel	No. of events	No. of police personnel	No. of events
November								
December								
<b>Total No. of participants</b>	<b>335</b>		<b>197</b>		<b>-</b>		<b>-</b>	
<b>Total No. of events</b>		<b>8</b>		<b>4</b>		<b>-</b>		<b>-</b>

Source: National Police Command.

149. Police investigators from the Crime Squad undergo vocational training at Mariscal Antonio José de Sucre University, where they specialize in the investigation of criminal offences, including the offence of enforced disappearance.

150. Additionally, the Armed Forces constantly organize training and awareness-raising events on human rights in military institutes and units as a fundamental part of their institutional policy.

151. The curriculum taught in military institutes include modules on human rights and international humanitarian law, which are mandatory and assessed, and the military training programmes followed by military units include modules on human rights and international humanitarian law.

152. A Directorate General for Human Rights and Interculturality in the Armed Forces was established under the Ministry of Defence. It has the following duties:<sup>85</sup>

“(e) Formulating and proposing policies and international agreements to promote a culture of peace and the right to peace, (...);

(f) Promoting and coordinating the defence of human rights, social inclusion, gender equality, equality of opportunities, transparency, and interculturality in the Armed Forces, as well as their adherence to the principles and values of the Plurinational State of Bolivia.”

153. In 2016, the Ministry of Defence, through the Directorate General for Human Rights and Interculturality in the Armed Forces, conducted the Human Rights and International Humanitarian Law Education and Training Programme, during which a total of 24 class hours were spent on the topic of enforced disappearance within the framework of the Convention, which successfully rose awareness of the issue among 370 military personnel, including high-ranking officers, subordinate officers, junior officers and sergeants, in La Paz, Cobija and Sanandita, as shown in the following table:

*Training of Armed Forces personnel through the Human Rights and International Humanitarian Law Education and Training Programme (2016)*

Force	1st course, La Paz (19–21 April)	2nd course, Cobija (1–3 June)	3rd course, Sanandita (18–20 July)	Total
Army	11	60	105	178
Bolivian Air Force	26	57	2	83
Bolivian Navy	50	59	0	109
<b>Total</b>	<b>87</b>	<b>176</b>	<b>107</b>	<b>370</b>

Source: Ministry of Defence.

<sup>85</sup> Art. 39 (e) and (f) of Supreme Decree No. 29894 of 7 February 2009 on the Organizational Structure of the Executive Branch of the Plurinational State.

154. The State Prosecutor Training College has placed emphasis in its curriculum on training prosecutors on the topic of enforced disappearance through a series of competency-based modules.

155. With respect to the case of *Ibsen Cárdenas and Ibsen Peña*<sup>86</sup> v. *Bolivia*, the Attorney General's Office issued an instruction<sup>87</sup> directing the Public Prosecution Service Training Institute to introduce a training programme relating to enforced disappearance. Accordingly, the Public Prosecution Service Training Institute drafted a training programme on enforced disappearance, in accordance with operative paragraph 13 of the international judgment made in the case of *Ibsen Cárdenas and Ibsen Peña v. Bolivia* of 1 September 2010, reflecting the Bolivian State's commitment to complying with that judgment. The Bolivian State is continuing its efforts to locate the remains of Mr. José Luis Ibsen Peña.

156. The Public Prosecution Service provides public criminal prosecution services and thus plays a role in the Bolivian State's crime policy. It also provides expert witnesses and forensic services through the Forensic Investigation Institute, which may solicit other laboratories and national or international police, forensic and scientific and technical bodies for assistance in the investigation of offences. Recently, emphasis has been placed on the Public Prosecution Service's third essential service, which is providing support, assistance and protection for victims.

157. All cases that come to the attention of the Public Prosecution Service are investigated by state prosecutors. The following instructions have been issued in that regard (annex VII):<sup>88</sup>

- (a) Instruction No. 249/2009 on investigation into the case of Renato Ticona;<sup>89</sup>
- (b) Instruction No. 538/2009 requiring information on cases of enforced disappearance requested by the Permanent Human Rights Assembly to be provided;
- (c) Instruction No. 726/2009 on investigation into cases relating to enforced disappearance, ill-treatment and torture or bodily harm linked to dictatorships;
- (d) Instruction No. 827/2009 directing prosecutors assigned to appeals to participate in the investigation of enforced disappearances and crimes against humanity, specifically the case of Renato Ticona;
- (e) Instruction No. 955/2009 on the application of the offence of enforced disappearance according to the jurisprudence of the Supreme Court of Justice and the standards of the Inter-American Court of Human Rights;
- (f) Instruction No. 615/2010 on the adoption of international standards set by the United Nations for the investigation of enforced disappearances and offences relating to human rights violations;
- (g) Instruction No. 697/2010 directing legal action and proceedings to go ahead in the case of *Trujillo – Ibsen*;<sup>90</sup>
- (h) Instruction No. 843/2011 on investigation into the case of Juan Carlos Flores Bedregal;<sup>91</sup>

<sup>86</sup> Enforced disappearances that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime (the military dictatorship of Hugo Banzer Suárez from 1971 to 1978).

<sup>87</sup> Instruction No. 833/2010 of 8 October 2010.

<sup>88</sup> Annex VII: Information on the measures taken by the Public Prosecution Service pursuant to the International Convention for the Protection of All Persons from Enforced Disappearance, provided by the Attorney General's Office in CITE/FGE/RJGP/DGFSE Note No. 027/2013 relating to the existence of, or steps undertaken to establish, mechanisms to conduct investigations, locate victims and, in the case of death, locate and return their mortal remains to relatives.

<sup>89</sup> Case of enforced disappearance that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime (the military dictatorship of Luis García Meza from 1980 to 1981).

<sup>90</sup> Enforced disappearances that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime (the military dictatorship of Hugo Banzer Suárez from 1971 to 1978).

<sup>91</sup> Case of enforced disappearance that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime (the military dictatorship of Luis García Meza from 1980 to 1981).

- (i) Instruction No. 922/2011 on investigations into enforced disappearances;
- (j) Instruction No. 356/2012 on a workplan for the Ibsen enforced disappearance case.<sup>92</sup>

### **The right of the victim to know the truth and to obtain reparation and compensation**

#### **Article 24**

158. With regard to measures taken to establish mechanisms to ensure the right to know the truth regarding the circumstances of enforced disappearances and the fate of disappeared persons, a Truth Commission was established pursuant to Act No. 879 of 23 December 2016:

“... to investigate cases of murder, enforced disappearance, torture, arbitrary detention and sexual violence – considered to be grave human rights violations, committed with political or ideological motives – that occurred in Bolivia between 4 November 1964 and 10 October 1982.” (Annex VIII)<sup>93</sup>

159. The Truth Commission is composed of five members who receive no remuneration, chosen for their proven impartiality, professionalism, ethical conduct and personal integrity and their commitment to the promotion of human rights, as well as their knowledge of the situation during the period covered by article 1 of Act No. 879. The members were appointed by the President of the Plurinational State of Bolivia on 21 August 2017. They are all human right activists and notable figures in the struggle for democracy<sup>94</sup> (annex IX).<sup>95</sup>

160. According to article 4 of the above-mentioned Act, the Truth Commission has the following functional structure:

“... ”

- A plenary committee composed of five members
- A president, elected by an absolute majority of the members of the plenary committee for the duration of the Commission’s mandate
- A technical secretariat, comprising a technical support team headed up by an executive secretary, responsible for the operational and technical aspects of investigations”<sup>96</sup>

161. According to article 6 of the above-mentioned Act, the Truth Commission has the following duties:

“... ”

1. Entering private buildings, including former safe houses and current and former places of deprivation of liberty, subject to authorization from a competent authority, where necessary.
2. Soliciting and receiving testimonies from victims and members of their families and the instigators and perpetrators of crime, as well as accessories before the fact, accomplices and accessories after the fact, through interviews, hearings or

<sup>92</sup> Case of enforced disappearance that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime (the military dictatorship of Hugo Banzer Suárez from 1971 to 1978).

<sup>93</sup> Annex VIII: Act No. 879 of 23 December 2016 on the Truth Commission.

<sup>94</sup> Supreme Resolution No. 21933 of 21 August 2017, through which the following citizens were appointed as members of the Truth Commission: Edgar Fidel Ramírez Santiesteban, Eusebio Gironda Cabrera, Nila Heredia Miranda, Teodoro Barrientos Céspedes and María Isabel Viscarra Quezada.

<sup>95</sup> Annex IX: Supreme Resolution No. 21933 of 21 August 2017, through which the members of the Truth Commission were appointed.

<sup>96</sup> Act No. 106: “The present amends Act No. 879 of 23 December 2016 on the Truth Commission – Article 2 (I) (amendments). Article 4 (I) (3) of Act No. 879 of 23 December 2016 on the Truth Commission is amended to include the following text: ‘3. A technical secretariat, responsible for the operational and technical aspects of investigations.’”

other means, and requesting security measures for such persons if their lives or physical integrity are endangered. The Commission may convoke public hearings for the purpose of receiving information.

3. Compiling, analysing and systematizing information that could contribute to uncovering the truth surrounding grave violations of human rights and their alleged perpetrators with a view to facilitating prosecution by the competent authorities.

4. Where necessary, reviewing existing documentation from criminal proceedings opened into grave violations of human rights that occurred during the period covered by article 1 of the present Act, or requesting that closed cases be reopened by the competent authorities.

5. Coordinating activities with public and private entities and international bodies for the purpose of locating and identifying the remains of victims of enforced disappearance and returning them to their relatives.

6. Preparing and signing arrangements and agreements with specialized technical entities with a view to achieving the Commission's objectives.

7. Recommending action or measures to design public policies to ensure the satisfaction of victims and members of their families not provided by the perpetrators or the State.

8. Recommending legislative and institutional reform to prevent future violations of human rights in the country.

9. Drafting and adopting its rules of procedure.

10. Drafting and adopting its workplan and schedule of activities.

11. Fulfilling its mandates as established by the present Act.”

162. Pursuant to article 14 of Act No. 879, as amended by Act No. 168, the mandate of the Truth Commission shall last for 24 months (two years). It may, in extraordinary circumstances, be extended by supreme decree for a maximum of 12 months.

163. Act No. 1068 also amended article 15 (Funding) of Act No. 879, which now establishes that the Commission's operational expenditure shall be funded through:

- “(a) Resources from the National Treasury, according to financial availability;
- (b) Internal and external donations;
- (c) Other sources of funding.”

164. Article 1 (Purpose) of Supreme Decree No. 3590 of 13 June 2018 establishes that: “The purpose of the present Supreme Decree is to establish the Truth Commission as a decentralized public institution.”

165. With regard to mechanisms for conducting investigations and locating victims, the Public Prosecution Service has adopted international standards on applicable procedures. Through the Forensic Investigation Institute, it undertakes to recover and identify mortal remains and/or skeletal remains using forensic genetics, medicine, anthropology, biology, odontology and chemistry.

166. After the restoration of democracy, former president Hernán Siles Suazo issued Supreme Decree No. 241 of 28 October 1982, which provided for the establishment of the National Commission for the Investigation of Enforced Disappearances for the sole purpose of investigating cases of enforced disappearance that occurred between 1964 and 1982. However, the Commission was deactivated before the completion of its mandate.

167. Subsequently, in the light of the Declaration on the Protection of All Persons from Enforced Disappearance and resolution 2002/41 of the United Nations Commission on Human Rights, in response to a request from the Asociación de Familiares de Detenidos, Desaparecidos y Mártires por la Liberación Nacional de Bolivia to establish a commission of inquiry to investigate cases of enforced disappearance having occurred during dictatorial regimes and in view of the State's commitment to complying with international demands

regarding the enforced disappearance of José Carlos Trujillo Oroza,<sup>97</sup> son of Ms. Gladys Oroza de Solón Romero, the Inter-Agency Council of Inquiry on Enforced Disappearances was established pursuant to Supreme Decree No. 27089 of 18 June 2003 and tasked with following up on the decisions of international human rights bodies and processing information that may lead to the discovery of the remains of victims of enforced disappearance.

168. In October 2013, an agreement on inter-agency cooperation was concluded between the Attorney General's Office, San Andrés University and the Inter-Agency Council of Inquiry on Enforced Disappearances with a view to coordinating joint activities in relation to the investigation of cases of enforced disappearance that occurred between 4 November 1964 and 10 October 1982 through field visits, the recovery and identification of remains in suspected burial sites and other appropriate measures.

169. Geo-referencing was carried out as part of the agreement and the search for, surveying and identification of possible burial sites of victims of enforced disappearance were narrowed down to the areas of Teoponte and Mapiri in the department of La Paz,<sup>98</sup> Vinto in the department of Oruro, and Santa Cruz, which were selected for excavation and the exhumation of possible undiscovered remains.

170. To date, the Inter-American Court of Human Rights has issued three judgments against Bolivia regarding enforced disappearances in relation to the cases of *Trujillo Oroza*, *Ticona Estrada*, and *Ibsen Cárdenas* and *Ibsen Peña*, in which a series of measures of redress were ordered in favour of the victims. They included compensation for material and immaterial damages and other forms of redress according to each case. Almost all of these measures have been carried out by the State (annex X).<sup>99</sup>

171. A system for the administration of records of enforced disappearances was established to house information gathered through investigations involving testimonies obtained from witnesses to the events that occurred between 1964 and 1982, as well as documentary information such as texts, press publications and archives.

172. Since the establishment of the Inter-Agency Council of Inquiry on Enforced Disappearances in 2013, the Public Prosecution Service has returned the skeletal remains of 17 disappeared persons<sup>100</sup> to their relatives. During excursions to the region of Teoponte between 2009 to 2011, the skeletal remains of the following persons subjected to enforced disappearance by the Government of Alfredo Ovando Candia (1970) were discovered, identified and returned to their relatives: Eloy Mollo Mamani, Delfín Mérida Vargas, Francisco Imaca Rivero, Rafael Dimas Antezana Egüez, Estanislao Villca Colque, Herminio Villca Colque, Bustos Aranibar, Fabio Barba Rincón, Gonzalo Rojas Paredes, Alberto Caballero Medinaceli and Luís Barriga Luna.

173. Similarly, in 2013, remains were exhumed from the General Cemetery in La Paz and were analysed, resulting in the identification of Mr. Hugo Bohórquez Fernández and the five sets of skeletal remains discovered in the mausoleum of the Asociación de Familiares de Detenidos, Desaparecidos y Mártires por la Liberación Nacional de Bolivia mentioned in paragraph 104 of the present report.

174. Supreme Decree No. 29851 of 10 December 2008 provided for the adoption and implementation of the “Bolivia: Dignity for a Good Life” National Human Rights Action Plan 2009–2013, which included a chapter on the right to the truth, as well as for the establishment of the National Human Rights Council. In 2008, the remains of Mr. Rainer Ibsen Cárdenas were located, identified and returned to his relatives.

<sup>97</sup> Case of enforced disappearance that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime (the military dictatorship of Hugo Banzer Suárez from 1971 to 1978).

<sup>98</sup> Case of enforced disappearance that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime (the military dictatorship of Alfredo Ovando Candia from 1966 to 1999).

<sup>99</sup> Annex X: Compliance by the Bolivian State with judgments issued by the Inter-American Court of Human Rights in relation to the cases of *Trujillo Oroza*, *Ticona Estrada*, and *Ibsen Cárdenas* and *Ibsen Peña*.

<sup>100</sup> Enforced disappearances that occurred between 4 November 1964 and 10 October 1982 under a dictatorial regime (the military dictatorship of Alfredo Ovando Candia from 1966 to 1999).

175. The National Human Rights Council, through resolution No. 02/2015 of 3 March 2015, adopted the Plurinational Policy on Human Rights 2015–2020, which incorporates the guidelines set out in the Constitution and focuses on rights in accordance with the Patriotic Agenda 2025. It also incorporates the recommendations issued to the Plurinational State of Bolivia by treaty bodies and committees established under international agreements, which, by virtue of the principle of *pacta sunt servanda*, are mandatory. The strategic axis focusing on civil and political rights within the Plurinational Policy on Human Rights 2015–2020 includes measures relating to the right to truth.

176. The Bolivian State has no ante-mortem data on disappeared persons and members of their families. However, biological material can be stored in facilities managed by the Evidence Division of the Forensic Investigation Institute.

177. With respect to compensation and redress for victims, article 113 of the Constitution provides that: “I. Victims of rights violations are entitled to obtain compensation, redress and reparation for damages in a timely fashion.” This constitutional provision is reflected in the mechanisms provided for under the Code of Criminal Procedure, such as effective preventive measures, and in the scope of the Criminal Code, which provides for restitution, redress and compensation.

178. Article 91 of the Criminal Code establishes that civil liability extends to:

- “Restitution of the goods of the aggrieved party, which must be returned, even if they are in the possession of a third party.
- Redress for any damage caused.
- Compensation for any damage caused to the victim, his or her family or a third party to a reasonable sum set by the judge in the absence of conclusive proof. Compensation must always cover the expenses incurred by the victim for his or her treatment, recovery and rehabilitation.”

179. In addition, Act No. 2640 of 11 March 2004 provided for the establishment of a compensation procedure for persons subjected to political violence by agents of unconstitutional Governments between 4 November 1964 and 10 October 1982.

180. Article 7 of the implementing regulations of Act No. 2640, adopted through Supreme Decree No. 28015 of 22 February 2005, provided for the establishment of a certification procedure. The implementing regulations were subsequently amended by Supreme Decree No. 29214 of 2 August 2007, which set new deadlines and amended the procedure such that potential beneficiaries must meet a set of requirements for the certification of acts giving rise to compensation, officially disseminated on 12 August 2007.

181. The minimum requirements for the certification of acts giving rise to compensation were officially published in a national newspaper on 2 August 2007. For the act of enforced disappearance, the following was required:

- The victim’s original birth certificate (or the victim’s original baptism certificate, if he or she was born before 1942)
- The original birth certificates of the victim’s children or parents
- An original marriage certificate or original official family record book
- If on behalf of a third party, proof of special and sufficient power of attorney
- Bibliographical publications and/or publications from the written press
- Written statements from witnesses. (Where no publications exist, or if the existing publications do not provide sufficient detail regarding the case in question, statements from witnesses made before a competent authority are required.)

182. Within the framework established through Act No. 2640, 63 requests for the certification of acts of enforced disappearance giving rise to compensation were submitted to the now defunct National Commission on Compensation for Victims of Political Violence.

183. In accordance with the procedure established pursuant to Act No. 2640 and Act No. 4069 of 27 July 2009, and their implementing regulations adopted through Supreme Decree No. 28015 and Supreme Decree No. 29214, the stages of the certification process were as follows:

- (a) Receipt of requests, classification, registration and verification of supporting documentation;
- (b) Certification granted through a decision issued by the now defunct National Commission on Compensation for Victims of Political Violence, until its dissolution pursuant to article 1 of Act No. 4069;
- (c) Certification granted by the Technical Certification Commission, since its appointment in August 2009, for requests left unresolved by the now defunct National Commission on Compensation for Victims of Political Violence through the issuance of appealable decisions, pursuant to article 3 of Act No. 4069;
- (d) Ministerial Resolution No. 195/2010 of 1 June 2010, issued by the then Ministry of Justice, requiring potential beneficiaries to present their appealable decisions before 9 July 2010, published and broadly disseminated for the information of applicants;
- (e) Receipt of requests for reconsideration from applicants whose requests had been rejected upon initial consideration, pursuant to article 20 (1) of Act No. 2640;
- (f) Issuance of definitive decisions upon reconsideration by the Technical Certification Commission regarding the admissibility or inadmissibility of requests, pursuant to article 20 (II) of Act No. 2640;
- (g) Ministerial Resolution No. 018/2011 of 2 February 2011, issued by the then Ministry of Justice, requiring potential beneficiaries to submit their decisions upon reconsideration before 29 March 2011, published in written form and circulated nationally for the information of applicants;
- (h) Notification of decisions upon reconsideration and finalization of the certification procedure.

184. Certification was granted to 1,714 beneficiaries. Of those, 7 requests for certification in relation to acts of enforced disappearance giving rise to compensation were certified.

185. Act No. 2640<sup>101</sup> establishes that, according to the degree of police violence suffered and subject to technical and legal certification, victims have a right to an exceptional and definitive compensation payment of a maximum value equal to 300 times the national minimum salary.

186. Act No. 238 of 30 April 2012, which amends article 7 (a) of Act No. 2640 of 11 March 2004, authorized the National Treasury to disburse 20 per cent of the total amount of compensation due by the Bolivian State to victims of police violence, equivalent to US\$ 3,600,000, in the form of unique and definitive payments, in accordance with article 12 (k) of Supreme Decree 28015 of 22 February 2005 and pursuant to Act No. 238 of 30 April 2012 amending Act No. 2640 of 11 March 2004.

187. With regard to payments made in compensation for acts of enforced disappearance giving rise to compensation, article 2 (h) of Supreme Decree No. 1211 of 1 May 2012 establishes that acts of enforced disappearance giving rise to compensation qualify for the maximum amount of compensation.

<sup>101</sup> Act No. 2640 of 11 March 2004 – art. 7. (Exceptional compensation). According to the degree of police violence suffered and subject to technical and legal certification, the victim shall have a right to an exceptional and definitive compensation payment of a maximum value equal to 300 times the national minimum salary, calculated as follows: Between one day and one year, the maximum value of compensation shall be equal to 60 times the minimum salary; between one year and two years, the maximum value of compensation shall be equal to 120 times the minimum salary; two years or more, the maximum value of compensation shall be equal to 300 times the minimum salary. If an act giving rise to compensation involves torture, bodily harm or the certifiable infliction of disability, this shall be considered an aggravating factor within each of the categories of calculation listed above, in accordance with the implementing regulations.

188. The Social Services Support Unit of the Ministry of the Presidency, in accordance with Supreme Decree No. 1211 of 1 May 2012,<sup>102</sup> is currently disbursing compensation to the beneficiaries of victims of enforced disappearance in accordance with the established legal requirements.

189. Regarding moral redress, article 5 of Act No. 2640 establishes that:

“The National Congress shall grant public honours to all victims of political violence in Bolivia or to their legal successors, in accordance with transparent and fair criteria relating to eligibility, certification as a victim, degree of consanguinity for legal successors, and procedures for verifying acts considered political violence ....”

190. Article 12 (e) of Supreme Decree No. 28015 establishes that one of the duties and powers of the now defunct National Commission on Compensation for Victims of Political Violence was to coordinate with the National Congress (Plurinational Legislative Assembly) with regard to the conferral of the honours provided for in article 5 of Act No. 2640.

191. With regard to the conferral of honours (moral compensation), the Ministry of Justice and Institutional Transparency has submitted a list of victims of police violence to the Plurinational Legislative Assembly of Bolivia for processing.

#### **Protection of children and adolescents – article 25**

192. Article 60 of the Constitution states that:

“It is the duty of the State, society and the family to guarantee that priority is given to the best interests of the child or adolescent. These interests comprise the pre-eminence of his or her rights and his or her entitlement to priority protection and assistance under all circumstances, to priority access to public and private services, and to swift and timely access to the administration of justice with the assistance of specialized staff.”

193. When a child goes missing, the Public Prosecution Service, in accordance with the article 188 of the Children and Adolescents Code, coordinates with the Office of the Ombudsman for Children and Adolescents, the State Department of Social Welfare and the Bolivian police force to conduct all necessary investigations. If the child is found, the Public Prosecution Service coordinates with municipal and departmental public bodies for the protection of children to return him or her to the family of origin.

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<sup>102</sup> Supreme Decree No. 1211 of 1 May 2012 – art. 4. (Individual unique and definitive payments funded by the National Treasury) I. The Ministry of Justice shall submit to the Social Services Support Unit of the Ministry of the Presidency the ministerial resolution and supporting documentation relating to the certification granted in order that a unique and definitive payment funded by the National Treasury may be made to any beneficiaries.