



## International Covenant on Civil and Political Rights

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### Human Rights Committee 109th session

#### Summary record of the 3011th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 16 October 2013, at 10 a.m.

*Chairperson:* Sir Nigel Rodley

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*The meeting was called to order at 10.10 a.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Third periodic report of the Plurinational State of Bolivia (continued)*  
(CCPR/C/BOL/3, CCPR/C/BOL/Q/3 and Add.1)

1. *At the invitation of the Chairperson, the delegation of the Plurinational State of Bolivia took places at the Committee table.*
2. **Ms. Ayllón Quinteros** (Plurinational State of Bolivia), responding to the questions posed by the Committee at the end of the previous meeting, explained that, despite the transition from an inquisitorial to an accusatory justice system several decades earlier, little progress had been made in improving access to justice, expediting criminal procedures or reducing overcrowding in prisons, where 80 per cent of detainees were awaiting trial. The singular model of justice had failed, and the system had collapsed. Over the past 12 years the Government had therefore been implementing a new, pluralistic model, in which both ordinary justice and indigenous campesino justice, as well as specialized legal systems, enjoyed equal status.
3. To facilitate the process, the Government had arranged a series of workshops and seminars for indigenous authorities and communities, as well as prosecutors, judges and lawyers working in the ordinary system, on the different components of the new model. University curricula still needed to be updated, however, because they currently prepared students to practice only ordinary law. Training also played a key role in the Government's efforts to stop lynching. Lynching was clearly prohibited under the Constitution, and work had been done to raise awareness of that prohibition among authorities and the population at large, especially in communities where lynchings had occurred.
4. The Government had taken decisive action to reduce prison overcrowding. Presidential amnesties and pardons had been issued for those in pretrial detention for petty offences, and the Code of Criminal Procedure was being amended so that persons with no fixed place of residence or employment charged with minor offences would no longer be automatically remanded in custody pending trial, which amounted to the criminalization of poverty. The severe delays caused by the problems with setting up citizens' courts and other bottlenecks in the justice system were also being addressed.
5. Huge strides had been made in tackling discrimination, as reflected in the diverse backgrounds of the members of the current National Assembly and the admission of indigenous youths to the Armed Forces and universities. Those institutions had previously been accessible only to the wealthy elite. Discrimination had been made an offence under the law, punishable with administrative sanctions and prison sentences.
6. **Mr. Cox Mayorga** (Plurinational State of Bolivia), referring to a document without a symbol circulated in the conference room, said that, under the Constitution, the courts were obliged to apply the Covenant. The fact that no complaints had been filed under the Optional Protocol to the Covenant was not due to any restrictions imposed by the State. On the contrary, the State had disseminated the contents of the instruments widely since 2010 as part of the preparations for the submission of its third periodic report to the Committee.
7. Lynching was not permitted in any jurisdiction and was treated as murder or attempted murder. Nevertheless, there had been between 14 and 44 lynchings each year in the period 2006–2010, mostly in La Paz. To tackle the issue, 1,000 indigenous judges had attended courses on the right to life; 15,000 persons had received training in the delimitation of jurisdictions, and the Government was taking steps to expedite criminal procedures.

8. Legislation had been passed to simplify the procedures whereby victims of the political violence perpetrated by the State between 1964 and 1982 could obtain legal redress. Free medical attention had also been made available to such victims, and assistance was provided for burials. Agreements had been reached with municipalities to name public spaces or buildings, such as streets, parks and schools, after victims of the political violence and to put up commemorative plaques in places where specific events had happened. A truth commission had also been established to shed light on the enforced disappearances that had occurred during the period in question. As for the victims of the violence in Pando and Sucre, one-off payments had been made by the Government to the victims' families.

9. There were no reliable statistics on human trafficking because cases were often classified as other types of offences. A new law to combat slavery and trafficking in persons had, however, been passed in 2012. In addition, a special unit had been set up to investigate cases of human trafficking and a protocol was being developed for handling trafficking victims. With regard to the protection of the Guaraní people, an interministerial plan had been implemented to address their needs, and their situation had improved considerably.

10. **The Chairperson** said that, while the delegation had provided extensive information about the State party's legislation, policies and institutions, it had said very little about specific cases in which justice had been served. He urged the delegation to explain how the legal system was working in practice, and how it complied with the Covenant. Otherwise, the Committee would be forced to draw its own inferences based on the lack of information provided.

11. **Mr. Rodríguez-Rescia** thanked the head of delegation for her frank admission that poverty was being criminalized in the State party. A more comprehensive solution to prison overcrowding was needed. He was concerned in particular about children over 6 years of age who were not in conflict with the law but were nevertheless living in prison with a parent deprived of liberty. There were high levels of corruption in the judiciary, which undermined the due process guarantees required under article 14 of the Convention. He asked what measures the Government was taking to combat that corruption.

12. He wished to know whether the restriction placed on lawyers who had defended persons accused of crimes against national unity would be removed, allowing them to present their candidacy for judicial functions. He wished to know more about the procedure by which the Plurinational Constitutional Court took final decisions on cases falling within the jurisdiction of native indigenous campesino courts. Noting that an additional 20 public defenders were to be hired thanks to assistance from the Danish international cooperation agency, he wished to know whether the Government planned to continue to employ them once that cooperation ended.

13. **Mr. Neuman**, referring to the Committee's general comment No. 32, asked what basic strategy was in place to ensure the full compatibility of customary law with the principles of the Covenant, and whether the judges of native indigenous campesino courts were trained to implement the Covenant. He wished to know whether the Plurinational Constitutional Court could review decisions handed down by native indigenous campesino courts if those courts applied rules that were in violation of the Covenant. He asked whether the Government planned to extend the geographic coverage of the justice system to cover every municipality in the country, and if so, when it expected to achieve that goal. He wished to know why, after so many years, the State party had still not established a legal framework for lodging claims of conscientious objection to military service, and when it planned to do so.

14. **Mr. Salvioli** invited the delegation to provide in writing, within the next 48 hours, information on measures to fight racism, on convictions for acts of racial hatred, on

whether those responsible for the murder in 2012 of two female town councillors had been brought to justice, on the classification of femicide as an offence in the Criminal Code and on measures to prevent the excessive use of force, as well as statistics on domestic violence in the State party.

15. He requested information on the number of individuals who had been tried and convicted on charges of corruption. He wished to know how the policy on corruption in the police force was being effectively implemented. About 20 NGOs had informed the Committee that the Government had not taken any steps to disseminate information about the Covenant and that they had not been involved in the drafting of the State party's report. He therefore wished to know more about the process by which NGOs were invited to participate, and how the delegation thought that process might be improved.

16. **Mr. Vardzelashvili** welcomed the decision of the Plurinational Constitutional Court declaring as unconstitutional the provision of the Criminal Code criminalizing insults directed at public officials, and he asked whether the charges faced by members of the opposition under that provision had been dropped. According to information before the Committee, Act No. 045 on the Elimination of Racism and All Forms of Discrimination, while aiming to protect individuals from racism, included provisions that could be broadly interpreted in a way that restricted the freedom of expression of journalists, who could face fines or prison sentences and have their licences suspended. He asked the delegation to comment on that matter, citing two cases in which journalists had been charged with offences under the Act. Harassment of journalists still continued, and there were reports that high-ranking public officials had intimidated journalists and human rights defenders and openly criticized their work.

17. The law governing the registration of social organizations was open to wide interpretation that could result in the revocation of NGOs' registration and termination of their funding. He asked if the delegation could assure the Committee that its Government was not placing unnecessary restrictions on civil society organizations or impeding the work of human rights defenders. He requested updated information on efforts to remove children over 6 years of age from prisons where their parents were deprived of their liberty and to provide them with appropriate care elsewhere. He asked whether guidelines on the placement of children in prisons had been established, and whether they were ever placed in maximum security prisons. He requested information on measures to prevent and punish the exploitation of minors for prostitution, pornography, paedophilia and sex tourism, and on the outcome of the inspections conducted in workplaces to detect child labour.

18. **Ms. Waterval** noted that the State party had not replied to paragraph 25 of the list of issues concerning Act No. 031, the Framework Act on Autonomous Entities and Decentralization. She requested further information about how the consultation process with the indigenous and aboriginal campesino nations and peoples was implemented, including specific examples. It was unclear to her what annexes were being referred to in paragraph 275 of the written replies to the list of issues (CCPR/C/BOL/Q/3/Add.1). She requested further information about the implementation of Act No. 222 establishing a procedure for consultation on the construction of a road through the Isiboro Sécure National Park and Indigenous Territory (TIPNIS).

19. **Ms. Chanet** said that what the State party viewed as a problem of prison overcrowding should in fact be viewed as a problem with the State's criminal policy, given that 80 per cent of the prison population was in pretrial detention. It did not make sense to speak of pardoning people who had not been convicted. The proposed plans to reduce the prison population seemed to jeopardize the rights of victims and the punishment of crime. She asked what options were available to establish judicial control over individuals accused of offences without placing them in pretrial detention. She wished to know at what stage of the proceedings the detainees' lawyers became involved, what legal remedies were

available to detainees who wished to take proceedings before a court so that it might decide on the lawfulness of their detention, and which court was competent to make such decisions.

20. **Mr. Bouzid** asked the delegation to respond to reports that lawyers often acted as middlemen between their clients and corrupt judges seeking bribes, or abandoned clients who could not afford to pay. He also asked whether national law required legal aid to be provided for those in need.

*The meeting was suspended at 11.50 a.m. and resumed at 12.10 p.m.*

21. **Ms. Ayllón Quinteros** (Plurinational State of Bolivia) said that her delegation had provided the Committee with extensive information on legislation because her country was in the process of building a new system through the enactment of laws that would guarantee all Bolivians the full exercise and enjoyment of their rights under the Covenant. Children up to the age of 6 were permitted by law to live with their parents in prison, although the situation had degenerated in recent years and many children over 6 had been found to be living in San Pedro de La Paz prison. Following meetings between the Ministry for Justice, the Public Prosecution Service and the municipal government of La Paz, all children over the age of 6 had been removed from the prison, although some children under 6 were still living there. Significant progress in tackling the problem, for which responsibility was shared by all levels of government, had also been achieved in other areas of the country.

22. Pardons were applicable to persons who had been sentenced, particularly those with children and the elderly. The amnesty procedure applied to persons who had not been sentenced and was intended for first-time offenders who had committed trifling offences. Such persons were legally required to be held in pretrial detention. Amnesty was only one measure that was intended to tackle prison overcrowding; further measures included the drafting of new legislation.

23. Indigenous campesino justice had always existed in Bolivia but had not previously enjoyed protection under the Constitution. Indigenous campesino groups were subject to the provisions of the Constitution and all other norms of the State; indigenous campesino norms and judgements were therefore required to comply with the Constitution. Her Government viewed the indigenous justice system as the justice system of the first peoples of Bolivia and a means of respecting the rights of indigenous persons, rather than a system of traditional or customary justice. Training on justice was being developed for all indigenous populations.

24. The Jurisdiction Demarcation Act had originally been intended to establish one text reflecting indigenous legislation and had given rise to much debate among NGOs. However, since her country comprised 36 nationalities and each of the three major groups — Quechua, Guaraní and Aymara — had various subgroups, each with their own system, that had not been possible. Judges from the ordinary justice system were often not needed because the indigenous system was already in place. Indigenous justice was being strengthened in accordance with the fundamental rights set out in the Constitution and in international law.

25. The Public Prosecution Service was weak but would be strengthened, in particular through the establishment of a new body that would provide assistance and services to victims. The Danish Government was working with the Bolivian Government to establish the service and appropriate funding. A budget would also be allocated for the nomination of public prosecutors, in order to increase their number from 68 to more than 100.

26. The Plurinational Constitutional Court had ruled that the criminal offence of non-compliance should be removed from the statute book and all cases of non-compliance or contempt of court had subsequently been suspended. The policy of electing judges by

popular vote had been criticized by the opposition, mostly due to existing restrictions that prevented certain lawyers from running for election. Lawyers who were considered to have acted against the State by defending repeat offenders under the drug trafficking law were not allowed to serve the State as senior judges. The restriction applied to many lawyers because the State had lost a great number of trials under the previous administration. Noting the suggestion from the Committee that the curriculum for training lawyers should be amended, she said that the training focused on the formal and procedural rather than material aspects of law.

27. **Ms. Motoc** asked for more information on the compatibility of indigenous justice and human rights standards, such as those set out in the Covenant to protect women's rights. She also wished to know whether corruption was a problem within traditional community justice systems, particularly with regard to collective ownership — which notably existed within the Guaraní community — and how the State was tackling any corruption present in the indigenous justice system.

28. **Ms. Chanet** said that, while she welcomed the legislation that had been outlined by the delegation, it was important to note that the Committee was mainly interested in how legislative tools were applied and what difficulties the State party faced when implementing the Covenant. She asked how the central and local governments were dealing with the great number of new laws and implementing them for the benefit of all.

29. **Mr. Salvioli** asked for the delegation's comment on the binding commitment to put forward a law providing for conscientious objection to military service that had been undertaken by the State party as part of the friendly settlement of the *Alfredo Díaz Bustos* case by the Inter-American Court of Human Rights.

30. **The Chairperson**, speaking as a member of the Committee, asked for clarification of the qualifications required to stand for election as a judge. He wished to know whether the persons responsible for lynchings had been prosecuted, and if so, what the outcome of those cases had been.

31. **Ms. Ayllón Quinteros** (Plurinational State of Bolivia) said that she was not aware of any cases of corruption within the indigenous justice systems and reports indicated that the indigenous systems were efficient at resolving the problems faced by their communities. Femicide was a crime in her country and punishments had been handed down by the courts in several cases of femicide. The Constitution stipulated that all persons seeking to be elected to senior positions as judges, such as judges of the Supreme Court, should be lawyers with a minimum of eight years of professional experience. The persons involved in the lynching of the mayor of Ayo Ayo had been convicted of murder and given a sentence of 30 years. The *Alfredo Díaz Bustos* case had served as a case study for the development of the law.

32. She said that her delegation would use the suggestions made by Committee members to make further progress in many areas. Her country had entered a new era where civil and political rights formed the basis for a State where all discriminatory colonial practices had been abolished, women participated actively in decision-making and the public service worked to serve the people.

33. **The Chairperson** welcomed the commitment of the Bolivian Government to ensuring the enjoyment of civil and political rights by groups that had not always benefited from those rights in the past. He noted that the delegation had not commented on the alleged legal harassment of human rights defenders and other persons who were perceived to be unfriendly to the Government and noted that significant action was required to enforce the law and prevent lynching.

*The meeting rose at 1 p.m.*