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# **amnesty international**

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## **Bolivia**

### **Submission to the UN Universal Periodic Review**

**Seventh session of the UPR Working Group of the  
Human Rights Council**

**February 2010**



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### **Executive summary**

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:<sup>1</sup>

- Under section B, Amnesty International raises concern over the slow pace of implementation of key provisions of the new Constitution and political interference in the judiciary.
- Section C highlights Amnesty International's concerns about human rights violations, including unlawful killings, in the context of civil unrest and tension between politically opposed groups, discrimination and violence against Indigenous peoples and human right defenders, and continued impunity for human rights violations.
- In section D, Amnesty International makes a number of recommendations for action by the government to address the areas of concern.

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<sup>1</sup> Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

# Bolivia

## Amnesty International submission to the UN Universal Periodic Review

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### B. Normative and institutional framework of the State

In October 2008, Congress approved a revised text for the new Constitution. The new text was put to a nationwide referendum in January 2009 and approved with 61.43% of the vote and a turn-out of over 90%. The new Constitution, promulgated on 7 February 2009, asserts the “pluri-national” character of the Bolivian State and contains significant new provisions on economic, social and cultural rights, such as the recognition of sexual and reproductive rights, and the rights of persons with disabilities. It also envisages a system of “indigenous, native and *campesino* jurisdiction” [*jurisdicción indígena originaria campesina*]. As well as these substantive developments, it introduces structural changes regarding the judiciary, establishes an electoral branch of the State, among others, and sets up a new framework for environmental, natural resource and land issues.

The political change process driven by the government of President Evo Morales implies significant structural and cultural changes within the State. The current administration has been unable to make significant advances with implementing the Constitution or adapting existing legislation, due to the imminent handover to a new Pluri-national Legislative Assembly to be elected in December 2009. Likewise, key offices within the Bolivian State, such as the Ombudsman’s Office [*Defensor del Pueblo*] and the Prosecutor General [*Fiscal General*], have been under interim leaderships for prolonged periods.

The judicial system has long suffered from political interference and corruption, exacerbated by structural problems that have resulted in its independence being undermined, and in recent years the system has seen further erosion. As a consequence of this situation, since June 2009 the Constitutional Court has no judges and as of August 2009 the Supreme Court has only 7 out of 12 judges.

In December 2008, Bolivia adopted an ambitious national human rights action plan (*Plan Nacional de Accion de Derechos Humanos Bolivia – Para Vivir Bien, 2009-2013*), developed through a consultative process between the State and civil society.

### C. Promotion and protection of human rights on the ground

#### Constitutional reform and the political change process

Antagonism between the government and the opposition during the process of drafting the new Constitution and its possible implications for the control of Bolivia’s economic and natural resources led to confrontations, civil unrest and tensions between politically-opposed groups, some of which were violent and resulted in deaths. Those departments pursuing a strong autonomist agenda raised many objections to both the proposed texts and the process by which these were discussed.

In a recall referendum in August 2008, 67.4 per cent of voters had confirmed President Morales in his presidency for the remainder of his four-year term. However, Amnesty International is concerned that deep-rooted cultural and racial tensions are latent between the pro-autonomy movement, especially in “*media luna*” departments of Beni, Pando, Santa Cruz and Tarija, and those supporting the ruling *Movimiento al Socialismo* (MAS) party. This could generate further violence and human rights violations in the run-up to the December 2009 elections and beyond.

Implementation of the new Constitution will require significant reform and adaptation of existing laws and procedures, as well as a new law [*“ley de deslinde”*] to set boundaries between the “ordinary” and “community” jurisdictions that it establishes. Similarly, the new Constitution provides for a Pluri-national Legislative Assembly and new procedures for electing judges. Amnesty International believes that a coordinated and collaborative approach between different branches of the State is essential so that implementation of the Constitution can be carried out in a manner that is respectful of the rule of law and Bolivia’s international human rights obligations.

#### **Human rights violations during violent incidents, including unlawful killings**

Amnesty International has reported deaths and injuries of demonstrators in both Cochabamba and Sucre in January and November 2007, in the context of the politically-charged protests around the pro-autonomy and constitutional-reform processes.

More recently, clash groups (*grupos de choque*) – politically-motivated civilian groups believed to be operating under the authority of individuals allied to the opposition movement - have been involved in violence in Santa Cruz sparked by debates around departmental autonomy. In May 2008, Indigenous and *campesino* (peasant farmers) supporters of President Morales were corralled by a group of opposition activists in the city of Sucre’s main square where they were beaten, their shirts were stripped off and they were forced to burn their traditional clothing and flags and to chant slogans critical of the President.

In September 2008, between 11 and 19 people, mainly *campesinos*, were killed and around 50 others injured when violence escalated in Pando department in the run-up to a planned assembly (*ampliado campesino*) to discuss issues of local importance, such as land distribution and natural resource management in the wake of perceived threats to a recently-completed process of land titling. Since the violence, a number of national and international investigations, including research conducted by Amnesty International in August 2009, have been able to clarify what actually happened, and coincide in finding that local officials of the opposition-led prefecture and civic committee were involved in the planning and commission of violent acts. The investigations also highlighted the failure by police to stem the violence. On 12 September 2008, President Morales declared a state of emergency in Pando which remained in place for more than two months.

A series of related events also give cause for concern, such as the ill-treatment of 15 *campesinos* detained for their alleged role in the violence, and the manner in which a number of people allied to the prefecture and civic committee allegedly involved in the violence were detained and transferred to La Paz under the state of emergency and in subsequent months. Amnesty International heard allegations that these detentions were carried out with excessive use of force and lack of corresponding judicial guarantees.

Amnesty International is concerned that at the time of writing, one year after the violence, investigations have not established responsibilities for *all* violations of human rights that took place in Pando and subsequently by the fact that those responsible have not yet been brought to justice. The organisation is also concerned about threats and harassment reported by local human rights defenders and potential witnesses in the wake of the violence as well as against businesses owned by people identified with the indigenous and *campesino* movement.

### Justice and impunity

Long-standing problems in the judiciary have hindered Bolivia's fight against impunity. Amnesty International hopes that the approved reforms in the justice system are a means to consolidate its independence to ensure justice for all victims of human rights violations and fair trials for all alleged perpetrators. Amnesty International notes the imprisonment of Luis Arce Gómez, former Interior Minister under the dictatorship of Luis García Meza, who was deported to Bolivia from the US in July 2009 on the basis of a 1993 Supreme Court judgement sentencing him for his role for crimes including genocide.

In October 2008, an extradition request was filed with the US government regarding former President Gonzalo Sánchez de Lozada and two former ministers, Carlos Sánchez Berzaín and Jorge Berindoague. All have been implicated in the killings of 67 people during demonstrations in El Alto in 2003, but their extradition is still pending. In addition, several other former ministers and military officers were notified in November 2008 of charges in connection with the killings, but it is understood that four ex-ministers also on trial alongside Sánchez de Lozada have fled to Peru. Oral proceedings started in May 2009, but have been suspended several times as a result of legal challenges. While Amnesty International welcomes efforts to bring the case to justice, the process against Sánchez de Lozada and others should respect international standards on the rights of the accused and should not proceed against the accused in absentia.

Despite these developments, Amnesty International is concerned that jurisdictional battles in other key cases (namely the Pando case and the case known as the 'terrorism' case<sup>2</sup>) have marred several recent judicial processes. These could set negative precedents for the pursuit of lasting and impartial justice in the future.

Notwithstanding the historical problems faced by the justice system and the current reform process that is underway, Amnesty International hopes that these cases will be brought to justice in a manner that is respectful of the rule of law and international standards of due process. Cases such as these will be an opportunity for the current government to demonstrate its respect for the separation of powers and its political commitment to strengthening the justice system in the long term.

Delays caused by unresolved jurisdictional battles, and numerous challenges against law officers involved in politically-sensitive cases such as the Pando case, create a state of legal uncertainty that affects both victims and their relatives, as well as the alleged perpetrators. The former Prefect of Pando has been under preventive detention since September 2008, charged for his role as suspected intellectual author of the violence. His case should be clarified as a matter of urgency in order to ensure that it is adjudicated in a manner that is both timely and respectful of human rights.

In August 2009, the first results were reported of efforts to locate and identify the remains of 26 missing persons in the Teoponte area of La Paz department since the 1970s. Amnesty International welcomes the finding of the remains of five people as an essential part in the search for truth for the human rights violations of Bolivia's past. Another crucial element of this process would be the opening of archives from the period of military and authoritarian rule that could provide evidence of the abuses committed.

### Discrimination and violence against Indigenous Peoples and human rights defenders

Amnesty International is concerned at reports of racially-motivated attacks on organizations and individuals working for the rights of Bolivia's Indigenous Peoples and *campesinos*. The UN Special Rapporteur on indigenous people has observed that racist discourse, employed by some political parties and civic committee pressure groups and disseminated by some media outlets, against Indigenous Peoples at all levels of society remains prevalent.<sup>3</sup> The organisation is also concerned by the situation faced by Indigenous Guaraní families

<sup>2</sup> In which three alleged mercenaries were killed and two others were detained in April 2009 on suspicion of involvement in an alleged plot to assassinate President Evo Morales during a police operation in a hotel in Santa Cruz.

<sup>3</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen: Mission to Bolivia, A/HRC/11/11 paras. 65-73, 18 February 2009.

in the Chaco region living in a state of bondage analogous to slavery, as described by the Inter-American Commission on Human Rights, the Special Rapporteur on indigenous people, and the UN Permanent Forum on Indigenous Issues.<sup>4</sup>

For example, more than 40 people were injured in February and April 2008 when landowners and groups of armed men attacked members of the Guaraní People in Santa Cruz during the process of clarifying title deeds to traditional lands of the Guaraní. The attacks against Indigenous and *campesino* supporters of President Morales in Sucre in May 2008 by a group of opposition activists (see above) also had an apparent racist undertone.

In September 2008, the offices of several NGOs working with Indigenous and *campesino* communities were attacked in the context of autonomy and constitutional reform debates in several cities, notably Santa Cruz, and office equipment and documentation were destroyed.

### **Economic, social and cultural rights**

Despite high levels of poverty, particularly among *campesinos* and Indigenous Peoples, there have been positive developments in the area of economic, social and cultural rights both on paper and in practice. These include significant advances achieved in the new Constitution and in the introduction of programmes to improve literacy and school attendance, to address malnutrition, to increase social housing, to provide retirement pensions and to support pregnant women and those with newborn children, as well as advances reached in the titling of land in favour of *campesinos* and Indigenous Peoples. However, according to the United Nations Population Fund, Bolivia continues to have the highest incidence of maternal mortality in South America (approximately 290 per 100,000 live births).

## **D. Recommendations for action by the State under review**

### **Amnesty International calls on the government:**

#### *Constitutional reform and the political change process*

- To take all possible measures to ensure a smooth transition to the new Constitution and related national institutions, paying due respect to guarantees for the rule of law and human rights;
- To promote and encourage enhanced collaboration and coordination between the branches of the State, especially the Executive and the Judiciary, and to ensure that the Judiciary is able to fulfil its functions efficiently, independently and without political interference;
- To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

#### *Human rights violations during violent incidents, including unlawful killings*

- To expedite impartial and comprehensive investigations into all of the events surrounding the violence in Pando in September 2008 as well as other incidents, with the aim of identifying those responsible and bringing them to justice in a competent, independent and impartial court.
- To clarify the roles of the armed forces, the police and judicial authorities before, during and after the violence in Pando, including any failure to respond to or stem the violence.

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<sup>4</sup> Inter-American Commission on Human Rights, Annual Report 2008, OEA/Ser.L/V/II.134, Chapter II.D.i; Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen: Mission to Bolivia, A/HRC/11/11 paras. 50-54, 18 February 2009; UN Permanent Forum on Indigenous Issues, Mission to Bolivia: Report and Recommendations, August 2009, pp 17-19.

*Justice and impunity*

- To identify means by which the Supreme Court and the Constitutional Court can carry out their functions, especially through the designation of members of proven technical ability, moral probity and independence from any external influence;
- To implement the Rome Statute of the International Criminal Court in national law, and to bring such legislation in line with international law, including the definition of torture;
- To introduce a provision in domestic legislation on the non-applicability of statutory limitations for genocide and other crimes under international law;
- To make concerted efforts to locate and make available archives relating to human rights abuses committed during the period of military and authoritarian rule;
- To issue a standing invitation to the Special Procedures of the UN Human Rights Council to visit Bolivia.

*Discrimination and violence against Indigenous Peoples and human rights defenders*

- To investigate and take appropriate action against state officials, both regional and national, for discrimination against Indigenous Peoples;
- To ensure the prompt and full implementation of the recommendations of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, the UN Permanent Forum on Indigenous Issues, and the Inter American Commission on Human Rights.

*Economic, social and cultural rights*

- To ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- To allocate adequate resources to implement national policies to reduce maternal mortality, to remove barriers preventing poor and Indigenous women from accessing reproductive and maternal health care, including through providing language support and training of health professionals, and to provide clear and accessible information to women about their sexual and reproductive rights and right to health;
- To ensure the full and prompt implementation of the provisions to strengthen economic, social and cultural rights in the new Constitution through effective and sustainable policies at the national and local levels and through the allocation of adequate resources.

**Appendix: Amnesty International documents for further reference<sup>5</sup>**

*Amnesty International Annual Report 2009: The State of the World's Human Rights*

*Bolivia: Respect for human rights is fundamental to stop escalation of violence*, 12 September 2008

*Bolivia: Inaceptables las protestas violentas en contra de mejorar las vidas del pueblo indígena Guaraní*, 21 April 2008

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<sup>5</sup> All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/bolivia>