



**UPR Submission
Bolivia
February 2014**

I. Summary

Long-standing problems in Bolivia's criminal justice system, such as extensive and arbitrary use of pre-trial detention and long delays in trials, undermine defendant's rights and contribute to serious overcrowding in prisons. Impunity persists for serious human rights abuses committed during the country's authoritarian rule from 1964 to 1982. In addition, the administration of President Evo Morales continued to launch verbal attacks on the press, accusing critical journalists of politically motivated lies; and women and girls remain at high-risk for gender violence. Bolivia has failed to adequately implement several recommendations on these issues formulated during its 2010 UPR review, which enjoyed the government support at the time.¹

II. Human Rights Issues

Accountability for Past Abuses

In 2010, Bolivia supported several recommendations to ensure accountability for human rights abuses committed in the past, including: to take further measures to bring to justice all perpetrators of abuse in order to eradicate impunity for those who commit human rights violations (Sweden, para. 98, rec. 51), to expedite impartial investigations into the violent incidents in Santa Cruz and Pando with a view to identifying those responsible and bringing them to justice in a fair trial before an independent court (Austria, para. 98, rec. 51), and to conclude a thorough and impartial judicial investigation into the acts of violence in Pando (United Kingdom, para. 98, rec. 51).

However, Bolivia has made little progress investigating and prosecuting human rights violations committed under authoritarian governments between 1964 and 1982. A contributing factor has been the unwillingness of the armed forces to provide information that might clarify the fate or whereabouts of people killed or disappeared during this period.

Plans to create a truth commission announced by the Morales administration in 2008 have not materialized. Bolivia has failed to fulfill commitments to compensate victims of political violence during that period. A 2004 law budgeted US\$3.6 million in government funds for this purpose, which would only cover about 20 percent of the

¹ Report of the Working Group on the Universal Periodic Review, Bolivia (Plurinational State of), March 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/120/13/PDF/G1012013.pdf?OpenElement> (accessed January 17, 2014).

proposed costs. The remaining funds were to be obtained from private donors, but were never raised.

In April 2012, Congress passed a law announcing one-off payments equivalent to roughly 20 percent of the compensation amounts approved in 2004. As of December 2012, 1,418 of the 1,714 approved beneficiaries had received one of these reduced payments, according to the government. Human Rights Watch does not have more recent official statistics to report on. Many additional potential beneficiaries were reportedly rejected due to overly stringent documentary evidence required by the government commission appointed to review claims, according to an organization that groups victims.

Long delays in the trials of opposition leaders and government officials have obstructed justice for victims of violent clashes in 2008 between supporters and opponents of President Morales. Repeated changes of jurisdiction and prosecutorial inefficiency have also undermined the right of the accused to due process and a prompt trial. As of March 2014, a La Paz court was still hearing evidence in a case involving Leopoldo Fernández, former prefect of Pando department, and five local officials, charged in 2008 for their alleged roles in a September 2008 massacre in which 13 people were killed. The judge repeatedly suspended proceedings when defendants failed to appear but took few and ineffective measures to ensure future appearances.

The government has not reopened an investigation into the April 2009 killing of two Hungarians (one of Bolivian birth) and an Irishman, whom the government alleged were mercenaries involved in a separatist plot. Police shot them dead after storming their hotel rooms in Santa Cruz. Reports by an Irish government pathologist and an independent forensic consultant suggested that at least two of the victims may have been extrajudicially executed.

Due Process Violations

In 2010, Bolivia also accepted to take steps to reduce the use of pre-trial custody and to increase alternatives to imprisonment (Austria, para. 98, rec. 49), as well as to improve the independence and impartiality of the judicial system (Slovakia, Slovenia, France, Italy, and Denmark, para. 98, rec. 39).

The broad discretion that judges enjoy in ordering pretrial detention and lack of access to public defenders have greatly undermined due process rights for those accused of a crime, particularly among Bolivia's poor. According to a report published by the United Nations High Commissioner for Human Rights (UNHCR), as of September 2012, 84 percent of prisoners in Bolivia were awaiting trial. Bolivian law allows up to three years in pretrial detention, a limit often exceeded in practice.

High-profile defendants have also suffered due process violations and judicial harassment. For example, in October 2013, José María Bakovic, a 74-year-old former director of the National Road Service (SNC), died from a heart attack after prosecutors—ignoring warnings from doctors that a journey to the high altitudes of

La Paz could endanger his life—ordered him to attend a hearing there. Bakovic, who worked aggressively to eradicate corruption within the SNC while he was its director, himself became the target of a corruption investigation after President Morales took office in 2006. Before his death, he said that he had defended himself in 72 cases filed in different parts of Bolivia, and was eventually sentenced in August 2013 to three years in prison for economic damage to the state.

Prison Condition

In addition, Bolivia accepted in 2010 recommendations to address problems in its prison system, including: to improve detention conditions in general, particularly for women and children (Italy, para. 98, rec. 28), to take concrete measures to prevent prison overcrowding (Turkey, para. 98, rec. 28), and to intensify efforts to improve the situation in detention centers and prisons (Slovakia, para. 98, rec. 28).

Yet, extended pretrial detention and trial delays have continued to lead to overcrowding in Bolivia's prisons. As of September 2013, the government reported there were 14,770 inmates in prisons with a capacity of under 5,000. Eighty percent of those prisoners, President Morales said at the time, were being held due to "delays of the justice system."

Prison conditions are poor: most are dilapidated; food and medical attention are inadequate; and internal control is often left to prisoners. At least 35 inmates were killed and more than 50 injured in a fire resulting from a clash in August 2013 between rival gangs in Palmasola prison. The dead included an 18-month-old who was spending the night in the prison with his father, who reportedly died while trying to shield him from the flames.

In September, President Morales signed a decree that allowed the pardoning of prisoners serving sentences of eight years or less, while those in pretrial detention for crimes with penalties of four years or less could be released and have their charges dropped under a government amnesty. While the government estimated this would affect roughly 2,000 prisoners, the Bolivian Catholic Church estimated that only approximately 600 prisoners in pretrial detention would be eligible for release, due to stringent eligibility requirements.

Freedom of Expression

In 2010, Bolivia also supported recommendations to promote and protect free speech in the country, including: to promote good relations with and among media institutions (Norway, para. 98, rec. 52), to take measures to protect journalists from acts of violence and intimidation (Germany, para. 98, rec. 52); to fully guarantee freedom of expression, ensuring that regulation in respect of the mass media is carried out in accordance with international human rights instruments (Chile, para. 98, rec. 55); to robustly support and uphold the universal principle of freedom of expression, recognizing that such freedom is essential to a fully functioning democracy (United States of America, para. 98, rec. 55); and to contribute to an atmosphere supportive of independent and diverse media, including by encouraging all actors, including public officeholders and political actors, to condemn any attempt to intimidate the media and by fully investigating all

complaints of media harassment and prosecuting those responsible (Canada, para. 98, rec. 55).

While public debate is robust, on occasions President Morales or his ministers have aggressively criticized the press, accusing journalists of lies and politically motivated distortions. In August 2013, for example, the minister of the presidency accused the La Paz newspaper, *Página Siete*, of being “indecorous, malicious, deceitful and mendacious,” and of having links with Chilean right-wing politicians. The minister’s comments followed an Independence Day speech the same month in which President Morales accused unnamed newspapers and television outlets of having a pro-Chilean stance (Bolivia has a long-standing maritime dispute with Chile). In August 2012, the government filed a criminal lawsuit against *Página Siete* and two other outlets for “inciting racism,” by publishing a headline it alleged distorted a presidential speech about food shortages. As of March 2014, the case remained open.

As of March 2014, a bill presented by the government on transparency and access to public information remained pending before the Plurinational Legislative Assembly. The National Press Association criticized several of the grounds for confidentiality envisaged in the bill, which grants a wide range of government authorities broad powers determine exceptions to access.

Gender-Based Violence and Reproductive Rights

Finally, in 2010 Bolivia supported recommendations regarding the need to protect women’s rights, including: to strengthen national mechanisms for the advancement of women so that a gender perspective is reflected (Mexico, para. 98, rec. 5); to devote special attention to protecting and promoting the rights of women and children in the processes of developing and implementing national policy (Belarus, para. 98, rec. 14); to strengthen the fight against discrimination and violence against women (Brazil, para.98, rec 20); to take specific measures to combat domestic violence against women (France, para.98, rec 31); to take all measures necessary to eradicate gender violence, including the classification of “femicide” and its adequate penalization (Netherlands, para. 98, rec 31); and to take further measures to put an end to violence against women (Azerbaijan, para.98, rec 31).

Nonetheless, women and girls in Bolivia remain at high risk for gender-based violence. According to police statistics reported in the press, in 2012 there were over 140 gender-based killings of women, and thousands of complaints filed for acts of gender-based violence. Public protests following several high-profile murders of women in early 2013, including the fatal stabbing in February of journalist Hanalí Huaycho by her husband—a former police officer—led the government to pass a comprehensive law in March 2013 to combat gender-based violence. Prior to her killing, Huaycho had repeatedly reported abuses by her ex-husband to authorities.

The new law adds “femicide” to the criminal code, sanctioning the killing of a woman in nine circumstances with a mandatory 30-year sentence. It also establishes

a task force to combat domestic violence, and mandates the construction of women's shelters, among other reforms.

In Bolivia, victims of sexual violence must receive judicial authorization before they may access legal abortion services. Failure to do so may result in prosecution: an indigenous woman served eight months in prison in 2012 after being convicted for obtaining an abortion without judicial authorization after she became pregnant from rape.

III. Recommendations

Regarding Accountability for Past Abuses

Bolivia should ensure that independent, prompt, and impartial investigations are conducted into all allegations of human rights abuses. Specifically:

- The Plurinational Legislative Assembly should adopt legislation establishing torture as a crime as defined in the Convention Against Torture, and avoid delays in investigations into allegations of torture.
- Courts should avoid unnecessary delays in these investigations and carry out prompt trials of human rights violations that occurred during authoritarian governments between 1964 and 1982, as well as in the more recent incidents in Pando and Santa Cruz, described above.
- The Armed Forces should actively collaborate with these investigations, providing information that might clarify the fate or whereabouts of people killed or disappeared during authoritarian governments between 1964 and 1982.
- The government should ensure that victims of political violence are adequately compensated and that mechanisms created for that purpose do not arbitrarily leave out potential beneficiaries.
- The government should also implement the Rome Statute in national legislation, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes before its national courts in accordance with international law.

Regarding Due Process Violations and Prison Conditions

Bolivia should adopt measures to end due process violations during the judicial process and to improve prison conditions. Specifically, it should:

- Adopt clear criteria to limit judges' discretion to send suspects to pre-trial detention,
- Implement alternatives to preventive detention and strictly limit its duration,
- Reduce prison overcrowding, and
- Ensure improved prison conditions by providing adequate nutrition and medical health care to prisoners, and limiting the power that prisoners have to control prisons, which leads to violence by rival gangs.

Regarding Freedom of Expression

Bolivia should ensure that journalists can freely exercise their right to free speech. The Plurinational Legislative Assembly should ensure that all legislation that regulates free speech, including laws to regulate the media and access to official information, complies with international standards on free speech, such as those outlined in the Inter-American Legal Framework regarding the Right to Free Speech.

Regarding Gender-Based Violence and Reproductive Rights

Bolivia should ensure that women and girls are no longer at high risk for gender-based violence. Specifically:

- The government should effectively implement provisions to address gender violence included in the abovementioned March 2013 law, such as for example the creation and implementation of a task force to combat domestic violence, and the construction of women's shelters, and
- Prosecutors should carry out prompt, thorough, and impartial investigations into all complaints of gender-based violence, including alleged cases of "femicide."

To protect women and girls' reproductive rights, the Plurinational Legislative Assembly should adopt legal reforms to eliminate the requirement of prior judicial authorization for therapeutic abortion and abortion in cases of rape and incest.