



**University of Oklahoma College of Law
International Human Rights Clinic
The United States of America**

Report on the Plurinational State of Bolivia to the 20th Session of the Universal Periodic Review, Human Rights Council, October 2014

Annex

Prepared by

Students

Corie White, J.D. Candidate May 2015
Kate Callahan, J.D. Candidate May 2014
Caroline Lewis, J.D. Candidate May 2014
Hilary Moffett, J.D. Candidate May 2015
Nicholas Toups, J.D. Candidate May 2015

Professors

Alvaro Baca
Lindsay Robertson
Taiawagi Helton

March 13, 2014

ANNEX

1. The Plurinational State of Bolivia is democratic republic divided into nine departments. The population is estimated to be around ten million, with over 60% self-identifying as indigenous. The purpose of the research trip was to evaluate the current human rights situation within Bolivia. Research was mainly conducted in the capital of La Paz, but included a day trip out to Tiwanaku and Lake Titicaca. Various interviews were conducted, primarily with Bolivian human rights groups, as well as the United States Embassy and a group of indigenous peoples currently protesting outside the Ministry of Justice whom are seeking reparations from the government for human rights abuses conducted by previous dictatorships.

2. In 2013, new census data was released in Bolivia that brought the population to 10,461,053.¹ An estimated 1.715 million people live in La Paz, 1.584 million in Santa Cruz, and 307,000 in the constitutional capital of Sucre. 67% of the total population lives in urban areas.²

3. Indigenous people represent a majority of Bolivia's population at 62% (about 3.9 million people).³ In rural areas, 72% of the population speaks indigenous languages, compared to 36% in urban areas.⁴ While the plains are 17% indigenous and 83% non-indigenous, the highlands and valleys are 67% and 60% indigenous, respectively. Bolivia's Quechuas and Aymaras predominately reside in the highlands and valleys.⁵

¹ Greg Benchwick & Paul Smith, *Lonely Planet Bolivia* 34 (8th ed. 2013).

² Id.

³ Id.

⁴ Id.

⁵ Id.

⁶ Id. at 60.

⁷ Id.

⁸ Id. at 31

⁹ Id.

4. Students visited the city of La Paz. The legislative capital of Bolivia, La Paz is the highest capital in the world, sitting at an altitude of 12,000 feet.⁶ It is also the largest city in Bolivia with a population around 1.715 million. The University of San Andrés was founded in La Paz in 1830.⁷

5. Bolivia declared independence from Spain on August 6, 1825. Today the government consists of three branches: the Executive branch headed by President Juan Evo Morales Ayma (since 22 January 2006, last election held 6 December 2009) and Vice-President Álvaro García Linera (since 22 January 2006, last election held 6 December 2009); Legislative branch consisting of the Chamber of Senators with 36 seats and the Chamber of Deputies with 130 seats; and the Judicial branch consisting of a Supreme Court, a Constitutional Tribunal, and a Plurinational Electoral Organ.⁸ Bolivia's current Constitution came into effect February 7, 2009.⁹

6. Bolivia has recently experienced a boom in their natural gas industry. As one of the largest sources of energy on the continent, it is second only to Venezuela in South American natural gas reserves.¹⁰

7. In writing this report, the International Human Rights Clinic at the University of Oklahoma College of Law had the opportunity to travel to Bolivia. There, we met with local students, activists, non-profit organizations, and representatives at the United States Embassy in Bolivia. We express our sincere gratitude to Richard Ozuna Ortega for his guidance and assistance. We further express our sincere gratitude to the University of Oklahoma College of Law and Dean Joseph Harroz.

¹⁰. Id. at 33.

8. The students found the people of Bolivia to be charming and warm. The students visited with protestors outside the Ministry of Justice to discuss human rights concerns and Bolivia's history.

I. THE RIGHT TO CONSULTATION ON MAJOR EXTRACTION AND CONSTRUCTION PROJECTS ON INDIGINOUS LANDS

Best Practices

9. The State adopted Law No. 222 in February 2012, which called for a consultation with all concerned indigenous communities of the TIPNIS on the inviolability of the territory, the construction of the highway and development plans for the area.

10. In July of 2012, the State began an unprecedented consultation process regarding the TIPNIS project. The process culminated in December and, according to preliminary official figures, 58 of 69 communities residing in the TIPNIS participated. The other 11 abstained as an expression of their opposition.

Challenges and Obstacles

11. Consultation under Law No. 222 has led to protracted tension between the Government and some indigenous communities. Two marches relating to the TIPNIS controversy and several other social protests occurred throughout 2013.

12. After the results of the TIPNIS consultation process were released, outside third parties, the Episcopal Conference and the Permanent Human Rights Assembly of Bolivia, challenged the official figures based on findings from an observation mission.

National priorities, initiatives and commitments

13. In response to lawsuits contesting Law No. 222, the Plurinational Constitutional Court ruled that the law was constitutional, but should be implemented through agreement between the State and the TIPNIS indigenous communities. The UN High Commissioner found

this to be a significant ruling on the right to consultation, establishing the scope of the right in accordance with international standards.

14. The State established a national commission in February of 2012 to draft framework legislation on the general consultation of indigenous peoples.

Expectations in terms of capacity-building and technical assistance

15. The State should critically evaluate all ongoing major extraction and construction projects on indigenous lands, specifically focusing on whether the requirement of adequate consultation with indigenous peoples has been met. Advice and assistance from international bodies, NGOs, and neutral third parties should be consulted to ensure a fair and balanced evaluation.

16. Bolivia must develop an indigenous consultation policy as part of their constitution, consistent with ILO Convention 169 and the goal of active indigenous participation in projects that directly impact their land and people. It is critical that indigenous communities have a voice in the drafting and development of such a policy.

II. ACCESS TO THE JUDICIAL SYSTEM

Best Practices

17. The government has implemented the Judiciary Act (No. 025) of 24 June 2010 establishes that the administration of justice is free of charge, without discrimination or exclusion, thereby laying the foundations for solving the problem of the lack of access to justice, the main victims of which have traditionally been impoverished or excluded population groups.¹¹

Challenges and Obstacles

¹¹ Doc. CCPR/C/BOL/3 Page. 10 Paragraph 49.

18. Despite efforts by the government, the scope of coverage of the justice system is still geographically limited, and corruption still has a hold on the system.

National Priorities, Initiatives and Commitments

19. The government introduced in 2010, the Marcelo Quiroga Santa Cruz Act, which is designed to fight against corruption and illegal enrichment. It also introduced the 2010 Judiciary Act, 2010 Plurinational Constitutional Court Act, and the 2010 Framework Act on Autonomous Entities and Decentralization, in an attempt to increase the coverage and improve the structure of the court system

Expectations in Terms of Capacity-Building and Technical Assistance

20. The State has sought the technical assistance of the High Commissioner for Human Rights for limit the spread and influence of corruption and impunity within its governmental systems.

III. FORCED LABOUR

Best Practices

21. The government established in 2007, the Inter-Ministerial Council for the Eradication of Servitude, Forced labour and Slavery-like Practices by Supreme Decree No. 29292 with a view to implementing the 2007-2008 transitional inter-ministerial plan for the Guarani people.

Challenges and Obstacles

22. The Inter-Ministerial Council came to an end in 2009 without meeting all of its objectives and without provisions for its continuation by means of comprehensive measures.

23. Efforts made by the government and various other organizations have not been sufficient in eradicating contemporary forms of slavery in areas of Bolivia. As of April 2013, an

estimated 600 Guarani families still live in conditions of captivity and forced labour in the Chaco region.

National priorities, initiatives and commitments

24. In 2013 efforts were underway between Government authorities and Guarani representatives to implement existing agreements about land titling, waste recovery, assistance to indigenous autonomies, and a new governmental plan to eradicate the forced labour and servitude that was still affecting Guarani families in the Chaco region.

Expectations in terms of capacity-building and technical assistance

25. The Government of the Plurinational State of Bolivia should continue dialogue and cooperation with relevant United Nations institutions and agencies, such as OHCHR and the United Nations country team in Bolivia in providing technical assistance and expertise necessary to facilitate the effective implementation of relevant legislation and policy actions.

IV. LAND RIGHTS

Best Practices

26. The Bolivian government has made progress in developing the foundation for a successful land transfer program. The government has already worked with local communities to grant a total of 30,314 hectares to six campesino communities. Eight titles to land for schools and 180 individual titles have been granted. Additionally, in the Porvenir region of Bolivia, seventeen productive projects have been implemented, helping 650 families through projects to save the local tree nurseries and other agro-forestry industries.

Challenges and obstacles

27. The Bolivian government faces many challenges in its efforts to restore land rights to the Indigenous populations. In the most recent census, there was a drop in Bolivian citizens that identified themselves as Indigenous. This is in part due to complicating procedures, but also reflects the opaque definition of “Indigenous” in Bolivia. Without a firm system in place to establish what is an Indigenous person and how those persons group into smaller populations, it is nearly impossible for the government to successfully implement a program allowing those populations to recapture full land rights.

National priorities, initiatives and commitments

28. The Bolivian people approved a new Constitution in 2009, highlighting the need for increased indigenous land rights. Chapter four, Article thirty of the Constitution addresses “Rights of the Nation and Rural Native Indigenous Peoples”. Section II (6) calls for “the collective ownership of land and territories.”

29. While national census levels reveal a diminishing Indigenous population over the last ten years, a majority of Bolivians, including the President, Evo Morales, identify as Indigenous. The specific goals to increase Indigenous land rights is a direct consequence of a more powerful population politically and a national commitment to Bolivian heritage.

V. RIGHTS OF THE CHILD

Best Practices

30. In Article 58 of the new Bolivian Constitution, the government recognizes children and adolescents as holders of rights, a huge step in improving the overall legal framework for the protection of children.

Challenges and Obstacles

31. Despite a Constitutional recognition of the rights of children and adolescents, there has been little legislation laying out and solidifying these rights.

National Priorities, Initiatives and Commitments

32. The government is working to implement the Child Development Project, a program for the protection of children's rights comprising education, health care and housing components.

33. A "Guidelines for the Alternative Care of Children" document will be included in the draft of the Plurinational Community Development Plan for the social inclusion of children and adolescents and the protection of their rights.

34. The government has instituted children's ombudsmen offices which oversee access to nutrition, health care and educational services for children living in detention centers.

35. A comprehensive draft law on human trafficking and smuggling that includes child-protection measures and is based on the commitments assumed under the Palermo Protocol and other international human rights instruments was submitted to the Plurinational Legislative Assembly.

36. The government is working on strengthening the work of the National Council against Human Trafficking.

Expectations in Terms of Capacity-Building and Technical Assistance

37. The State should concentrate on developing special juvenile courts to better serve the specific needs of children in the juvenile justice system. Efforts should also be put in establishing programs to promote the protection and social reintegration of children and adolescents in conflict with the law or placed in institutions for economic or social reasons.

38. Child labor legislation and policies need to be put into place, in particular protecting children from exploitative labor and dangerous work.

39. The government should strengthen policies on regarding trafficking and smuggling, including sexual violence against children and the sale of children.