



# The Plurinational State of Bolivia

## Submission to the UN Universal Periodic Review 20<sup>th</sup> Session of the UPR Working Group

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Submission by CIVICUS: World Alliance for Citizen Participation, NGO in  
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and

Fundación CONSTRUIR

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## **1. (A) Introduction**

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.
- 1.2** Fundación CONSTRUIR, established in 2009, seeks to promote citizen participation, protect human rights, improve access to justice, and strengthen democratic development. To achieve this mission conducts research, training and advocacy at the local and national level in coalition with a number of domestic and international organizations.
- 1.3** In this document, CIVICUS and Fundación CONSTRUIR outline concerns related to the environment in which civil society and human rights defenders (HRDs) operate in the Plurinational State of Bolivia, and discuss the threats they face in the exercise of the freedoms of expression, association and assembly.
- 1.4** CIVICUS and Fundación CONSTRUIR are concerned by legislative and extra-legal measures taken by the Bolivian government to curtail or stigmatize civil society organizations (CSOs), in an apparent attempt to suppress criticism and pluralistic debate of government policy.
- 1.5** CIVICUS and Fundación CONSTRUIR are also alarmed by the failure of the Bolivian government to adequately protect human rights defenders who have been targeted due to their legitimate human rights activities and face death threats and harassment in the exercise of their work. While the government has taken a number of steps to prosecute security forces and other government officials who committed abuses, inconsistent application of national legislation has led to impunity.
- 1.6** CIVICUS and Fundación CONSTRUIR are further troubled by the use of judicial, financial and administrative hurdles by the Bolivian authorities to restrict freedom of expression, independence of the media, access to information and freedom of association.
  - In Section B, CIVICUS and Fundación CONSTRUIR highlight concerns related to the freedom of association and restrictions on civil society activities.
  - In Section C, CIVICUS and Fundación CONSTRUIR express concerns involving harassment and arbitrary detention of human rights defenders.

- In Section D, CIVICUS and Fundación CONSTRUIR highlight concerns relating to the freedom of expression, independence of the media, restrictions on access to information and intimidation, harassment and attacks on journalists.
- In Section E, CIVICUS and Fundación CONSTRUIR highlight concerns regarding the freedom of assembly.
- In Section F, CIVICUS and Fundación CONSTRUIR make a number of recommendations to address the concerns listed.

## **2. (B) Restrictions on freedom of association and impediments to civil society activities**

- 2.1** Article 21 of the Constitution of Bolivia guarantees the right to freedom of association. Moreover, a number of national laws have been introduced further articulating the right to freedom of association.<sup>1</sup> Under Article 9 of the Law No. 342, freedom of association for youth groups is explicitly safeguarded (5 February 2013, Article 9, Numeral 7). In addition, Article 5 of the law on HIV-AIDS prevention (Ley para la Prevención del VIH-SIDA, Protección de los derechos humanos y asistencia integral multidisciplinaria para las personas que viven con el VIH-SIDA) guarantees freedom of association, expression and assembly to people living with HIV/AIDS. Article 22 of the ICCPR, to which Bolivia is a state party, also guarantees freedom of association.<sup>2</sup>
- 2.2** However, despite these protections, in practice, a number of policy and legal obstacles to the effective realisation of this right persist. Of particular concern are national laws which provide the government with excessive discretionary powers to monitor and interfere in the internal activities of CSOs. Under Supreme Decree No. 22409 (Creating a National Registry for NGOs and Detailing Reporting and Registration Requirements), CSOs must provide general information on their activities, sources of funding and project plans for a three-year period. According to Article 11 of the law, the Ministry of Planning and Coordination is also permitted to evaluate the extent to which CSOs have fulfilled their objectives, implemented their projects, and assess the impact of activities stipulated in implementation agreements between CSOs and relevant ministries.
- 2.3** In addition, Law No. 351 and Supreme Decree No. 1597 further require that CSOs declare in their statutes an explicit intention to contribute to the socio-economic development of Bolivia. Such requirements seriously undermine the independence of CSOs and provide the government with a powerful tool to dictate their internal affairs.

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<sup>1</sup> Constitution of 2009 of the Republic of Bolivia [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=178173](http://www.wipo.int/wipolex/en/text.jsp?file_id=178173); English version [http://www.forensic-architecture.org/wp-content/uploads/2012/11/Bolivia\\_Constitution\\_2009-Official-Translation.pdf](http://www.forensic-architecture.org/wp-content/uploads/2012/11/Bolivia_Constitution_2009-Official-Translation.pdf)

<sup>2</sup> Ratification status for Bolivia, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=21&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=21&Lang=EN)

- 2.4** Moreover, under the Bolivian Civil Code, the government is endowed with broad authority to dissolve and liquidate associations and foundations. Article 64 of the Civil Code permits the Public Ministry to dissolve an association or foundation if it engages in activities which are deemed contrary to public order or good conduct.
- 2.5** The Supreme Decree No. 26140 (Regulation of the Operations of Non-governmental Organizations working with Peasants, Indigenous, and Ordinary Peoples and Settlers)<sup>3</sup> also contains a number of troubling and discriminatory elements specifically aimed at regulating the operations of CSOs which work with rural and indigenous communities. Among other restrictions the decree endows the authorities with broad powers to investigate, supervise, and sanction these organizations, including the suspension or revocation of their registration through an administrative proceeding.
- 2.6** CSOs critical of government policy are also subjected to harassment, including public smear campaigns and forced dissolution. On 4 December 2013, President Evo Morales threatened UNITAS, a network of 26 Bolivian NGOs, with expulsion. Moreover, on 20 December 2013, the Ministry of the Presidency ordered the expulsion by 26 March 2014 of IBIS Education for Development, an organization working primarily with indigenous organizations, on unsubstantiated claims of political meddling.<sup>4</sup>
- 2.7** The right to strike, organize and bargain collectively are recognised under Articles 49 and 53 of the Constitution and related regulations and statutory instruments. However, requirements to form unions are unnecessarily onerous. Establishment of a union requires a minimum of 20 persons, including at least 50 percent of the respective workforce. The Labour Code also requires prior government approval of a union's elected leadership, permits only one union per enterprise and allows labour inspectors to attend union meetings.<sup>5</sup>

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<sup>3</sup> Supreme Decree No. 26140, Text of the law, <http://www.bu.edu/bucflp/laws/supreme-decree-no-26140-governing-ngos-working-with-indigenous-groups-and-peasant-farmers/>

<sup>4</sup> Bolivia expels Danish NGO for meddling, Global Post, <http://www.globalpost.com/dispatch/news/afp/131220/bolivia-expels-danish-ngo-meddling-1>; Close the NGOs: Asserting Sovereignty or Eroding Democracy in Bolivia and Ecuador?, Upside Down World, <http://upsidedownworld.org/main/news-briefs-archives-68/4626-close-the-ngos-asserting-sovereignty-or-eroding-democracy-in-bolivia-and-ecuador>; Gobierno da plazo hasta el 26 de marzo de 2014 para que ONG IBIS transfiera o cierre sus programas, Pàgina Siete, <http://www.paginasiete.bo/nacional/2013/12/27/gobierno-plazo-hasta-marzo-2014-para-ibis-transfiera-cierre-programas-9755.html>

<sup>5</sup> Country Reports on Human Rights Practices for 2013, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

### **3. (C) Concerns involving harassment, intimidation and attacks against human rights defenders and civil society activists**

- 3.1** Article 12 of the UN Declaration on Human Rights Defenders mandates States to take necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, it is a matter of deep concern that human rights defenders engaged in legitimate activities continue to be subjected to reprisals by state officials.
- 3.2** Human rights defenders including lawyers, indigenous leaders and trade unionists and members of CSOs and social movements continue to face harassment, intimidation, and threats. In particular, HRDs advocating for greater protection of land, environmental and indigenous persons' rights have been disproportionately targeted.
- 3.3** On 23 January 2014, the Institute of Therapy and Investigation into the After-effects of Torture and State Violence (Instituto de Terapia e Investigación sobre las Secuelas de la Tortura y la Violencia Estatal – ITEI), publicly denounced the growing number of death threats received by its staff since 15 November 2013.<sup>6</sup>
- 3.4** In 2011, five environmental CSOs (the Conservation Strategy Fund, Herencia, Puma, WCS Rainforest Alliance and Armonía) which were implementing projects funded by the United States Agency for International Development (USAID) in the Amazon region were forced to leave Pando Province following a resolution by the Association of Municipalities which condemned the organizations “for menacing the government of President Evo Morales.”<sup>7</sup>
- 3.5** Article 14 of the Constitution of Bolivia prohibits all forms of discrimination based on sexual orientation and gender identity. Nonetheless, discrimination by the authorities against LGBTI persons remains rife. In 2013, a study undertaken by the Emancipation Fund revealed that 86 percent of surveyed LGBTI individuals have been subjected to physical or verbal abuse by police officers. Moreover, a number of organizations reported a severe reluctance among the security services to pursue reports of infringements of the rights of LGBTI persons.

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<sup>6</sup> Bolivia: Death threats against human rights defender Ms Emma Bolshia Bravo Cladera, Front line defenders, <http://www.frontlinedefenders.org/node/24878#sthash.s344o2eu.dpuf>

<sup>7</sup> Bolivia 2011, Report on Laws and Regulations Governing Civil Society Organizations in Bolivia, World Movement for Democracy, <http://www.wmd.org/projects/defending-civil-society/country-reports/bolivia-2011-en>

#### **4. (D) Concerns regarding freedom of expression, independence of the media, restrictions on access to information and intimidation, harassment and attacks on journalists**

- 4.1** Article 21 of the ICCPR guarantees the freedom of expression and opinion. While Article 106 of Constitution of Bolivia also provides for the right to hold opinions and free expression, a number of worrying qualifications to these provisions undermine the right to freedom of expression. Article 107 of the Constitution imposes a duty to citizens to communicate with “truth and responsibility” and stipulates that the media must contribute to the promotion of the ethical, moral, and civic values of the nation’s multiple cultures.
- 4.2** Since its human rights record was first examined during the 7<sup>th</sup> Session of the Universal Periodic Review process in 2010 the Bolivian Government has continued to invoke national legislation to curtail the exercise of the right to freedom of expression. On 8 May 2013, Bolivia’s National Assembly adopted Law No. 370, which, under Article 12 (Chapter I, Title III, Paragraph II), protects freedom of expression of foreign migrants. However, restrictions under Article 12, Paragraph III, of the same law limit such rights in cases where migrants violate national security or public order, foster political propaganda, interfere in internal affairs or incite hate or discrimination.<sup>8</sup>
- 4.3** Moreover, the Law Against Racism and All Forms of Discrimination (Law 045), adopted on 8 October 2010, includes a number of worrying provisions which unduly restrict freedom of expression.<sup>9</sup> Article 23 of the law allows for 1 to 5 years imprisonment for people accused of divulging, publishing or endorsing racist or discriminatory ideas. In July 2012 and January 2013, the Mayor of the city of Oruro and the office of the Vice Minister of Decolonization filed a lawsuit against television presenter Milena Fernandez in response to her statement that the city of Oruro was “foul smelling”.
- 4.4** Physical attacks against journalists continue at an alarming rate. In 2011, Bolivian CSO, the National Press Association (Asociación de la Prensa Boliviana, ANP), which represents 20 media outlets, documented 46 attacks against its journalists while the Unite Foundation registered 81 cases of verbal and physical aggression against 130 media-sector employees in 2012.<sup>10</sup>

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<sup>8</sup> Law 370, Full text, <http://bolivia.infoleyes.com/shownorm.php?id=4429>

<sup>9</sup> Bolivia, Reporters Without Borders, <https://en.rsf.org/report-bolivia,168.html>

<sup>10</sup> Human Rights Committee considers report of Bolivia, OHCHR, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13864&LangID=E>; Bolivia, Inter American Press Association, <http://www.sipiapa.org/en/asamblea/bolivia-102>

- 4.5** In October 2012, four assailants doused Radio Popular journalist, Fernando Vidal, with gasoline and then set him on fire in Yacuiba Province. Prior the incident Mr Vidal had reported on alleged corruption among local customs agents.

## **5 (E) Concerns regarding freedom of assembly**

Article 21 of the Constitution of Bolivia guarantees the right to peaceful assembly. In addition, Article 21 of the ICCPR also protects this right. While public demonstrations are not generally prohibited, between 2010 and 2014, the right to peaceful assembly was imperilled by the use of excessive force by security forces.

- 5.1** In September 2011, five hundred members of the Bolivian security forces used tear gas and rubber bullets to forcibly clear a protest camp in Yucumo, Beni. The 800 protestors advocating against the construction of a highway through the TIPNIS indigenous territory and national park rainforest, included older persons, pregnant women and children.<sup>11</sup>
- 5.2** Moreover, in 11 months in 2011-2012, the National Media Observatory (Observatorio Nacional de Medio, ONADEM) reported that 25 journalists have been attacked during on-going protests in the country.
- 5.3** Violence committed during labour demonstrations continue to be a serious problem. During a labour strike organized by the Bolivian Labor Central Union, at least 30 individuals, including both protesters and police officers, were injured from 5-15 May 2013. On May 6, near Parotani, Cochabamba Province, two protesters were allegedly shot and wounded.

## **6. (F) Recommendations to the Government of the Plurinational State of Bolivia**

CIVICUS and Fundación CONSTRUIR call on the Government of the Plurinational State of Bolivia to create an enabling environment for civil society to operate, in accordance with the rights ensured by the ICCPR and the UN Declaration on Human Rights

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<sup>11</sup> Bolivian Police Intervene in Indigenous TIPNIS March, Bolivia Diary, <http://boliviadiary.wordpress.com/2011/09/26/news-bolivian-police-intervene-in-indigenous-tipnis-march/>; <https://nacla.org/blog/2011/9/28/police-attack-tipnis-marchers-roils-bolivia>; Bolivia: Criminal Charges Against Indigenous Leaders, Revelations of Police Infiltration Reignite TIPNIS Conflict, Upside Down World, <http://upsidedownworld.org/main/news-briefs-archives-68/4435-bolivia-criminal-charges-against-indigenous-leaders-revelations-of-police-infiltration-reignite-tipnis-conflict>; Informes ONADEM: Agresiones a periodistas conflicto TIPNIS, Fundación UNIR, <http://www.scribd.com/doc/101132219/Informe-Sobre-Agresiones-a-Periodistas-Caso-TIPNIS-Julio>

Defenders. At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made:

### **6.1 Regarding restrictions on the freedom of association**

- Articles 52 (2), 58 and 57 (Title II) of the Bolivian Civil Code and the Supreme Decree No. 22409 of 1990 should be amended to guarantee that undue restrictions on the freedom of association are removed;
- Threats to expel foreign CSOs working in Bolivia by the President and other Government bodies must be revoked;
- Senior government officials and government security forces should ensure greater cooperation with the Human Rights Ombudsman and Civil Society Organizations;
- Provisions found in regulations and statutory instruments restricting the right to organize and bargain collectively and form a union should be amended to fully guarantee freedom of association.

### **6.2 Regarding the arbitrary detention and harassment of civil society activists**

- Civil society members and human rights defenders should be provided a safe and secure environment to carry out their work. All instances of violations of their rights should be independently investigated;
- The Government of Bolivia should investigate and bring to justice perpetrators of violence against human rights defenders in the country;
- Investigations currently suspended into attacks, harassment and intimidation of activists should be re-launched.

### **6.3 Regarding restrictions on freedom of expression and access to information, and intimidation, harassment and attacks on journalists**

- Senior government officials should condemn the persecution of journalists, including attacks, harassment, intimidation and slander;



- Every case of injury caused to journalists should be subjected to a mandatory and transparent investigation;
- Efforts should be made to promote the adoption of a law to grant greater access to information;
- Articles 23 of the Law Against Racisms and All Forms of Discrimination which imposes sanctions against those accused of spreading racist ideas should be reviewed in order to prevent its broad invocation to stifle independent media.

#### **6.4 Regarding restrictions on freedom of assembly**

- Recourse for judicial review and effective remedy should be provided, including compensation, in cases of unlawful denial of the right to freedom of assembly by state authorities;
- Security forces in charge of crowd control should be equipped with non-lethal weapons and provided training across the board on humane means of crowd control as well as on the UN Basic Principles on the Use of Force and Firearms;
- The use of excessive force in the dispersal of protests should be publically condemned and a formal investigation into such instances should be launched.