

FOLLOW-UP REPORT - ACCESS TO JUSTICE AND SOCIAL INCLUSION: THE ROAD TOWARDS STRENGTHENING DEMOCRACY IN BOLIVIA

I. INTRODUCTION

1. The purpose of this report is to follow up on the recommendations made by the Commission in the report *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia* (hereinafter also "*Access to Justice and Social Inclusion*" or "the Report of the IACHR") of June 28, 2007. Since that report was published the Commission has continued closely to monitor the matters identified as priorities with respect to the situation of human rights in that country.

2. In a communication dated September 25, 2008, the IACHR requested the State for information and its observations regarding implementation of the recommendations contained in the aforementioned report. In a note of February 19, 2009, the Bolivian State requested an extension of the time for presenting information. On February 26, 2009, the IACHR notified the State that it could have one additional month. On March 20, 2009, the Commission reiterated to the State its communication of February 26, 2009, granting the one-month extension. On March 26, 2009, the State submitted a supplementary report on compliance with the recommendations. The State transmitted an additional supplementary report with its note of May 1, 2009.

3. Furthermore, in keeping with the powers recognized in the Charter of the Organization of American States and the American Convention, a delegation of the Commission conducted a visit to Bolivia from June 9 to 13, 2008, in order to gather information on indigenous families and peasant farmers living in a state of bondage analogous to slavery. The Commission also issued press releases on various acts of violence recorded in different parts of the country. During the 133rd and 134th periods of sessions there were public hearings on the human rights situation in Bolivia. The first was held at the Commission's initiative, and the second was requested by the Women's Legal Office [Oficina Jurídica de la Mujer] and the La Paz Bar Association. In addition, the Bolivian State was asked to provide information on several facts that could constitute a threat to the full exercise of human rights.

4. This report has been prepared based on the information collected through the endeavors mentioned in the preceding paragraph and bearing in mind incidents that have had public repercussions, are closely connected with the political climate in Bolivia, and, in specific contexts, have had an impact on the observance of the human rights of the Bolivian people.

5. The Commission's analysis follows the same sequence as that of *Access to Justice and Social Inclusion*. First there is a description of positive developments, a brief overview of the political context, the main conflicts that have arisen and how they relate to the duty of the State to observe and ensure the human rights of all persons under its jurisdiction. Next, the report reviews the issues of administration of justice, rights of persons deprived of liberty, rights of indigenous peoples and peasant communities, women's rights, children's rights, and rights of refugees or asylum seekers. Each section indicates the implementation status of the recommendations, whether or not measures had been adopted in that regard and, if so, the results of those measures and present challenges.

II. POSITIVE ASPECTS AND OVERALL PROGRESS

6. The Commission notes that, generally speaking, the current government has continued to give priority to public policies and programs that reflect a political will to move forward with a human rights agenda in Bolivia.

7. The Commission regards as positive a number of legislative and administrative initiatives that, combined with adequate and effective steps for their implementation, could become important instruments for improving the human rights situation in Bolivia.

8. For example, the Commission was informed that the government designed the National Plan of Action on Human Rights (2009-2013) enacted by Supreme Decree No. 29851 of December 10, 2008. It is a government policy instrument whereby the State undertakes to observe, ensure, and advance the exercise of human rights at the national, departmental, regional, and municipal level, as well as for indigenous communities.¹ The Commission hails the extensive societal participation in the Plan's design. In March and April 2008, the Office of the Vice Minister of Justice and Human Rights presented for the consideration of civil society, civic, and youth organizations in all nine departments in the country, a draft of the document in order to gather inputs. Subsequently a second phase of the process was held in which six panels were set up on specific issues: children and adolescents; gender and equity; economic, social and cultural rights; indigenous peoples; migration; and education and protection of human rights.²

9. According to information supplied by the State, the Plan includes the pertinent national and international standards; recommendations made to the Bolivian State by international human rights organizations; the objectives and results desired; problems in exercising rights subject to protection in the domestic jurisdiction; the government organs responsible for implementation; and the budget assigned.³

10. The Commission also notes that, in keeping with the recommendations contained in the Report of the IACHR, human rights training programs were carried out in 2007 and 2008.⁴ The Commission was informed that the government provided training to various state authorities in this area. According to the Ombudsman, "in the country as a whole training was given to 1,145 members of the Armed Forces and 2,803 police operatives. As regards (...) civil servants, 1,871 officials received training. Groups were set up in different state institutions to replicate the training in human rights."⁵

11. The State reported that in 2008 the following human rights training courses were offered: i) training course for citizen and family conciliation units, March 13-April 30, 2008; ii) human rights and gender awareness course for trainers of police cadets and students of the professional training institutes, March 3-7, 2008; iii) human rights and gender course for police in the operational units in La Paz and El Alto; iv) lectures for the command and senior staff course, July 9-12, 2008, called "The Bolivian Police as a Guarantor of Human Rights and Conflict Resolution"; v) human rights and women cycle, September 22-October 11, 2008; and vi) crosscutting human rights program with gender focus to consider the governing regulations of the

¹ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, pp. 1 and 2; Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

² Bolivian Chapter of Human Rights. Public communiqué. "*Plan de Acción de DDHH*" [Plan of Action on Human Rights].

³ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁴ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser.V/II. Doc. 34. June 28, 2007, para. 45.

⁵ Report of the Ombudsman to Congress 2007. September 29, 2008, p. 40.

Bolivian police, through workshops to review domestic and comparative legislation, and to draft regulatory proposals⁶.

12. The State added that the Bolivian police, together with civil society and the ombudsman, developed an annual operations plan for 2009 that includes human rights activities. In this regard, the Commission considers it a positive step that curricula on human rights and international humanitarian law are now required in the armed forces training institutes.⁷ The Commission is also pleased to note the police initiatives in connection with the awareness campaigns on violence against women, human rights in performance of official duties, and the rights of children.⁸

13. The Commission draws attention to the progress in terms of the creation of Integrated Justice Centers, the results of which are detailed below in the section on Administration of Justice and Judicial Coverage.

14. The Commission also welcomes the efforts of the Ministry of Justice and the Prosecutor's Office [*Ministerio Público*] with regard to protection programs for victims and witnesses in cases involving human rights violations. These aspects are analyzed in greater depth in the section on impunity in cases of human rights violations.

15. The executive branch presented to the Congress a bill entitled "Law on Respect for Differences: against all forms of discrimination."⁹ The Commission hopes that the relevant authorities will initiate the process of discussion and approval of this bill, which could be a fundamental instrument for preventing discrimination in the exercise and enjoyment of rights.

16. The Commission takes a favorable view of the fact that, in keeping with one of the recommendations contained in *Access to Justice and Social Inclusion*, the new Constitution provides for the elevation to constitutional rank of all international human rights treaties, which, as that report mentions, could increase the effectiveness of judicial mechanisms for the protection of human rights.¹⁰

17. In general terms, the Commission takes a positive view of the fact that the new Constitution approved by referendum and promulgated on February 7, 2009, contains a broad catalogue of civil, political, economic, social, and cultural rights, including collective ones. Recognition of these rights comes with constitutional protection mechanisms such as habeas corpus, suit for constitutional protection, suit for protection of privacy, suit for unconstitutionality, suit for compliance, and peoples' suit. The Commission also notes with satisfaction that Article 14 of the new Constitution expressly prohibits discrimination based on sexual orientation and gender identity.

⁶ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

⁷ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. May 1, 2009.

⁸ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. May 1, 2009.

⁹ Annual Report. First Half of 2008. Ministry of Justice. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 11; See also: <http://www.bolpress.com/art.php?Cod=2007040502>. Available at November 15, 2008.

¹⁰ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007, para. 36, p.8.

18. The Commission acknowledges the efforts of the government to achieve a high percentage of literacy in the country which culminated in its declaration as an “illiteracy-free territory” by UNESCO on December 20, 2008. The Commission has also taken note of other important measures in this regard, such as the Juancito Pinto Bonus and Dignity Plan [*Renta Dignidad*], designed to advance economic, social and cultural rights, and to improve quality of life for the Bolivian people.¹¹ The Commission also welcomes the development of the Equal Opportunity Plan by the current Vice Minister for Equal Opportunity, enacted in Supreme Decree No. 29850 of 2008.¹²

19. The Commission encourages the Bolivian State, in keeping with its constitutional and legal powers, to continue efforts to ensure the highest possible standard in the exercise of economic, social and cultural rights, which are indivisible from civil and political rights.

III. POLITICAL CONTEXT AND SOCIAL UNREST

20. During its visit to Bolivia in June 2008, the Commission increased its store of information on the ongoing situation of conflict between different power groups that dispute decision-making authority on political, economic, and social matters. This confrontation continued to give rise to serious violence and acts of discrimination that endanger the lives and safety of Bolivians, as well as constituting a threat to the stability of democratic institutions.

21. In this context, the Commission has noted the establishment of “shock groups” that have contributed to the polarization of society and exacerbated the climate of violence. According to observations by the Bolivian Office of the United Nations High Commissioner for Human Rights (hereinafter the “Office of the UN High Commissioner”), although most of these groups support opposition sectors that advocate departmental autonomy, there are also some defending the national government.¹³ The Commission is concerned about information received that these groups enjoy the protection of important political or economic power groups that influence judicial authorities in their communities.¹⁴

22. A great many acts of violence occurred in the second half of 2007 and throughout 2008 and were connected with issues such as the draft Constitution, full “capitalhood”,¹⁵ the regional autonomy statutes,¹⁶ implementation of the agrarian reform,¹⁷ and the recall referendum¹⁸.

¹¹ Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, para. 3; Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 9.

¹² Informe del Estado de Bolivia sobre el seguimiento de recomendaciones – Acceso a la Justicia e Inclusión Social: El Camino hacia el fortalecimiento de la democracia en Bolivia. 27 de febrero de 2009.

¹³ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. 9 March 2009, para. 13.

¹⁴ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. 9 March 2009, para. 16.

¹⁵ The issue as to whether the administrative and political capital of Bolivia is the city of Sucre or La Paz. The population of the city of Sucre, which is where the judicial branch has its headquarters, has been claiming full “capitalhood” of the Bolivian state for that city.

¹⁶ The departments of Santa Cruz, Tarija, Beni and Pando, drew up and put to a referendum statutes on their autonomy as regional entities with regard to the administrative issues, such as distribution of taxes. This state of affairs came about as a result of their discrepancy over the way in which a number of issues that are particularly sensitive for the regions were treated in the first draft Constitution.

¹⁷ As described in the section on access to land and territory for indigenous peoples and peasant communities, the National Institute of Agrarian Reform has been implementing Law 3545 on Renewal of the Agrarian Reform to ensure regularization of land titles, *inter alia*, through verification of their use for the appropriate economic and social purposes.

A. Major conflicts since the second half of 2007

23. From July to December 2007, the Constituent Assembly continued to be the scene of political tension and debate. On November 24, 2007, the general guidelines were approved that would govern the discussions on the details of the provisions in the draft constitution that would subsequently be put to a referendum. The text approved initially –in broad terms– made no reference to the issue of political and administrative “capitalhood” of the Bolivian state. This omission led to conflicts between government and opposition supporters, which resulted in three deaths, a high number of injuries in police ranks, and the withdrawal of the police from Sucre because it was believed that it was not possible to keep the peace and maintain law and order.¹⁹

24. On December 9, 2007, in Oruro, the text was approved “in detail”. Subsequently, and as a result of the opposition’s disagreement with the way the Constitution treated regional autonomy, the indigenous question, “capitalhood”, and distribution of the hydrocarbons tax, among other matters, a number of regional authorities submitted autonomy statutes for the regions of Santa Cruz, Tarija, Beni and Pando to a referendum. Government authorities and the Ombudsman have indicated that the statutes lack any constitutional or legal footing. In the words of the Ombudsman, “the aforesaid statutes were drawn up by ‘ad hoc committees’ composed of members of those elites, with virtually no involvement of civil society or indigenous-peasant organizations, the chief purpose of which is to keep a series of powers exclusively at the departmental government level in order to consolidate control of forums that ensure the perpetuation of the economic and political power of the elites.”²⁰

25. While the discussions on the autonomy statutes were going ahead, on the eve of a visit by the President of the Republic to the city of Sucre on May 24, 2008, a group of indigenous peasants was prevented from entering the stadium where the President was due to be received, owing to the fact that it was surrounded by university students belonging to the *Unión Juvenil Cruceñista*, an opposition organization. During their visit to Bolivia in June 2008, the Rapporteur for the country, Commissioner Luz Patricia Mejía, and the IACHR Rapporteur on the Rights of Indigenous Peoples, Commissioner Víctor Abramovich, received testimony that the youths were carrying firearms, stones, dynamite, and gasoline as they hurled racist insults. The information received suggests that on this occasion indigenous persons and peasants were victims of acts of violence and humiliation, forced to kneel, remove their shirts, and shout slogans in support of full “capitalhood” and against President Morales.²¹ As a result of these acts, more than 30 indigenous persons and peasants were wounded.²²

26. Following approval of the autonomy statutes in Santa Cruz, Beni, Pando, and Tarija, a dialogue was opened between the parties to make the contents of the statutes compatible with the draft constitution. The President of the Republic proposed three subjects for the dialogue: i) an autonomous constitutional pact; ii) a fiscal pact to redistribute the direct tax on hydrocarbons; and

...Continuation

¹⁸ As a result of the approval of the autonomy statutes, a referendum was called on the revocation of the posts of President and Vice President of the Republic and eight departmental governors.

¹⁹ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 60.

²⁰ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 5

²¹ Information received by the IACHR in the course of the visit to Bolivia in June 2008.

²² UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 18.

iii) an institutional pact to simplify appointment of officials of the judicial branch and the National Electoral Court.²³

27. This dialogue did not bear fruit, so the executive branch proposed a recall referendum for the posts of President and Vice President of the Republic, and eight departmental governorships. At that stage, political tensions and discussions centered on the legality of the autonomy statutes and on the call for a referendum. The referendum was held on August 10, 2008, and drew a turnout of 84% of the electorate. The result was a massive show of popular support for the president's administration, with 67.4% of the vote. As regards the governors, six were ratified (four belonging to the opposition and two to the ruling party), while the mandates of the Governors of La Paz and Cochabamba were revoked.²⁴

28. In mid-August 2008, the dialogue broke down and tensions increased. In this context, civic committees in the regions called for the implementation of the autonomy statutes to be speeded up, called a strike, and prohibited government authorities from visiting their departments. The measures adopted included, *inter alia*, a blockade of roads, the suspension of food shipments to the west of the country, and blockades in Villamontes and Yacuiba, the border regions with Argentina and Paraguay where the gas supply valves are located.²⁵

29. These measures were maintained as a means of pressure to prevent the referendum on the Constitution from being held. In response, the National Electoral Court suspended the referendum. In spite of that, in the first fortnight of September 2008 the Santa Cruz offices of several state institutions were violently seized and looted, including the National Institute of Agrarian Reform, National Tax Service, *Empresa Nacional de Telecomunicaciones*, *Canal 7*, Department of Immigration, and others.²⁶

30. Around that time similar acts were carried out against the Center for Legal Studies and Social Research (CEJIS), the offices of the Indigenous Peoples Confederation of Bolivia (CIDOB), the Coordinator of Ethnic Communities of Santa Cruz, and the Center of the Investigation and Promotion of the Rural Farmer (CIPCA). These acts were accompanied by threats to the physical integrity of the leaders of these organizations and resulted in injuries to tens of civilians.²⁷

31. In response to what was called a "civil-mayoral coup d'état," the government ordered State security authorities to protect public installations and repeatedly urged the people to defend democracy, the national institutions, and the socio-political process.²⁸

²³ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

²⁴ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, pp. 3 and 4.

²⁵ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 4.

²⁶ United Nations High Commissioner for Human Rights. Office in Bolivia. Press Release, 11 September 2008.

²⁷ United Nations High Commissioner for Human Rights. Office in Bolivia. Press Release, 11 September 2008.

²⁸ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 9.

B. The events that occurred in Pando Department on September 11, 2008²⁹

32. As a result of these blockades and the aforementioned occupations of buildings, the Peasant Farmers Federation invited all of its member organizations to a “Department-wide emergency meeting to analyze the political climate, defense of the land, and protection of natural resources.” This meeting was scheduled for September 11, 2008.³⁰

33. According to available information, on the night of September 10, 2008, officials from the Departmental Roads Service, which takes its orders from the Governor’s Office, and members of the Civic Committee, using heavy machinery, mobilized to head off the peasants marching to the meeting scheduled for the following day. To that end, they dug two deep ditches in the Puerto Rico to Porvenir road in Pando, in the area known as *Tres Barracas*, to block the peasants’ advance.³¹

34. On September 11, 2008, the events occurred that left at least 11 persons dead, among them two officials from the Office of the Governor of the Department of Pando;³² 50 injured, and tens of people displaced to the countryside and the city of La Paz.³³ The Commission also received information about discriminatory treatment of injured indigenous persons and peasants when they sought assistance at health centers.³⁴ Some media organizations in the area portrayed the events as a “confrontation”³⁵, but the testimonies received by agencies such as the Ombudsman and the Office of the UN High Commissioner led these institutions to conclude that the incident was a massacre with participation of persons linked to the Office of the Governor.³⁶

35. The Report of the Ombudsman on these events says that the circumstances surrounding the deaths indicate the direct involvement of human and material resources belonging to the Office of the Governor of Pando. In particular, the report found that “the fact that the ditches at Cachuelita and Tres Barracas were dug with SEDCAM machinery,³⁷ that vehicles belonging to the Office of the Governor were used to transport personnel, civic committee members, and other persons in order to block the advance of the peasants; that unconventional

²⁹ On these events, the Commission is studying a complaint in the framework of the individual petition system, and wishes to clarify that this report in no way prejudices that case.

³⁰ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 7.

³¹ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, pp. 8 and 9.

³² UNASUR, UNASUR Committee for clarification of the events in Pando, Report of the UNASUR Committee on the events in Pando, *Hacia un alba de Justicia para Bolivia* [Toward a New Dawn of Justice for Bolivia], November 2008, Conclusion No. 9.

³³ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 17; Union of South American Nations. Report of the UNASUR Committee for clarification of the events in Pando, November 2008, Conclusion No. 2.

³⁴ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 30.

³⁵ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

³⁶ Ombudsman. Ombudsman’s Report on the Violent Events in September 2008 in Pando Department. La Paz. Nov. 27, 2008; UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. 9 March 2009, para. 10.

³⁷ Departmental Roads Service.

firearms were used in the area; and that steps were taken that exceeded its authority, meant that this institution was involved directly, and in some cases indirectly, in the deaths (...) people.”³⁸

36. According to the report of the Office of the UN High Commissioner, that agency received testimony that there were indiscriminate gunshots against the peasants’ meeting in El Porvenir. It is said that some of the victims, well-known indigenous leaders, were intentionally targeted and killed.³⁹

37. Furthermore, according to witnesses, 15 persons were abducted in the attack and taken to the offices of the Pando Civic Committee, where they were allegedly tortured and threatened with being killed unless admitted to being the perpetrators of the acts of violence and to accepting payment in return for attending the peasant meeting. These persons were taken to the Prosecutor’s Office, which contradictorily is said to have opened a criminal investigation against them, despite the fact that they were victims in the massacre.⁴⁰ Information has also been received that six supporters of the Office of the Governor were captured, beaten, and then released by the peasants after police intervention.⁴¹

38. The Commission notes that in response to these events, on September 24, 2008, the government approved and implemented a decree to provide medical and social assistance to those injured in Pando, financial assistance to the next-of-kin of the victims killed, and humanitarian aid to communities affected by the violence.⁴² However, the Commission is perturbed by complaints about the inability of the security forces to carry out their duty to prevent human rights violations.⁴³

39. For its part, the General Secretariat of the OAS has played a fundamental role in support of democratic institutions by dispatching electoral observation missions to monitor the country’s elections and democratic consultation processes, including the recall referendum. The OAS also attended and mediated in the dialogue processes in the city of Cochabamba and the National Congress, which resulted in the calling of the constitutional referendum to be held on January 25, 2009. For its part, the Permanent Council adopted on May 3, 2008, a resolution entitled “Support for the Process of Dialogue, Peace, and for Democratic Institutions in Bolivia”, and on November 19 of that year, held a protocolary meeting to receive the President of the Republic, Evo Morales Ayma.

40. As it stated in the press release issued in the wake of these events⁴⁴, the Commission vigorously deplores and repudiates these acts, which reflect a total disregard for human life. The Commission considers particularly serious the allegations that local authorities were

³⁸ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 17.

³⁹ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 22.

⁴⁰ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, pp. 10-12; Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 25.

⁴¹ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 22.

⁴² UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 29.

⁴³ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, paras. 42, 43, and 44.

⁴⁴ IACHR. Press Release 41/08. *CIDH Condena violencia en Bolivia*. September 15, 2008.

involved in planning some of these acts. The Commission urges the Bolivian State to take steps to prevent the repetition of acts of this nature through the creation and implementation of a system with sufficient capacity to ensure that control measures are compatible with the international obligations adopted by Bolivia. Such measures of non repetition also include the National Police, which, in strict observance of human rights, have a constitutional obligation to use reasonable and proportionate means to prevent situations of violence of the kind described.

41. The State must also do its duty to ensure that the events are investigated and those responsible punished. The Commission urges the State to carry out the necessary investigations in an effective manner, in strict compliance with the guarantees of due process.

C. The State of Siege in the Department of Pando

42. As a result of the events of September 11, 2008, in Pando, on September 12, 2008, Decree 29.705 was passed declaring a state of siege throughout the territorial jurisdiction of that department, in accordance with Article 111 of the Constitution then in force.

43. The Decree introduced a prohibition that made it illegal: to carry firearms; to organize any political meetings, demonstrations, strikes, or blockades that might disrupt the normal development of activities; for more than three people to travel together between the hours of midnight and 6 a.m.; to hold any social gathering without the permission of the national police; for government- and privately owned vehicles to circulate between the hours of midnight and 6 a.m. without permission from the Traffic Authority; to travel in the country without a safe-conduct, and for any premises that engaged in night-time activities to operate between the hours of midnight and 6 a.m.⁴⁵

44. The Decree also provided that any persons or departmental, municipal, and provincial authorities involved in acts that violate public order, life, security, the peace, and the rule of law would be liable to application of the provisions contained in paragraphs 3 and 4 of Article 112 of the Constitution.⁴⁶

45. Under these provisions,

The declaration of a state of siege produces the following effects:

(...)

3. The rights and guarantees granted by this Constitution shall not be suspended ipso facto and in general by the mere declaration of a state of siege; but they may be with respect to specified persons charged upon good grounds with conspiring against the public order, in accordance with the provisions set forth in the following paragraphs.

4. The legitimate authority may issue summonses or arrest warrants against the accused, who must be brought before the competent judge within forty-eight hours, together with the documents substantiating the arrest. If the preservation of public order necessitates the removal of the accused, they may be ordered confined to a departmental or provincial capital that is not unhealthful. Banishment for political reasons is prohibited, but a person confined, sought or under arrest on such grounds, who requests a passport to leave the country, may not be denied it for any reason whatever and the authorities must grant him the guarantees necessary for that purpose.

⁴⁵ Decree 29.705 of September 12, 2008, Art. 2.

⁴⁶ Decree 29.705 of September 12, 2008, Art. 2.

(...)

46. Although the Decree did not set a time limit on the state of siege in Pando, under Article 111 of the Constitution such a measure may not last longer than 90 days.⁴⁷ The state of siege was lifted at midnight on November 24, 2008.

47. It came to the Commission's attention that on September 12, 2008, in the operation to retake control of Cobija airport, shots were fired that resulted in the deaths of two persons: a conscript named Ramiro Tinini Alvarado and a Mr. Luís Antonio Rivera.⁴⁸

48. The Commission has also been informed that between September 15, 2008 and the lifting of the state of siege, a group of between 25 and 38 persons were arrested and taken as internal exiles to the military base of the "Bolívar" regiment located in the city of Viacha, which is situated 20 km from the government headquarters in the city of La Paz.⁴⁹ According to testimony from the exiles and information from their next of kin gathered by the Office of the Ombudsman and the Office of the UN High Commissioner, the searches of the homes to make some of the arrests were conducted in nighttime operations in private residences, without an arrest warrant or any information on the reasons for the arrest or detention. The military personnel who took part in the operation reportedly broke into doors, fired in the air outside the houses of the people they were going to arrest, and even wounded one of them with a pellet in the neck. The reports said several persons were kicked and beaten with rifle butts, had their hair pulled, were insulted and threatened, and a weapon was pointed at one person in bed.⁵⁰

49. According to its international obligations, even in a state of siege, the Bolivian state is required to ensure that any measures connected with the use of force or, in general, to ensure security, is carried out within the limits imposed by respect for the life and safety of persons and by fundamental judicial guarantees not subject to suspension.

50. In addition, the State recognized that except for ExGovernor of Pando Leopoldo Fernández, none of the detainees was brought before a judge, because the constitutional provision on confinement provides that upon arrest there are two options: to be confined to preserve public order or to be brought before a competent judge for allegedly committing a crime. The State said that the authorities did not consider it appropriate to present the detainees to a judicial authority.⁵¹ In the Bolivian State's view, the arrests were not the result of a policy decision, but were carried out in the framework of current constitutional provisions, and in accordance with the "substantive and procedural guarantees provided in Article 27.2 of the American Convention."⁵²

⁴⁷ Constitution of Bolivia. Promulgated on February 2, 1967, and reformed in February and August 2004. Article 111: (...) IV. The executive branch may not extend the state of siege for longer than 90 days, nor declare another within the same year without the approval of Congress. To that end, as appropriate, special sessions of Congress shall be called should its houses be in recess.

⁴⁸ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 5.

⁴⁹ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 18.

⁵⁰ UN High Commissioner for Human Rights. Office in Bolivia. Public report on the violent events in Pando in September 2008. La Paz, March 2009, para. 86; Defensor del Pueblo. Informe Defensorial de los Hechos de Violencia Suscitados en Septiembre de 2008 en el Departamento de Pando. La Paz. 27 de noviembre de 2008, pág. 54.

⁵¹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁵² Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

51. Although the available information indicates that except for the use of force in the arrests, the persons confined received humane treatment and were given food and medical care,⁵³ the Commission is also concerned by the fact that their “exile” status is the result of a political decision and not the decision of a judicial authority able to confirm their detention, as required by the Constitution and in accordance with the case law of the Constitutional Court of Bolivia. This Court has held that “a state of siege is an extraordinary measure provided for in Article 111 of the Constitution that suspends a number of basic rights for certain individuals; nevertheless, it is necessary in respect of said individuals to observe the conditions set forth at Article 112 (3) and (4) of the Constitution.”⁵⁴

52. In the Commission’s opinion, the alleged arbitrary raids, mistreatment during detention and transport, and being held incommunicado, as well as the way in which the device of exile was used, namely on the pretext of the need for “political protection by the state of public order”, without a court order or judicial review,⁵⁵ and without the persons concerned being promptly charged with the commission of crimes while the state of siege was in force, is incompatible with the substantive and procedural guarantees provided in Article 27(2) of the American Convention precisely as protection mechanisms against abusive measures in states of emergency. Without these guarantees, persons in the custody of the State are left completely vulnerable and defenseless.

53. Accordingly, the Commission hopes to receive more-detailed information from the State on these alleged human rights violations during the state of siege, including measures taken to investigate the actions of the respective security officials.

D. Other violent acts against state institutions, political leaders or former leaders, and the media

54. The Commission was informed of attacks against state institutions,⁵⁶ at the workplaces and even the homes of senior officials belonging to both the ruling party and the opposition;⁵⁷ on the offices of media outlets, as well as on journalists and media workers;⁵⁸ and, in

⁵³ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 27.

⁵⁴ Constitutional Court of Bolivia. Constitutional Judgment 439/2000 – R.

⁵⁵ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 53.

⁵⁶ On December 5, 2007, an explosive device was detonated on the sixth floor of the Court of Justice.

In Tarija, hooded individuals linked to the office of the governor of that department and supposedly led by the president of the Civic Committee seized the offices of the National Tax Service and physically assaulted the regional manager.

In early September 2008 the buildings of a number of public institutions were taken over by force and looted. These included those of the National Tax Service, the National Institute of Agrarian Reform, *Empresa Nacional de Telecomunicaciones*, the Customs and the bus terminal.

On September 5, in Pando the media decided to suspend their broadcasts owing to attacks and threats to journalists. Cobija airport was occupied by officials of the governor’s office and civic leaders. They seized a military light aircraft, apprehended two colonels and a captain, and appropriated military supplies.

On these events, see: Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008; and Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR.

⁵⁷ According to various sources:

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On November 24, 2007, the home of the Governor of Sucre, David Sánchez, was burnt down.

On November 29, 2007, in Pando a group of persons burnt down the house of alternate senator Abraham Cuéllar, whom the opposition accused of selling out to President Morales' party.

On December 10, 2007, grenades were thrown at the home of MAS councillor Oswaldo Peredo.

On December 22, 2007, in Santa Cruz, radical pro-autonomy groups burnt down part of the home of the Constituent Assembly member, Carlos Romero.

On these incidents, see: Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008.

⁵⁸ According to various sources:

On August 28, 2007, during the strike in Santa Cruz, trade unionists smashed the windscreen of a *Red Uno* vehicle and prevented their coverage. Supporters of *Plan Tres Mil*, in Santa Cruz refused to allow *Red Unitel* reporters to cover their protest because the network says in its reports that the citizens who support the Plan "are MAS supporters." In Santa Cruz, *Canal 7* reporters were also assaulted by citizens who supported the strike, telling them, "We don't want any MAS supporters."

On January 19 and 25, 2008, the offices of the *Periodistas Asociados Televisión* and *ATB* networks were stoned by unknown persons. The La Paz Journalists Association requested measures to guarantee their safety in the practice of their profession.

On February 26, 2008, reporter Limberth Sánchez and cameraman Edson Jiménez of *Red Bolivisión* were attacked by a mob of demonstrators in Epizama to stop them from filming the mob torturing three policemen. The reporters were beaten, struck by stones, and had their equipment taken away from them. The three policemen died. The journalists were trying to record images of what was happening.

On March 25, 2008, demonstrators took over the offices of *Canal 7 Televisión Boliviana* and *Radio Patria Nueva*, cutting off the broadcast of these state-run media outlets for a number of hours as part of a fierce protest against the acting Governor of the Department of Chuquisaca. According to information received, the demonstrators entered the offices of both media outlets, smashed windows, and cut the power to the equipment.

On March 29, 2008, journalist Carlos Quispe died as a result of the beating he had received two days earlier at *Radio Municipal de Pucarani*. The journalist had been working at the radio station when it was attacked by demonstrators allegedly opposed to the Mayor of Pucarani, Alejandro Mamani. They beat him unconscious and he died days later in hospital. His assailants had attacked the municipal headquarters before moving on to the *Radio Municipal* facilities. The trial for this killing began on June 18, 2008, and six individuals were charged with "homicide" and "conspiracy to commit crime," including the city council members Edwin Huampo Espinoza, Basilio Poma Poma, Rufina Zerna Flores, and Nicolaza Cruz Quispe; as well the leaders of the Pucarani Municipal Oversight Committee, Julio Quisberth Quispe and Efrain Ticonipa.

On August 3, 2008, photojournalist Carlos Hugo Vaca, who was working for Reuters international news agency, was attacked by a group of presumed supporters of the governing party, *Movimiento al Socialismo* (MAS) [Movement toward Socialism], in the city of Santa Cruz. Vaca was covering a *MAS* march in support of the Bolivian President, Evo Morales, in the recall referendum. Vaca said that one of the demonstrators came up to him to let the air out of the tires of his motorcycle in order to stop him following the caravan. Then, four individuals struck him on the arms, accusing him of favoring the opposition. Ricardo Montero, of *El Deber* newspaper reported that other reporters were also threatened during the march.

On September 9, 2009, *La Razón* newspaper based in La Paz reported that opposition activists in the city of Santa Cruz de la Sierra staged a petrol-bomb attack on the offices of the state-run radio station *Nueva Patria*. In the course of two weeks of anti-government protests, opposition supporters also occupied the offices of *Canal 7*, another state run media outlet, where they stole equipment and burned furniture. Although no injuries were reported, the offices of both media outlets sustained extensive damage and have suspended their programming.

On these incidents, see, respectively: Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008; La Prensa: "*Desconocidos lanzan piedras contra ATB*" [Unknown persons throw stones at ATB]. Article published on January 27, 2008, available at: http://www.laprensa.com.bo/noticias/27-01-08/27_01_08_segu1.php // Opinion: "*Gobierno condena agresión a periodista y ataque a medios*" [Government condemns attacks on journalist and media facilities]. Article published on January 29, 2008. Available at: <http://www.opinion.com.bo/Portal.html?CodNot=17002&CodSec=6>; RWB: "Two journalists narrowly escape lynching in Cochabamba". February 28, 2008, available at: http://www.rsf.org/article.php3?id_article=25947 // El Diario: "*Jornada sangrienta en Cochabamba deja 3 policías linchados en Epizana*" [Bloody day in Cochabamba leaves three policemen lynched in Epizana]. Article published on February 27, 2008, available at: http://www.eldiario.net/noticias/nt080227/5_06nal.php; La Razón: "*Cívicos de Sucre toman la Prefectura*" [Civic Committee supporters in Sucre take over Governor's office]. Article published on March 26, 2008, available at: <http://www.la>

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general, among groups that support the positions of the opposing political, economic and social actors.

55. The Commission finds it particularly disturbing that on March 7, 2009, a group of neighbors attacked the home of Former Vice President Víctor Hugo Cárdenas in the community of Sank'a Jawira some 70 km from La Paz.⁵⁹ According to newspaper reports, the intimidation began around 8 a.m. when about a dozen persons gathered a few meters from the property.⁶⁰ The former vice president's wife reportedly called the police but got no response, apparently on orders of the town's mayor.⁶¹ According to available information, the assailants violently entered the house, broke windows and stole belongings, all in an extremely violent manner. The media reported that Cárdenas family members said they were beaten, pushed, kicked, insulted, forced to go into the yard and were whipped and stoned as they left.⁶² The women at home were said to have been brutally struck. The house was painted with slogans like "from the people to the people," "senior citizens' house," and "reclaimed for the people, dammit."⁶³ It was also reported that reporters trying to cover the incident were prohibited from taking photos and were chased "with whips."⁶⁴ After the incident, some news media reported statements by senior government officials, including the President and Vice Presidents of the Republic and the Vice Minister of Community Justice, who denied government participation in the events, but justified them on the basis of pending issues Mr. Cárdenas had with the community.⁶⁵

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razon.com/versiones/20080326_006223/nota_247_567594.htm // Red Erbol: "Un grupo de vándalos atenta contra los medios estatales en Sucre" [Vandals attack State media offices in Sucre]. Article published on March 25, 2008, available at: <http://www.erbol.com.bo/noticia.php?identificador=4407&id=1> // RWB: "Anger as rioters stone studios of public TV and radio stations during a demonstration in Sucre". March 27, 2008, available at: http://www.rsf.org/article.php3?id_article=26356; Special Rapporteur for Freedom of Expression: Press Release 189/08, "The Office of the Special Rapporteur for Freedom of Expression deplors the murder of Bolivian reporter Carlos Quispe Quispe, and urges the authorities of Bolivia to investigate the crime." April 9, 2008, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=728&IID=1>; IPYS/IFEX: "Canal universitario suspende transmisiones tras amenazas [University TV station suspends broadcasts following threats]; partidarios de presidente Morales agreden a reportero de agencia Reuters" [Supporters of President Morales attack Reuters reporter]. August 7, 2008, available at: <http://www.ifex.org/es/content/view/full/95958> // IPYS: "Partidarios de Evo Morales agreden a reportero de Reuters". [Supporters of Evo Morales Attack Reuters Reporter]. August 6, 2008, available at: <http://www.ipys.org/alertas/atentado.php?id=1563>; and Latin American Observatory for Freedom of Expression: "CPJ Condema agresiones a medios de comunicación en Santa Cruz" [CPJ condemns attacks on media in Santa Cruz]. Alert received at the Office of the Special Rapporteur on September 11, 2008. SIP: "Preocupación por agresiones contra medios bolivianos" [Concern over attacks against Bolivia media outlets]. Received at the Office of the Special Rapporteur on September 11, 2008. // CPJ: "Activistas opositores atacan dos medios estatales" [Opposition activists attack two media outlets]. September 10, available at: http://www.cpj.org/news/2008/americas/bolivia10sep08na_sp.html // RSF: "Reporters Without Borders urges president and opposition prefects to restore calm after ten days of severe violence." Received at the Office of the Special Rapporteur on September 15, 2008. Available at: http://www.rsf.org/article.php3?id_article=28550.

⁵⁹ Newspaper article. Los Tiempos. March 9, 2009. *Cárdenas will file suit against assailants*. Available at: <http://agorabolivia.com/2009/03/09/esta-es-la-democracia-del-mas/>.

⁶⁰ Newspaper article. La Razón. March 9, 2009. *Mob acted violently and without premeditation in Huatajata*. Available at: http://www.la-razon.com/versiones/20090309_006661/nota_249_774523.htm.

⁶¹ Newspaper article. La Razón. March 9, 2009. *Cárdenas says he asked for help and did not get it*. Available at: http://www.la-razon.com/versiones/20090309_006661/nota_249_774524.htm.

⁶² Newspaper article. La Razón. March 9, 2009. *Mob acted with fury in Huatajata*. Available at: http://www.la-razon.com/versiones/20090309_006661/nota_249_774523.htm.

⁶³ Newspaper article. La Razón. March 8, 2009. *People linked to Evo attack Cárdenas's family and house*. Available at: http://www.la-razon.com/versiones/20090308_006660/nota_262_774300.htm.

⁶⁴ Newspaper article. La Razón. March 9, 2009. *Media curbed*. Available at: http://www.la-razon.com/versiones/20090309_006661/nota_249_774527.htm.

⁶⁵ Newspaper article. La Razón. March 10, 2009. *Government Justifies Actions against Cárdenas*. http://www.la-razon.com/versiones/20090310_006662/nota_249_775230.htm. Among the statements, the note cites: "The truth hurts sometimes...when (Cárdenas) meets with the middle class, he says this new Constitution is indigenist, and when he meets

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56. A similar event occurred on March 3, 2009, against the former deputy of the *Movimiento al Socialismo*, who was reportedly attacked near her house by a group of persons with strong blows that left her covered with bruises. Some newspaper reports carried the victim's statement in the following terms: "a man pushed me with a stick to force me down on the ground while the women threw stones at me and lashed me with a whip." The available information indicates that Ms. Pareces was expelled from the political party in 2003 for speaking out against the current president, Evo Morales, and recently published the book *Del gonismo al evismo* [a reference to former president Gonzalo Sánchez de Lozada and the current president].⁶⁶

57. The Commission strongly repudiates the acts described in this section and expresses its deep concern over the increase in events of this sort allegedly occurring along with the progressively greater political polarization noted in Bolivia. The Commission is especially alarmed by the statements of senior government officials that could imply or be interpreted as a justification for these deplorable acts of violence. The Commission urges the Bolivian State to take the necessary steps to prevent the recurrence of similar acts, including the public and unequivocal condemnation of them, and to start and carry out a serious and diligent investigation to clarify what occurred, in order to identify the responsible parties and punish them accordingly.

IV. ADMINISTRATION OF JUSTICE

58. In the *Access to Justice and Social Inclusion*, the Commission examined the obstacles traditionally faced by certain, particularly vulnerable sectors of society. The Commission centered on coverage and distribution of justice services; guarantees of independence, impartiality, transparency, and suitability; implementation of the accusatorial criminal prosecution procedure, and factors of impunity in cases of gross violations of human rights committed during the military dictatorships and in the framework of social unrest.⁶⁷

A. Coverage and distribution of justice services

59. The Commission expresses its deep concern at the continued minimal coverage of justice services in the country. According to the Commission's findings on its report, only 55% of municipalities have a judge, 22% a prosecutor, and 3% a public defender.

60. Although the State reported that the Attorney General of the Republic is implementing a project called the Prosecutors' Map [Mapa Fiscal] to achieve a broader and more even distribution of prosecutors in the national territory, the available information indicates that thus

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with some indigenous brothers he says: Evo is excluding them, leaving them out, discriminating against the Indians. What kind of talk is this?"; "if he wants to have his property respected, he has to settle (his problems) with his community, with his province, with his city hall, and if he cannot convince them, it's the family's problem"; "Víctor Hugo Cárdenas should ask himself what harm he must have done to his neighbors, to the residents, the people of his community and province, that caused these residents to repudiate him and feel estranged from him and criticize him. This is a matter that Víctor Hugo Cárdenas has to explain to history"; "history has penalized him, history has punished him, and the repercussions of these damaging acts against Bolivia have repercussions up to today"; "We would be ingenuous to make him out to be a victim...we are not so naive or stupid to make a victim of one who is not, one who victimized the people by destroying the State 10 years ago."

⁶⁶ Newspaper article. El Deber. March 12, 2009. *Former masista deputy denounces another attack*. Available at: <http://www.eldeber.com.bo/2009/2009-03-12/vernotaahora.php?id=090312003810>.

⁶⁷ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007. pars. 46-174.

far, the lack of coverage of justice services continues to affect people who live in extremely poor rural areas, inhabited for the most part by indigenous peoples and peasant communities⁶⁸.

61. The Commission reiterates that the lack of judicial coverage perpetuates the exclusion of certain sectors of society from access to justice. This situation also fosters impunity in human rights violations and encourages their repetition, as has happened, for instance, in the cases of mob lynching described hereinbelow. The Commission reminds the Bolivian State that, pursuant to Article 25 of the American Convention, all persons under its jurisdiction must have the possibility of recourse to the courts, and must be able to obtain a response to their demand within the guarantees of due process. The exercise of these rights presupposes that there is a judicial system that covers the entire national territory.

62. The Commission urges the State to adopt forthwith measures to increase the presence of judicial authorities, prosecutors, and public defenders throughout the country. If it does not, the guarantee of the right to judicial protection for persons subject to Bolivian jurisdiction will continue to be illusory.

63. The Commission has also been informed of the creation of Integrated Justice Centers as forums “of and for the local community, implemented in order to improve access to justice for vulnerable sectors of the Bolivian population.” These centers began to operate in 2004 and were later recognized by Executive Decree 28.586 of January 17, 2006, as part of the National Program on Access to Justice. Their function is to provide free information services, legal advice, and conciliation services, as well as processing birth certificates and providing neighborhood training on matters connected with the exercise of citizen rights. They also have courts of first instance with jurisdiction over certain disputes in civil, criminal, and family-law matters.⁶⁹

64. According to available information, at present there are 11 such centers in the country: six are located in the city of El Alto; one in Santa Cruz de la Sierra; one in La Paz, one in Chimoré, Cochabamba; one in Coroico, Yungas, and one in Yapacaní, Santa Cruz. As of December 2007, 55,000 cases had been heard.⁷⁰ During 2008 32,380 cases were heard⁷¹ and as of June 2008, 16,259 individuals had received free comprehensive assistance at the centers. There are plans to strengthen and create new Integrated Justice Centers in coordination with municipal governments, the judiciary, the Prosecutor’s Office, and universities.⁷²

65. The Commission values the efforts to extend and strengthen alternative dispute settlement mechanisms, which have proved effective at reducing procedural delays and congestion in the courts, as well as offering viable alternatives to people who, for a variety of reasons, are

⁶⁸ *Oficina Jurídica de la Mujer de Cochabamba. Follow-Up Report on the Recommendations of Access to Justice and Social Inclusion.*

⁶⁹ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR. paras. 55 and 56.

⁷⁰ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR. paras. 55 and 56.

⁷¹ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

⁷² Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 20.

unable to access the official justice system. In this regard, the IACHR hopes that the problems to do with allocation of sufficient funding to ensure that these centers can operate adequately properly on a permanent basis are overcome. The foregoing notwithstanding, the Commission considers that these measures are not sufficient to ensure access to justice, particularly for the inhabitants of the more remote rural areas. The presence of Integrated Justice Centers should not be regarded as a substitute for institutions such as the Prosecutor's Office and public defenders in rural parts of the country.

B. The status of the Constitutional Court

66. On May 17, 2007, the Constitutional Court warned that democracy, the rule of law and state institutions were in danger as a result of the government's intention to institute proceedings for misfeasance in office against the five members of the Court who announced that the term for which certain justices of the Supreme Court had been appointed had expired. The Commission received reports that the charges of misfeasance in office were permanently dropped; however, two of the accused justices decided to tender their irrevocable resignation in response to what they saw as harassment and a systematic attack on their independence and impartiality,⁷³ owing to the public exposure and politicization of the trial.⁷⁴

67. The Commission has been informed that since December 13, 2007, when a judge on that court resigned, this body has lacked the necessary quorum to convene and adopt decisions.

68. The Commission was subsequently informed that on May 26, 2009, the only female justice still serving on the Constitutional Court resigned, which means that all seats on the tribunal have been vacated. On June 23, 2009, the Commission formally asked the government to provide information on the current status of the Constitutional Court, inquiring specifically about the possibility that its members could be appointed soon by the Congress and measures that will be taken to address the backlog of cases due to the delay in the appointments. As of the date of approval of this report, the Commission had not received a reply to this request.

69. Available information indicates that the problem of the Constitutional Court vacancies will be resolved with the election of the members of the new Plurinational Constitutional Court.⁷⁵ However, the Commission notes that the new constitutional text indicates the need for several preliminary steps before justices can be named to that institution through universal suffrage as called for in the new Constitution. Among those steps is the election of the new Plurinational Legislative Assembly scheduled for December 6, 2009. After the legislative organ is installed, it has 180 days to enact legislation for the electoral system, the judicial organ, and the Plurinational Constitutional Court, all of which are needed to proceed with the elections for the Court. According to the timeline of the new Constitution, the new Plurinational Constitutional Court will not be elected until at least the second half of 2010.⁷⁶

⁷³ Communication of the Constitutional Court of Bolivia to the IACHR. Received on November 6, 2007.

⁷⁴ The Inter-American Court of Human Rights recently developed case law on the relationship that exists between fair trial guarantees in the framework of disciplinary proceedings against judges and the principle of judicial independence. In this regard, see I/A Court H.R. *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes")*. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182.

⁷⁵ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

⁷⁶ See: Articles 198 and transitory provisions first, second, and fourth of the new Constitution.

70. The Commission understands that the current Constitutional Court continues to exist in Bolivia's present political and juridical system, just as there is continued operation of the other State institutions such as the Congress, which will be replaced by the Plurinational Legislative Assembly once it is chosen under the new Constitution. The status of the Constitutional Court is that its seats are vacant, but this does not mean the institution has ceased to exist nor that its functions of constitutional control and protection of basic rights have disappeared from the Bolivian government structure.

71. According to statistics published by the Constitutional Court Secretariat, this lack of justices has paralyzed 4,489 constitutional cases, affecting an estimated 29,069 persons.⁷⁷ Since by its very nature the role of the Constitutional Court is to defend the Constitution and guarantee basic rights, the Commission is alarmed that a year and a half has gone by with no progress in appointment of the justices. The Commission considers that this situation seriously jeopardizes citizens' right to proper administration of justice and upsets the system of Constitutional checks and balances, thereby threatening the country's democratic institutions.

72. In this regard, the Commission urges the Bolivian State to name justices to the Constitutional Court immediately for the term remaining until that institution is replaced by the Plurinational Constitutional Court. The Commission feels it is essential for this appointment to ensure the guarantees of independence for the justices and the necessary resources for them to carry out their functions.

C. Guarantees of independence, impartiality, transparency, and suitability

73. In *Access to Justice and Social Inclusion* the IACHR analyzed the irregularities in the appointment processes for judges and prosecutors, as well as in enforcement of the disciplinary system of the judiciary and the Prosecutor's Office. The report also referred to the perceptions of some sectors of society regarding interference by the executive branch in the judiciary and complaints about the lack of transparency in these selection processes. In a similar sense to what was described *supra*, one aspect that the IACHR has found troubling is the high number of vacancies lasting months in top posts of different branches of government and the present provisional status of the position of Attorney General.

74. The problem of provisional appointments continues to plague the Prosecutor's Office. According to information received by the IACHR during its visit to Bolivia in June 2008, Mr. Mario Uribe continues to occupy the post of Attorney General on a *pro tem* basis as Congress has not taken the necessary steps to appoint his successor.

75. The foregoing notwithstanding, the Commission notes the information supplied by the State on the implementation of a prosecutor career through a system of public competitions with monitoring and participation of civil society through the Network for Participation and Justice, to guarantee transparency. The Commission continues to receive information on the results of this initiative to implement the prosecutor career definitively and permanently in accordance with the internal rules of procedure of the Prosecutor's Office, which establishes procedures for the appointment of prosecutors with a prosecutor career based on merit competition and progressive accreditation of knowledge.⁷⁸

⁷⁷ See: www.tribunalconstitucional.gov.bo Available on July 28, 2009.

⁷⁸ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

76. The Commission also welcomes information supplied by the State concerning some undertakings aimed at overcoming the problems and barriers for the proper implementation of the judicial career. These initiatives include directive CJ-GRH-022/08 of September 29, 2008, to human resources chiefs of all judicial districts, which orders that all jobs be posted on the official website.⁷⁹ The State also reported that there will be reforms in the whole system for selection and discipline of the judicial branch.⁸⁰ The State said that under the new Constitution, the Magistrates' Council will pre-select candidates for the departmental courts, who will be appointed by the Supreme Court, and select the district examining magistrates [*jueces de partido e instrucción*] through merit competition. It added that under the new Constitution, the Plurinational Legislative Assembly will nominate candidates for the Plurinational Constitutional Court, the Supreme Court, the Agro-environmental Court, and the Magistrate's Council, who will then be elected by universal suffrage under Article 158 of the new Constitution.⁸¹

77. The Commission trusts that the State will continue to provide information on the consolidation of the judicial career in the framework of the new Constitution and the institutions to be established under it. The IACHR reminds the State of the need for it to effectively implement the judicial and prosecutorial careers systems in strict accordance with the rules that govern them and in keeping with international standards in such matters. In that regard, the Commission reiterates that the Basic Principles of the United Nations on the Independence of the Judiciary establish that there is a direct relationship between guarantees of independence and impartiality in the administration of justice, as a precondition for meeting the standards of due process, and the creation and strengthening of transparent mechanisms for the appointment and promotion of judges on the basis of their qualifications, and not for other, improper motives.

D. Accusatorial Criminal Prosecution Procedure and Public Defenders

78. In *Access to Justice and Social Inclusion* the Commission identified a series of obstacles and problems in the effective implementation of the accusatorial criminal prosecution system.

79. In this respect, the Commission was informed that the National Public Defenders Service embarked on redesign of its functions, which resulted in a Defender's Handbook and the Regulations of the National Public Defenders Service Training Institute, which documents detail the activities that public defenders are required to carry out.⁸² The Commission regards as positive the implementation of a computerized data system that will make it possible to follow up electronically on every case taken up by public defenders.⁸³

80. In spite of the foregoing, efforts to improve the coverage of the Public Defenders Service have not been sufficient.⁸⁴ There is still a shortage of public defenders, particularly in rural

⁷⁹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁸⁰ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁸¹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁸² Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 27.

⁸³ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 27.

⁸⁴ Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 20.

areas, since what few public defenders there are provide their services in departmental capitals and a number of intermediate cities.⁸⁵ In addition, there are no studies on the caseload of public defenders from which to make a determination as to the geographic coverage needed.⁸⁶

81. The Commission reiterates the crucial role that public defenders perform in guaranteeing the right to a fair trial for persons in positions of great vulnerability, and it reminds the State of the need to adopt measures to increase the number of active defenders and ensure the quality of their work.

82. The Commission takes note that measures have been adopted and/or continued to cope with the processing backlog for criminal cases. These measures include the Early Solution Unit, which is a filter or screening mechanism for cases that warrant the start of criminal proceedings.⁸⁷ In addition, the State reports that studies have been completed and manuals have been published for the application of alternative vehicles.⁸⁸ The State also mentioned that the guidelines for coordination at the police, prosecutor, and court levels have been implemented with software for databases that show the status of the proceedings with an indication of the dates and subjects involved, which makes it possible to follow up on the deadlines for the proceedings.⁸⁹ The State adds that the National Plan of Action on Human Rights contains a comprehensive diagnostic of the weaknesses in implementation of the Penal Procedure Code and other penal system legislation, taking into account the IACHR's recommendations. This action is to be taken between 2009 and 2013 with the goal of reducing the country's case backlog.⁹⁰

83. Nevertheless, the State emphasized that there are two major weaknesses in the current penal procedures. The first is the problem in forming the courts with citizen judges, for lack of candidates, which has caused delays and stays in the trials. The second refers to the "excessive guaranteeism" on behalf of the defendants, who use a series of delaying tactics and then claim that the statute of limitation for the proceeding has expired.⁹¹

84. The Commission welcomes the State's efforts to implement the accusatorial criminal prosecution system. However, available information indicates that the case backlog continues to be the major problem of criminal justice. In this regard, the Commission urges the State to continue striving to do whatever is needed to overcome these problems. The Commission stresses that the

⁸⁵ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR, para. 39.

⁸⁶ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR, para. 39; Ombudsman. Report to Congress. 2007. September 29, 2008, pp. 21 and 22.

⁸⁷ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁸⁸ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁸⁹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁹⁰ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁹¹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

design of these efforts must achieve a fair balance between the need to resolve cases expeditiously and to provide judicial guarantees for the defendants.

85. Finally, the Commission was informed that the preliminary draft of a proposed Law on Comprehensive Protection and Assistance for Victims of Violent Crime was prepared in coordination with the Prosecutor's Office. Furthermore, the Ministry of Justice intends to implement the National Legal Protection Service on behalf of violence victims.⁹² The Commission also received reports that the Ministry of Finance granted an additional appropriation to the Prosecutor's Office in order to implement the Victim and Witness Protection Program through the creation of new budget items for prosecutors and to hire part-time staff, such as paralegals, psychologists, and social workers.⁹³ The Commission values these government initiatives to improve assistance to victims of human rights violations and hopes to receive further information on their implementation and results.

E. Factors of impunity in cases of gross violations of human rights

1. Facts that occurred during the military dictatorships

86. As regards human rights violations that occurred during the military dictatorships, the Commission received reports of some progress with respect to the search for and identification of the remains of disappeared persons. The Commission was informed that the Interagency Council for the Clarification of Forced Disappearances submitted a project proposal for the exhumation, identification, return, and investigation of disappeared persons, which provides for the participation of the Argentine Unit of Forensic Anthropology, thanks to the support of the Argentine government. The intention is that the project would be financed in large measure with international cooperation funds.⁹⁴

87. Information provided by the State indicates that the Ministry of Justice signed a memorandum of understanding on technical cooperation with Argentina on November 5, 2007, based on a project for investigation and clarification of cases of forced disappearance during the dictatorship periods (1964-1981). The project includes: i) recovery of the remains of the disappeared persons, to be returned to their families; ii) gathering of evidence for clarification of the forced disappearances; iii) establishment of communication with and provision of social and psychological assistance to the families; iv) establishment of the national archive of the history of forced disappearances and martyrs for national freedom; and v) development of a collective conscience against dictatorships and in favor of democratic development. The project is to be carried out in 36 calendar months and there has already been progress in identification and delivery of some remains.⁹⁵

88. The Commission received information about the exhumation of the remains of 17 victims of forced disappearance found in the tomb of the Association of Next of Kin of the

⁹² Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 6.

⁹³ *Oficina Jurídica de la Mujer de Cochabamba*. Follow-Up Report on the Recommendations of *Access to Justice and Social Inclusion*. p.3.

⁹⁴ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, pp. 40-41.

⁹⁵ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

Disappeared Detainees and Martyrs for National Liberation. At present, the process of identifying the remains is said to be underway.⁹⁶

89. The Commission was also told about the presentation of a draft Executive Decree on appropriate operational practices in connection with the treatment of human remains and information about the disappeared person.⁹⁷

90. As regards reparations, the Commission has monitored the steps taken by the National Commission for Redress of Victims of Political Violence (hereinafter also "CONREVIP"), which is in the process of assessing victims of the dictatorships, in particular those of forced disappearance, torture, murder, exile, arbitrary arrest and imprisonment, and political and trade union persecution.⁹⁸ According to government sources, as of June 2008, 6,221 applications had been received and disaggregated as follows: 63 for disappearance; 233 for murder; 1,477 for exile; 3,521 for detention; 816 for persecution, and 17 for torture. It is estimated that the assessment of all 6,221 applications will be completed in the near term and an Executive Decree issued containing a list of the victims and beneficiaries of redress.⁹⁹

91. The State added that the Ministry of Justice has made several efforts to obtain financing for 80% of the material compensation for beneficiaries of Law 2640 that established CONREVIP. The project is reported on the negotiation table of the Vice Minister for Public Investment and External Financing to press for funding for the external cooperation. It says that the current Ministry of Finance has granted 20%, so that is assured.¹⁰⁰

92. The Commission takes note of these efforts, which are evidence of political will to grant reparations to the next of kin of victims. However, the Commission notes that difficulties persist in the clarification of the facts because the investigations and judicial proceedings continue to make slow progress. Military secrecy continues to be one of the main obstacles in the progress of trials. The Commission was informed that the Permanent Assembly of Human Rights recently reiterated its request to complete the procedures for declassification of the files of the Second Army Department and other documents to enable investigations to continue in order to ascertain the whereabouts of the remains of several persons who disappeared under the military dictatorship of Luis García Meza.¹⁰¹ The Commission underscores the importance of access to the files for bringing full reparation and clarification of past human rights violations.

93. Moreover, the Commission welcomes the efforts the State is making to obtain funds for the location and identification of the remains of victims of the dictatorships, and to pay reparations to the victims found still living and/or their families. However, the Commission wishes to recall that these obligations must be satisfied by the Bolivian State in the framework of its international obligations assumed with the ratification of the American Convention and other human

⁹⁶ Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 26.

⁹⁷ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 41.

⁹⁸ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 41.

⁹⁹ Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 22.

¹⁰⁰ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

¹⁰¹ Permanent Assembly of Human Rights of Bolivia. Press Release of June 17, 2008.

rights treaties. The Commission hopes that if overtures to obtain external funding are not successful,¹⁰² the State will take the necessary budgeting steps to give continuity to the above-mentioned programs for identification of remains and for reparations.

2. Social conflicts in the last decade

94. With regard to social conflicts in the past years, the Commission received reports that progress in the investigations connected with the suppression of the mobilizations of February 2003 continues to be delayed by the failure of four accused servicemen to appear before the judicial authorities.¹⁰³ Nevertheless, the Commission welcomes the promulgation of Law No. 3955 in November 2008, which establishes reparations to victims of violence in February, September, and October 2003.¹⁰⁴ The Commission hopes that the State will continue to report on the implementation of this law and its concrete results.

95. With respect to the events that took place in Sucre in May 2008, described *supra*, the Commission took note that eight cases were under investigation in the Chuquisaca District Prosecutors' Office. According to the annual report of the Office of the UN High Commissioner, there have been indictments in three of the eight cases, while the Prosecutors' Office rejected the other five. That office said some victims were probably reluctant to testify for fear of reprisals by the Civic Committee of the zone.¹⁰⁵

96. As for the events that occurred in Pando Department on September 11, 2008, described *supra*, three investigations are said to be underway.¹⁰⁶ According to information supplied by the State, the first was opened by the Public Prosecutor's Office for the deaths of three persons. In this investigation, the Fifth Examining Magistrate for criminal cases reportedly ordered the preventive arrest of Former Pando Governor Leopoldo Fernández. The second investigation was opened by the Minister of Justice on September 24, 2008, and the alleged perpetrators are Former Pando Governor Leopoldo Fernández, leaders of the Civic Committee, officials of the Office of the Governor, and others. The accusations are: forced disappearance of persons, attempted assassination, harassment, torture, deprivation of liberty, and very serious, serious, and light wounds. The third investigation was opened with the formation of a Special Multiparty Committee of the House of Deputies, with that chamber assuming the role of the Public Prosecutor's Office in cases of national significance.¹⁰⁷

¹⁰² On this matter, the Office of the UN High Commissioner for Human Rights in Bolivia said there have been problems with the processing of the requests and payment of damages to more than 6,000 persons who sought compensation under Law No. 2640. Lack of funds is one of the major obstacles because the law stipulates that 80% of the required financial resources must be sought by the government from international cooperation agencies, and many donors consider that the State is solely responsible for the payments. See: UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 36.

¹⁰³ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 28.

¹⁰⁴ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 35.

¹⁰⁵ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 20.

¹⁰⁶ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 25.

¹⁰⁷ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009; and Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 25.

97. The State also informed the Commission that the national government sent directives and requests to various officials in the Prosecutor's Office, asking that investigations be opened *ex officio* regarding the looting and violent attacks on the state institutions and human rights organizations occurred in September, 2008 and mentioned above in the section dealing with the political context and social unrest. A National Prosecutorial Commission with nationwide jurisdiction and based in the city of La Paz was set up for that purpose.¹⁰⁸

98. The Commission hopes to continue receiving progress reports on these proceedings and urges the State to adopt measures to overcome the difficulties that have hampered clarification of human rights violations committed in the past as well as those that continue to occur in the present. In particular, the Commission urges the State to intensify its efforts to identify the culprits and impose appropriate penalties, given that the prospect of obtaining justice and ensuring that those responsible are punished dwindles as time passes.

3. Cases of "street lynching"

99. The Commission has also received information through press reports collected by the Office of the Ombudsman and other sources regarding repeated cases of lynching characterized by acts of mob violence perpetrated with cruelty. Generally speaking, the victims are captured on suspicion of having committed a crime and are beaten, mutilated, stoned, or burned, more often than not leading to their death. These acts are usually committed "in the name of justice" and are justified by the perpetrators as "justice by their own hand" in the absence of state protection. Cases of lynching are not properly investigated by the Prosecutor's Office or the courts because there are no judges or prosecutors present in the areas where this practice mostly occurs.¹⁰⁹ An aggravated fact in the "pact" or "silent agreement" between actors to ensure impunity¹¹⁰.

100. Although this is a problem that goes back decades, media reports suggest that there has been an upswing in recent years. According to journalistic sources, there were seven cases in 2005, 10 in 2006, and in 2007, 57 cases.¹¹¹ The Office of the UN High Commissioner said that at least 23 lynching attempts were reported by the media in 2008, resulting in 20 persons killed and 23 wounded.¹¹²

¹⁰⁸ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 22.

¹⁰⁹ *Oficina Jurídica de la Mujer de Cochabamba*. Follow-Up Report on the Recommendations of *Access to Justice and Social Inclusion*, p. 3.

¹¹⁰ Defensoría del Pueblo. Publicación denominada: *Monitoreo sobre la Cobertura Noticiosa de los Casos de Linchamiento en Bolivia durante 2007 y primer trimestre de 2008*. Disponible en: <http://www.defensor.gov.bo/defensor/userfiles/file/Linchamientos%20Monitoreo%20noticioso.pdf>.

¹¹¹ Defensoría del Pueblo. Publicación denominada: *Monitoreo sobre la Cobertura Noticiosa de los Casos de Linchamiento en Bolivia durante 2007 y primer trimestre de 2008*. Disponible en: <http://www.defensor.gov.bo/defensor/userfiles/file/Linchamientos%20Monitoreo%20noticioso.pdf>.

A título de ejemplo, cabe mencionar el caso de once personas que supuestamente habían cometido un robo en la localidad de Achacachi. Según la información difundida por la prensa, estas personas fueron golpeadas, quemadas, colgadas y maltratadas con látigos. El saldo de estos lamentables hechos fue la muerte de dos personas y graves afectaciones a la integridad física en el caso de los demás. Sobre estos hechos, Ver: Nota de prensa. Agencia Boliviana de Noticias. 17 de noviembre de 2008. Disponible a 1 de diciembre de 2008 en http://abi.bo/index.php?i=noticias_texto_paleta&j=20081117200729&k =. Ver también La Razón. 19 de noviembre de 2008. Disponible a 1 de diciembre de 2008 en http://www.la-razon.com/versiones/20081119_006461/nota_249_713356.htm.

¹¹² UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 45.

101. The Commission vigorously condemns these acts of violence and assault that constitute gross violations of the rights to life and integrity of the person, as well as denoting the weakness of the rule of law, since they are recurring and increasing to the detriment of people who are utterly bereft of any protection from the State. The Commission finds it unacceptable that lynchings should continue to occur without the Bolivian State having taken immediate steps to put a permanent stop to this practice.

102. The Commission urges the State of Bolivia to adopt these measures as a matter of priority and to immediately initiate investigations into these incidents in order to identify and punish those responsible. In view of the nature of violations of this type, inaction on the part of the State in investigating them could encourage their repetition and be interpreted as a kind of legitimization or acquiescence since, as mentioned in the preceding paragraph, these acts are usually justified by their perpetrators as a form of justice.¹¹³ Accordingly, the IACHR reminds the Bolivian State that in ratifying the American Convention it undertook to ensure the rights of all persons subject to its jurisdiction, which includes the duty to prosecute and punish those who commit human rights violations, regardless of whether they are agents of the state or private individuals.¹¹⁴

V. PRISON CONDITIONS AND RIGHTS OF PERSONS DEPRIVED OF LIBERTY

103. The prison population in Bolivia remains in a state of vulnerability and no significant progress has been made in that regard.¹¹⁵ Civil society organizations have taken on most of the State's responsibilities, such as, for example, providing skills development and vocational training courses for persons deprived of liberty; training for custodial staff; and support for improvements in the area of building infrastructure, health, food, legal assistance, etc.¹¹⁶ The Bolivian State has recognized that budgetary constraints have precluded substantive improvements in the infrastructure of all penitentiary centers.¹¹⁷

104. The Commission also notes that preventive custody remains one of the most widespread factors in the violation of prisoners' rights. Available information indicates that more than 75% of the inmates are in preventive detention.¹¹⁸ The Commission has been informed that this situation has to do not only with a failure to comply with statutory deadlines and domestic and international standards on such matters, but also with acts of corruption by a number of justice operators, who allegedly do not attend scheduled hearings or give these cases proper attention.¹¹⁹

¹¹³ In a similar vein, see IACHR. *Justice and Social Inclusion: the Challenges of Democracy in Guatemala*. 2003, para. 140.

¹¹⁴ See, *inter alia*, I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140.

¹¹⁵ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 2. See also Report of the Ombudsman to Congress 2007. September 29, 2008, p. 21.

¹¹⁶ *Idem*.

¹¹⁷ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

¹¹⁸ Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo; Comentarios y Seguimiento al Cumplimiento de Recomendaciones de la Comisión Interamericana de Derechos Humanos contenidas en el Documento "Acceso a la Justicia e Inclusión Social: El Camino hacia el Fortalecimiento de la Democracia en Bolivia". La Paz, Bolivia, Octubre de 2008, pág. 2, citando a información proporcionada por la ONG Capacitación y Derechos Ciudadanos; and UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 30.

¹¹⁹ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 2.

105. Accordingly, the IACHR reiterates to the State its recommendations that it adopt the measures necessary to ensure that judicial authorities apply preventive detention reasonably and strictly observing the maximum legal duration¹²⁰ in conformity with international standards; that all accused have at their disposal an effective judicial remedy to challenge excessive periods in preventive detention; and that the necessary judicial, legislative and other measures be adopted to correct the excessive application of preventive detention and the procedural delays that persist in the administration of justice.

106. On the other hand, the IACHR has received information that suggests that the new constitution would introduce a number of significant advances with regard to the situation of persons deprived of liberty. This would signify the beginning of a process of alignment with the standards in force and adoption of new public policies consistent with international rules and treaties.¹²¹ The IACHR has also been informed that civil society organizations, with the backing of the National Directorate of Prisons, have presented to Congress a bill amending Law 2298 with respect to the benefit of a reduction in sentence (a benefit not available to convicts sentenced for the crimes of rape of a minor, terrorism, or offenses recognized by Law 1008 that are punishable by more than 15 years of imprisonment, which makes them ineligible for a pardon). The bill, which is said to have passed its first reading in the House of Deputies, would provide all convicted persons with the opportunity to apply for a reduced sentence on grounds of study or work, assuming they have served two-fifths of their sentence and meet other additional requirements.

107. The IACHR will continue to monitor the passage and adoption of the aforesaid legislation, appraise its results, and evaluate other measures of different types adopted to correct excessive use of preventive custody and the persistent procedural delays in the administration of justice, as well as, in general, to ensure protection of the rights of persons deprived of liberty.

108. The overcrowding in a number of Bolivian prisons is directly linked to the excessive use of preventive detention.¹²² The information supplied indicates that population in San Pedro Prison in La Paz exceeds its holding capacity by more than 400% and that a similar situation exists in other prisons in the country.¹²³ The Annual Report of the Ombudsman to Congress states that there are around 7,000 persons deprived of liberty in Bolivia (6,000 of them men and 1,000 women) while the combined holding capacity of all the prisons is only 4,700.¹²⁴

109. The State reported on a series of measures that could contribute to reducing the prison population. These measures include application of alternative sentencing or "opportunity criteria."¹²⁵ Also the "Manual for Litigation in Precautionary Measures Hearings" was approved to

¹²⁰ According to information provided by the State in its Supplementary Report of March 26, 2009, Bolivia's Penal Procedure Code stipulates in Article 239 (1) (2) that preventive detention shall end when its duration exceeds the minimum sentence established for the offense, and when its duration exceeds 18 months without a verdict or 24 months without becoming *res judicata*.

¹²¹ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 3.

¹²² Report of the Ombudsman to Congress 2007. September 29, 2008, p. 21.

¹²³ Ombudsman. Report on the Follow-Up Report on *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, para. 17, December 5, 2008.

¹²⁴ *Idem*.

¹²⁵ Report of the Bolivian State on follow-up on the recommendations – *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*. February 27, 2009.

provide tools for the best use of precautionary measures hearings by justice authorities and defense attorneys. According to government sources, this measure has been disseminated to the departmental offices of the penitentiary system, criminal examining magistrates, prosecutors, defenders of the National Public Defenders' Service, and private trial lawyers.¹²⁶

110. The IACHR considers that these initiatives could be the genesis of a more comprehensive policy for overcoming the crisis of overcrowding in the jails. The Commission hopes to continue receiving information on the concrete results of the efforts described by the State and additional supplementary judicial, legislative, or other measures.

111. The Commission has also identified other problems that are of particular concern, such as a failure to separate persons held in preventive detention from convicted prisoners; the absence of a system of classification of prisoners according to the seriousness of their crimes; children living with their parents in prisons; and an absence of policies and specialized centers for juveniles in conflict with the law.

112. Indeed, the Commission expressed its grave concern that remand prisoners were housed together with convicts and, even worse, juveniles under the age of 18 were held with adult convicts and remand prisoners. As was noted, the age of criminal liability in Bolivia is 16, which means that juveniles between 16 and 18 years old are subject to the ordinary Criminal Code and held in prisons for adults. While in prison, moreover, those juveniles do not receive any differentiated treatment to meet their specific problems and needs.

113. The Commission is encouraged by the fact that from October 13 to 17, 2008, a feasibility study was done on reorganization of the prison infrastructure, which resulted in the identification of some detention centers to be used only for convicted persons.¹²⁷ The Commission hopes that the State will continue reporting on specific steps to follow up on this diagnostic, and the results anticipated in the short, medium, and long term.

114. As regards imprisonment of persons under 18 together with adult remand and convicted prisoners, the Commission has received information that a series of initiatives are being prepared with the participation of the State, though it would seem that they have yet to translate into concrete results.¹²⁸ The IACHR urges the States to make every effort immediately to eliminate the practice of housing juvenile (that is, under 18) remand and convicted prisoners together with adult remand and convicted prisoners even when the detention is only temporary.¹²⁹

115. It is a priority to establish effective systems to ensure that persons in pre-trial detention are segregated from those who had been convicted, and to create classification mechanisms for persons deprived of liberty according to sex, age, reason for detention, special needs, and applicable treatment.

¹²⁶ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

¹²⁷ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

¹²⁸ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 4.

¹²⁹ IACHR. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Document approved by the Commission at its 131st Regular Session, held from March 3 to 14, 2008, Principle XIX.

116. Another of the problems that the IACHR identified in its report had to do with prison security and control. In that respect, the report found that prison administrative staff do not work exclusively as professional prison officers, that the police personnel in charge of the prisons receive inadequate training, and that in many detention centers internal security is generally in the hands of the inmates themselves.¹³⁰

117. In this regard, the IACHR has received reports that the lack of capacity and resources to control security in prisons has led to the existence of internal control systems overseen by the inmates, who, in some cases, manage illegal operations with contacts outside the prison.¹³¹ Other security problems in prisons concern the entry of alcohol and drugs as well as outbreaks of violence among prisoners, in some cases with the involvement of the guards. As yet there are no mechanisms in place for tackling these problems.¹³²

118. Consequently, the IACHR expresses its concern and reminds the State of its recommendation to adopt the necessary measures to immediately regain control of internal areas of prisons in the country.

119. It is also a priority to establish special recruitment and training programs for all personnel in charge of the administration, supervision, operation and security of prisons and other places of deprivation of liberty, which must include education on international human rights standards related to prison security, the proportionate use of force, and the humane treatment of persons deprived of liberty.¹³³

120. In this connection, the IACHR has received information about a training initiative for prison officials that could be taken as an encouraging sign. According to the information, the *Universidad Pública y Autónoma de la Ciudad de El Alto de La Paz* (UPEA) is organizing a Diploma Course on Restorative Justice as part of a Masters Degree in Prison Administration. The objectives of this initiative are, *inter alia*, to replace the police with specialized staff and meet international standards in this area in the sense of “de-policing” or “civilianizing” prisons.¹³⁴ In the same vein, the State has reported plans in coordination with civil society to prepare and offer a distance course titled: “Expert in Legal Psychology, its applications in the penitentiary system,” for personnel in that system at the national level. It has also been working on a “curriculum framework” for the operation of what would be the Prison Personnel Training Institute.¹³⁵

121. The IACHR hopes that the executive branch supports this endeavor by allocating the necessary funds to accomplish positive results in recruitment and training.

¹³⁰ IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II., July 28, 2007, p.58.

¹³¹ Report of the Ombudsman to Congress 2007, September 29, 2008, p. 21.

¹³² Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in “*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*”. La Paz, Bolivia, October 2008, p. 5.

¹³³ IACHR. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Document approved by the Commission at its 131st Regular Session, held from March 3 to 14, 2008, Principle XX.

¹³⁴ *Idem*.

¹³⁵ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

122. Furthermore, prison facilities remain precarious and inmates are inadequately fed.¹³⁶ According to available information, none of 2007 budget for the General Directorate of Prisons for reconditioning jails [*carceletas*] –where the Ombudsman of Bolivia confirmed “the awful conditions in which persons deprived of liberty in these facilities are kept”- and making improvements at the main prisons in the departments was use for that purpose, and therefore no progress was possible in terms of the condition of infrastructure.¹³⁷

123. The IACHR also reiterates to the State its recommendation that it adopt measures with a view to improving infrastructure in those prisons where conditions are precarious and do not meet the minimum requirements with respect to drinking water, sanitary facilities, personal hygiene, floor space, light and ventilation; sufficient and adequate food; and adequate bedding.¹³⁸

124. With respect to medical care in the penitentiaries, the Commission underscores the information supplied by the State on the signing of interagency agreements for second- and third-level care to benefit the prison population in La Paz, Cochabamba, and Santa Cruz.¹³⁹ The Commission also notes that according to the State, basic health services including a general practitioner and a dentist are available in all detention centers.¹⁴⁰

125. Although the information received states that healthcare facilities in prisons are deficient,¹⁴¹ that there is no health care whatsoever available in provincial jails [*carceletas*], and that, in general, there is an urgent need for specialist medical care according to the need of the inmates.¹⁴²

126. The Commission welcomes information received to the effect that on February 27, 2009, the Ministry of Government issued Resolution No. 014/2009 the daily food allowance for prisoners in the district and provincial penitentiaries from 4.50 Bolivianos to 5.50 Bolivianos as of March 1, 2009.¹⁴³ In light of the concerns expressed in the preceding paragraphs, the Commission hopes that the state will continue to report on specific effects of this measure on conditions in Bolivian jails.

127. Consequently, given the precarious conditions of infrastructure, hygiene and safety indicated above, and the lack of internal control and security by the State, the Commission

¹³⁶ Report of the Ombudsman to Congress 2007, September 29, 2008, p. 21.

¹³⁷ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in “*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*”. La Paz, Bolivia, October 2008, p. 5.

¹³⁸ IACHR. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Document approved by the Commission at its 131st Regular Session, held from March 3 to 14, 2008, Principles XI and XII.

¹³⁹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

¹⁴⁰ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

¹⁴¹ Report of the Ombudsman to Congress 2007. September 29, 2008, p. 21.

¹⁴² Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in “*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*”, La Paz, Bolivia, October 2008, p. 5.

¹⁴³ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

expressed its particular concern over the physical, mental and moral integrity of children living with their parents in prisons.

128. In this connection, the IACHR notes from the information received that in June 2007 the General Directorate of Prisons adopted a resolution which stated that children would no longer be admitted to prisons unless they met the legal requirements, which provide that they must be under six years old and that the parents have custody of them. Thus far, the authorities have not complied with this resolution. The Commission was also informed of a private scheme introduced in Achocalla by the *Efel Ciapa* Foundation under which the children are taken to a nearby academic center on a daily basis.¹⁴⁴

129. The Commission also received information from the State on agreements between governors' offices and civil society organizations for scholarships for children in this situation. As examples, it mentioned the departments of Oruro and La Paz, in which the agreements provide for food, education, and transportation worth 9 Bolivianos in Oruro and 5 in La Paz. Another example cited by the State is the school and food support given children between 0 and 5 years in the prison centers in the departments of Tarija and Santa Cruz.¹⁴⁵

130. Although the Commission salutes these efforts, it considers it essential for the State to adopt comprehensive, ongoing measures of general application to ensure that when children are lodged in detention centers together with their father or mother deprived of liberty, the best interests of the child are taken into account upon establishing pertinent policies, and particularly that they have access to special protection, food, health and educational services necessary for their proper development. The State should also take steps to guarantee, in the same terms, the best interest of children not living in prison with the parent deprived of liberty who has custody of the child. In this context, the State should carry out serious and diligent investigations whenever there is a complaint of sexual abuse to the detriment of persons that live in prisons.

131. The Commission reiterates that the State should make available adequate and effective remedies of individual and collective nature for judicial control of overcrowding and violence inside penitentiaries. Those remedies must be accessible to persons deprived of liberty, their relatives, their private or public defenders, NGOs, the Ombudsman and other competent institutions.

132. The IACHR urges the State to take steps to provide and facilitate educational and working opportunities for persons deprived of liberty with a view to assisting in their reform, social readaptation, and personal rehabilitation.

VI. RIGHTS OF INDIGENOUS PEOPLES AND PEASANT COMMUNITIES

133. The Commission has devoted particular attention to this issue, which involves the majority of the Bolivian population. The main aspects examined by the Commission in *Access to Justice and Social Inclusion* may be summarized as access to land and territory; natural resources and participation in development projects; situation of forced labour and bondage analogous to slavery; difficulties in access to the official justice system, and recognition of indigenous justice.

¹⁴⁴ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 6.

¹⁴⁵ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

134. Some progress has been made as regards legislation. The Commission values the fact that the Bolivian State elevated the United Nations Declaration on the Rights of Indigenous Peoples to the rank of law.¹⁴⁶ The Commission also notes that the new Constitution incorporates numerous provisions on the collective rights of indigenous peoples, including the principle of indigenous autonomy.¹⁴⁷ The Commission hopes to receive information on the implementation of these initiatives, in particular on the aforesaid Declaration, which is now part of the Bolivian legal system.

135. The Commission was also informed of the creation of an interagency commission composed of the Vice Ministry of Justice and Human Rights, Vice Ministry of Community Justice, Office of the UN High Commissioner for Human Rights, Ombudsman, Committee for Indigenous Affairs of the House of Deputies, and *Universidad Cordillera*. According to available information, this commission prepared a draft antidiscrimination bill which would include in Bolivia's Criminal Code a chapter titled "Crimes against Human Dignity", which covers discrimination, dissemination and incitement of discrimination, and discriminatory associations. The bill is currently before Congress for the approval process.¹⁴⁸

136. The aforementioned progress notwithstanding, indigenous peoples and peasant communities continue, in practice, to face a series of abuses that obstruct their full inclusion in decision-making and the full exercise of their human rights,¹⁴⁹ in particular economic, social and cultural rights. It should be noted that despite some governmental efforts such as the establishment of three indigenous universities by Supreme Decree No. 29664 of August 2008,¹⁵⁰ the lack of access to education and health continues mainly to affect the indigenous population, especially children, women, and the elderly.¹⁵¹ Access to public services, such as safe drinking water, is a matter of concern; in all, 43% of the rural population has no access to this service.¹⁵²

137. The Commission sees with concern that in 2007 and 2008, there were a number of incidents of violence of a discriminatory bent against persons who identify themselves as belonging to an indigenous people. These incidents, which manifest themselves in the form of assault and verbal attacks, have targeted both private citizens and state authorities.¹⁵³ Violence of this type

¹⁴⁶ Law 3760 on the Rights of Indigenous Peoples.

¹⁴⁷ The Commission notes that the Special Rapporteur for the situation of human rights and basic freedoms of indigenous peoples said that the new Constitution incorporates novel forms of recognition of the rights of autonomy and jurisdiction; rights to land, territory, and natural resources; and rights to cultural identity and intercultural education. Special Rapporteur for the situation of human rights and basic freedoms of indigenous peoples. Rodolfo Stavenhagen. Preliminary note on the mission to Bolivia from November 25 to December 7, 2007. A/HRC/6/15/Add.2. December 11, 2007, page. 2; and Final Report of the Mission to Bolivia from November 25 to December 7, 2007, paras. 16 and 17.

¹⁴⁸ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 15.

¹⁴⁹ Information received during the visit of the IACHR to Bolivia from June 9 to 13, 2008. See also Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 57; Report of the Ombudsman to Congress 2007, p. 25.

¹⁵⁰ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

¹⁵¹ Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, para. 14. g).

¹⁵² Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HRC/7/5/Add.2. 30 January 2008, para. 16. Citing: Unidad de Análisis de Políticas Sociales y Económicas (UDAPE), Naciones Unidas, Organización Internacional del Trabajo, *Indigenous peoples originarios y objetivos de desarrollo del Milenio* (2006). UDAPE y otros, 2006.

¹⁵³ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition. La Paz, Bolivia, January 2008, p. 57.

also affects indigenous leaders and human rights defenders and occurs, in many cases, with the support of economic actors and local authorities.¹⁵⁴

138. The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Bolivia toward the end of 2007 and concluded in a preliminary note on his findings that discrimination and racism were “still manifested in the behaviour of public officials at the national and subnational levels and in the attitudes of political parties and pressure groups, which sometimes incite violence against persons based on their indigenous status.” The note also states that “expressions of anti-indigenous racism frequently occur in some media.”¹⁵⁵

139. As an example of the foregoing, incidents were recorded in which several members of the Constituent Assembly belonging to the ruling party, the Movement Towards Socialism [*Movimiento al Socialismo*] (hereinafter also “MAS”), were assaulted and insulted because of their social status. It is worth mentioning that during her tenure as Speaker of the Constituent Assembly, Silvia Lazarte was insulted by private individuals, who shouted “Dumb chola” [*chola ignorante*] and burned a rag doll while chanting, “Burn, *chola*.”¹⁵⁶

140. In the city of Sucre, in November 2007, during the demonstrations for full “capitalhood”, similar discriminatory expressions were used against indigenous persons, who, in addition to having been victims of physical violence were referred to as “llama faced indians” [*indios cara de llama*], “stinking” [*hediondos*], and “fucking indians” [*indias de mierda*]. There were also reports that medical assistance was later refused to the indigenous persons injured in these incidents.¹⁵⁷

141. During its visit to the country, the IACHR received troubling reports that discriminatory rhetoric had even penetrated some provisions of the autonomy statutes proposed by a number of regions in the country, given that there were aims to establish specific regimes for indigenous peoples in the regions, in disavowal of their rights and guarantees recognized in the Constitution and international instruments ratified by Bolivia. Specifically, concern was expressed over the text of Article 161 of the Autonomy Statute of Santa Cruz,¹⁵⁸ which states, “In keeping with ILO Convention 169 and the United Nations Convention on Indigenous Peoples, the people of Santa Cruz proudly recognize their mostly mixed racial condition and, to that extent, their obligation to preserve the culture and promote the comprehensive and autonomous development of the five indigenous peoples in the department: Chiquitano, Guaraní, Guarayo, Ayoreo, and Mojeño, pursuant to the provisions set forth in the Statute.”

¹⁵⁴ Information received during the visit of the IACHR to Bolivia from June 9 to 13, 2008. See also Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Preliminary Note on the Mission to Bolivia, 25 November to 7 December 2007. A/HRC/6/15/Add.2. 11 December 2007, p. 3.

¹⁵⁵ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Preliminary Note on the Mission to Bolivia, 25 November to 7 December 2007. A/HRC/6/15/Add.2. 11 December 2007, pp. 2 and 3.

¹⁵⁶ Information received during the visit of the IACHR to Bolivia from June 9 to 13, 2008. See also Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 35.

¹⁵⁷ Information received during the visit of the IACHR to Bolivia from June 9 to 13, 2008. See also, Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 35.

¹⁵⁸ UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of the Indigenous People. Press Release of 10 April 2008; Report of the Ombudsman to Congress 2007, September 29, 2008, p. 223.

142. As will be seen in the rest of this section, among the factors that have so far prevented government policies from achieving any visible results or being effectively implemented are the institutional crisis and the tensions that have arisen in recent years between national and subnational authorities and between different branches of government, in particular, between the executive and the judicial branch. In this regard, the Commission calls for dialogue and engagement to overcome the tensions which have not only caused social strife resulting in tragic losses of life and injuries, but have also prevented the adoption of measures for ensuring full exercise of rights for indigenous peoples and peasant communities in keeping with their worldview, distinct culture, and development priorities.

A. Access to land and territory

143. According to the most recent population census, 60% of the Bolivian population is indigenous. This population is composed of more than 36 groups, the largest ones being, in descending order, the Quechua, Aymara, Guaraní, Chiquitano, and Mojeño.¹⁵⁹ According to publicly available figures, 70% of the land is owned by just 7% of the population, with a marked discrepancy where indigenous peoples are concerned.¹⁶⁰ This state of affairs stems from historical events that have shaped the current land ownership situation in Bolivia. The first stage, which extends from the founding of the Republic in 1825 to 1952, was noted for the creation of large estates, or *haciendas*, and exploitation of indigenous labor. The second stage began in 1952 with the agrarian reform, the purpose of which was the award and titling of lands. At present, a third stage is in progress, which aims to put an end to the historic inequalities in land distribution. This stage began with the adoption of law 1715 of the National Agrarian Reform Service¹⁶¹ and Law 3545 on Renewal of the Agrarian Reform,¹⁶² which broaden the scope of the first agrarian reform. The Commission values the initiatives of the State to overcome the historical inequalities detrimental to indigenous peoples.

144. As the State indicated to the IACHR,¹⁶³ Law 3545 defines state policy on redistribution in Bolivia through implementation of processes of land regularization, reversion to the State, and expropriation.

145. Under the aforesaid law, regularization is the stage before land titling and consists of “the transitory technical and legal procedure to regularize and perfect agrarian property rights which is carried out *sua sponte* or on request.”¹⁶⁴ The regularization process must be completed nationwide within 10 years.¹⁶⁵ Its purposes are, *inter alia*, to prepare an official property register of

¹⁵⁹ According to figures from the National Institute of Statistics. Available at <http://www.ine.gov.bo>.

¹⁶⁰ Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, para. 23; For a breakdown of data by regions, see: Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, para. 14. Citing: Out of 8 million hectares classified as productive for agriculture, only 2.5 million hectares are currently exploited, World Bank, 2007; FAO, *Perfiles nutricionales por países*. Bolivia (2001). The overall Gini coefficient for land inequality stood at 0.768 in 1989 (Klasen et al., 2004); World Bank, *Bolivia: Towards a new social contract: Options for the Constituent Assembly* (2006), available at <http://go.worldbank.org/QO0BB5FXX0>.

¹⁶¹ Law 1715 (National Agrarian Reform Service Law) of October 18, 1996, available at <http://www.congreso.gov.bo>.

¹⁶² Law 1715 (National Agrarian Reform Service Law) of October 18, 1996, as amended by Law 3545 (Law on Renewal of the Agrarian Reform) of November 28, 2006, available at <http://www.congreso.gov.bo>.

¹⁶³ Information supplied by the Minister of Rural Development, Agriculture and Environment during the visit of the IACHR from June 9 to 13, 2008.

¹⁶⁴ Law 3545, Art. 64.

¹⁶⁵ Law 3545, Art. 65.

agrarian land, titling of ongoing agrarian property proceedings, settlement of disputes over ownership of agrarian land, and annulment of irregular titles.¹⁶⁶ Under Law 3545, regularization is done by the National Institute of Agrarian Reform (INRA), “the body that directs, coordinates, and carries out agrarian policy,”¹⁶⁷ and which, according to the Law, verifies that lands are used in accordance with their “Social and Economic Purpose” [*Función Económico Social*] (FES)¹⁶⁸ and “Social Purpose” [*Función Social*] (FS).¹⁶⁹

146. One regularization mechanism has to do with land recognized as the natural habitat of indigenous and aboriginal peoples and communities, or Aboriginal Community Lands [*Tierras Comunitarias de Origen*] (TCO), to which they have traditionally had access and where they maintain and develop their own forms of economic, social, and cultural organization, thereby ensuring their survival and development.¹⁷⁰ These lands are also “inalienable, indivisible, immune from reversion to the State, collective, immune from seizure, and indefeasible.”¹⁷¹ This regularization mechanism is known as Aboriginal Community Land Regularization [*Saneamiento de Tierras Comunitarias de Origen*] (SAN-TCO) and Law 3545 guarantees the participation of indigenous peoples in the execution of this process.¹⁷²

147. Once regularization has been carried out, it must be determined whether the land should revert to the State or be expropriated. Reversion is the process whereby or all part of the surface of a piece of land reverts to the ownership of the State because the use to which its owner puts it does not comply with its economic and social purpose or is harmful to the common interest.¹⁷³ According to information received by the IACHR during its visit to Bolivia in June 2008, the use of bondage or forced labor on a property constitutes “harmful” use. As part of the Aboriginal Community Land Regularization process, Law 3545 provides that any property that reverts to the State shall be granted to the relevant aboriginal community.¹⁷⁴ The Law also provides that, to be valid, reversion must be carried out within two years after a property has undergone the regularization process.¹⁷⁵

148. For its part, land expropriation is applicable for reasons of public utility.¹⁷⁶ The concept of public utility covers, *inter alia*, redistribution of land in favor of indigenous peoples whose lands are not sufficient in quantity or quality or suitably geographically located to ensure their

¹⁶⁶ Law 3545, Art. 66.

¹⁶⁷ Law 3545, Art. 17

¹⁶⁸ The Economic and Social Purpose consists of “sustainable use of the land in the pursuit of farming, forestry, and other productive activities, as well as conservation and protection of biodiversity, research, and ecotourism... for the benefit of society, the common interest, and its owner.” Law 3545, Art. 2.II.

¹⁶⁹ The Social Purpose consists of “using the land to ensure the well-being and economic advancement of the owners and their families, or indigenous, peasant and aboriginal peoples and communities”, Law 3545, Art. 2.I.

¹⁷⁰ Law 3545 (Law on Renewal of the Agrarian Reform) of November 28, 2006, Art.41.I.5.

¹⁷¹ Law 3545, Art. 41.I.5.

¹⁷² Law 3545, Art. 69.

¹⁷³ Law 3545, Art. 52.

¹⁷⁴ Law 3545, Art. 72.

¹⁷⁵ Law 3545, Art. 57.II.

¹⁷⁶ Law 3545, Art. 59.II. Article. 60 of Law 3545 provides that the amount of compensation for expropriation will be based on the market value of the lands, improvements, and investments, or investments in conservation of the property in question.

physical subsistence and ethnic reproduction as a result of the regularization or reversion processes.¹⁷⁷

149. Having clarified the preceding concepts and their relationship to the exercise of indigenous peoples' right to collective property, as well as the situation of bondage in which many families find themselves, the IACHR notes the efforts of the State to recognize the property rights of indigenous peoples through the adoption of Law 3545 and Executive Decree 29.215, which contains the implementing regulations for said law.¹⁷⁸ The Commission also notes the adoption of Executive Decree 29.292, which creates the 2007-2008 Interministerial Transition Plan for the Guaraní People. One of the objectives of this Plan is to initiate the territorial reconstitution of the Guaraní people through land regularization and implementation of the current agrarian policy.¹⁷⁹ The Commission hopes that these initiatives contribute to the demarcation and titling of indigenous peoples' lands and ancestral territories and that their results are quantifiable in the short term.

150. The Commission observes that according to official sources, by 2007 the land regularization process in Bolivia had been carried out in 32.61% of the national territory.¹⁸⁰ However, the Commission finds that in spite of the government's intentions to implement the agrarian laws, the measures have been severely hampered by groups of landowners, timber companies, and industrialists, sometimes supported by departmental and local authorities.¹⁸¹

151. During its visit, the IACHR was also informed that in regions where captive communities or families exist, the owners have resisted government inspections as part of the regularization process, confronting and threatening government employees as they went about their work in those areas. An example concerns the process initiated by a land regularization application made by the Guaraní People's Assembly to the INRA for an area covering 157,000 hectares in the Alto Parapetí region.¹⁸² In this context an incident occurred in which "armed groups of landowners" and the *Unión Juvenil Cruceñista* opposed to the aforesaid regularization process surrounded a delegation composed of INRA staff, the Vice Minister of Land, policemen, and indigenous persons, obstructing their free circulation, as well as physically assaulting and verbally abusing them.¹⁸³

152. During the Commission's visit it learned that the Guaraní lawyer who was with the aforementioned delegation was taken by force to the square by members of the landowners' organizations, whipped, and then tied to a post, where he remained for two hours. During that time, the lawyer was allegedly the butt of racist insults and was told that because of his activities he would be "flogged with a belt" to teach him manners.¹⁸⁴ The lawyer identified one of the local

¹⁷⁷ Law 3545, Art. 59.II.

¹⁷⁸ Executive Decree 29215 - August 2, 2007.- Implementing Regulations of Law 1715 on the National Agrarian Reform Service, as amended by Law 3545 on Renewal of the Agrarian Reform.

¹⁷⁹ Executive Decree 29292, published in Official Gazette No. 3030, October 3, 2007, creates the Inter-Ministerial Council for the Eradication of Bondage, Forced Labor, and Analogous Forms of Labor, as well as approving and setting in motion the 2007-2008 Interministerial Transition Plan for the Guaraní People (Art. 6).

¹⁸⁰ Ministry of Rural Development, Agriculture and Environment, 2007 report on the land process in the country. Available at: <http://www.agrobolivia.gov.bo/index.php?cpo=tierras>.

¹⁸¹ Testimony received during the visit of the IACHR from June 9 to 13 2008.

¹⁸² 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008, para. 5.

¹⁸³ 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008, par. 5; UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of the Indigenous People. Press Release of 10 April 2008.

¹⁸⁴ Visit of the IACHR to Bolivia in June 2008, Documents presented during a meeting with the Minister of Rural Development, Agriculture and Environment, the Vice Minister of Land, and the Director for Land Matters.

landowners as the person responsible for the whipping he received and as the ringleader of the organizations that carried out the aforesaid attacks.¹⁸⁵ It should be noted that the information received shows that on the same day a female journalist was pulled from the vehicle in which she was traveling, threatened with physical and sexual violence, and then tied to a post. The journalist was taken to a hotel where she remained incommunicado and later told the Mayor of Cuevo that “she had been well treated and that she was in a hotel, not a cell.”¹⁸⁶ With respect to these events, the IACHR is concerned by the acts of racism and violence that accompany the steps taken to resist implementation of the State’s agrarian policies.

153. The Commission is troubled that the Government’s attempts to overcome and remedy a situation of historic discrimination and exclusion should have triggered conflicts that have led, in turn, to deplorable acts of violence.

154. Furthermore, the land regularization process and verification of bondage in one particular property is hampered by a lack of figures or data on the exact number and location of the families that find themselves in such a plight.¹⁸⁷ The Commission has also been informed about the displacement of these communities “because the estate owners evict them to avoid any problems when they learn of the arrival of government officials to inspect the properties” where bondage is alleged to exist.¹⁸⁸ The Commission has also heard that landowners take reprisals against Guarafís who offer testimony or statements about their plight.¹⁸⁹

155. The initiative to do with the titling of Aboriginal Community Lands has not achieved the most favorable results. In several cases the IACHR was informed that the regularization process failed to meet indigenous peoples’ expectations for the reconstitution of their territory due to the fact that some INRA procedures are beset with irregularities. The Commission underlines the importance that the State ensure that said institution act in strict accordance with the law governing regularization.¹⁹⁰

156. The Commission reiterates that the case law of the inter-American system for protection of human rights has maintained that Article 21 of the American Convention recognizes the right to property of members of indigenous communities within the framework of communal property, which includes recognition of “the close ties the members of indigenous communities have with their traditional lands and the natural resources associated with their culture thereof, as well as the incorporeal elements deriving therefrom.”¹⁹¹ The Commission also reminds the parties involved

¹⁸⁵ Information received during the visit of the IACHR to Bolivia from June 9 to 13, 2008, See also “*Cordilleranos exigen retirada de Almaraz y marchan por la tierra*” [Highlanders demand Almaraz’s withdrawal and march for land], *El Deber*, April 16, 2008.

¹⁸⁶ *Idem*.

¹⁸⁷ Information presented to the IACHR by the Vice Minister of Land at the meeting held in the city of La Paz on June 11, 2008. The agency in charge of gathering information on salaried workers, their respective contacts, and payrolls at estates is the National Institute of Agrarian Reform.

¹⁸⁸ Information presented to the IACHR by the Vice Minister of Land at the meeting held in the city of La Paz on June 11, 2008, in the course of the visit of the IACHR to Bolivia in June 2008.

¹⁸⁹ *Idem*.

¹⁹⁰ Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, para. 14.

¹⁹¹ I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C No. 79, para. 148; I/A Court H. R., *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005. Series C No. 125, para. 137; I/A Court H. R., *Case of the Indigenous Community Sawhoyamaxa*. Judgement of March 29, 2006. Series C No. 146, para. 118.

in the conflict that all expropriation procedures must be carried out in accordance with international standards on such matters and in the framework of due process.¹⁹²

B. Natural resources and participation in development projects

157. On this point, in *Access to Justice and Social Inclusion* the Commission made recommendations designed to ensure that indigenous peoples and other affected communities be involved in the processes of design, implementation, and evaluation of development projects carried out on their lands and ancestral territories. Specifically, the Commission drew attention to the importance that the State ensure that indigenous peoples be consulted on any matters that might affect them, noting that the purpose of such consultations should be to obtain their free and informed consent, as prescribed in ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples.

158. By and large, the Commission continued to receive information about violations of human rights committed by companies in the mining, lumber, and petroleum industries to the detriment of indigenous peoples and communities in the vicinity of the areas where the respective projects are carried out. In particular, mention was made of adverse effects on health and production systems; changes in domestic migration patterns; a decline in the quantity and quality of water sources; impoverishment of soils for farming; a reduction in fishing, animal life, plant life, and biodiversity in general, and disruption of the balance that forms the basis of ethnic and cultural reproduction.¹⁹³

159. The Commission welcomes some important progress in the legislation area. On May 9, 2007, Supreme Decree No. 29.124 was approved to implement Supreme Decree No. 29.033 of February 16, 2007, which establishes provisions and procedures for consultation and participation of native indigenous peoples and peasant communities when there are plans for hydrocarbon activities on their community lands, common property, and lands reserved for their occupation and access.¹⁹⁴ Also approved were the Regulations for Socio-Environmental Monitoring of hydrocarbon activities on the land of native indigenous peoples and peasant communities (Supreme Decree No. 29.103).¹⁹⁵ Later, on August 31, 2007, the Law for Sustainable Development of Hydrocarbons was approved.¹⁹⁶ The latest advance was the establishment of the constitutional right to prior and informed consultation in Article 403 of the new Constitution.¹⁹⁷

160. The Commission is appreciative of the adoption of a broad concept of indigenous land and territories, wherein the latter category includes not only physically occupy spaces but also those used for their cultural or subsistence activities, such as routes of access. The Commission finds this approach to be compatible with the cultural reality of indigenous peoples and their special

¹⁹² IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser.V/II. Doc. 34. June 28, 2007. paras. 241 and 242.

¹⁹³ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 57.

¹⁹⁴ Observatorio de Derechos Humanos y Políticas Sociales. Documento de Trabajo. Los Derechos Humanos en la Bolivia del 2007. Primera Edición. La Paz, Bolivia. Enero de 2008, pág. 63.

¹⁹⁵ Special Rapporteur for the situation of human rights and basic freedoms of indigenous peoples. Rodolfo Stavenhagen. Mission to Bolivia from November 25 to December 7, 2007. A/HRC/11/11. January 9, 2009, para. 18.

¹⁹⁶ Observatorio de Derechos Humanos y Políticas Sociales. Documento de Trabajo. Los Derechos Humanos en la Bolivia del 2007. Primera Edición. La Paz, Bolivia. Enero de 2008, pág. 62.

¹⁹⁷ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

relationship with the land and territory, as well as with natural resources and the environment in general. The Commission hopes to obtain information on the implementation mechanisms for this legal framework and on their results in effectively safeguarding the right to prior consultation.

161. In spite of the foregoing, the Commission continued to receive information about cases in which development projects allegedly have a profound and serious adverse impact on indigenous communities. Thus, for example, it received reports that the pollution brought about by the resumption of mining¹⁹⁸ and hydrocarbons extraction in the departments of Oruro,¹⁹⁹ Potosí and La Paz, has caused considerable environmental damage.

162. The Commission had already highlighted the contamination of the River Pilcomayo and the serious ill effects on health caused by extractive activities in the area. The Commission laments that there is no record of any efforts to improve the situation. According to the most recent reports, the contamination of the River Pilcomayo watershed by extractive industries has harmed some 100 indigenous communities in the departments of Potosí, Chuquisaca and Tarija. According to estimates, this pollution has brought about the loss of 80% of crops, 60% of livestock, and 90% of fish life.²⁰⁰

163. Attention should also be drawn to the mercury contamination of the River Beni, which is harmful for all the inhabitants of that zone, but in particular the members of the Ese Eja indigenous people. According to a recent report from the Ombudsman "all 923 members of this extremely vulnerable indigenous people have mercury levels in their body that are four times over the limit established by the World Health Organization."²⁰¹

164. One problem connected with this issue is the shortage of housing and the attendant increase in forcible evictions of peasant farmers and indigenous persons to make way for mining and lumber concessions, particularly in Bolivia's Chaco region.²⁰²

165. The very limited information on these isolated cases precludes a complete follow-up on measures that the Bolivian State could adopt to tackle this situation. The Commission hopes to receive detailed information in this respect and reiterates its recommendations regarding the need to minimize the adverse effects of development projects on indigenous peoples; eliminate any threat to their lives, safety and cultural integrity; and ensure, through clear consultation procedures, that their free and informed prior consent is obtained in order to carry out said projects.

C. Situation of forced labour and bondage analogous to slavery

166. The Commission has given special attention to this issue since 2005, when it held a hearing at which it was informed of the appalling living conditions of a high number of indigenous

¹⁹⁸ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 57.

¹⁹⁹ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Preliminary Note on the Mission to Bolivia, 25 November to 7 December 2007. A/HRC/6/15/Add.2. 11 December 2007, p. 3.

²⁰⁰ Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, par. 55.

²⁰¹ Report of the Ombudsman to Congress 2007, September 29, 2008, p. 32.

²⁰² Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, par. 14. h).

families that live on large estates, or *haciendas*, where they have to work for a tiny wage.²⁰³ This means that in order to meet their basic needs they have to go into debt with their employers, thereby cementing a deplorable situation of debt bondage analogous to slavery. International human rights law vigorously outlaws and requires states to adopt immediate measures for their permanent elimination.²⁰⁴

167. The Commission continued to monitor this situation by means of the visit conducted from November 12 to 17, 2006, the report *Access to Justice and Social Inclusion*, several press releases,²⁰⁵ and the recent visit exclusively to examine this issue from June 9 to 13, 2008. On this last occasion, the Commission received valuable information from government sources and civil society organizations. It also had the opportunity to visit a number of estates, where it gathered testimony from witnesses.

168. During that visit, the Commission was informed that in the last 20 years a number of Guaraní communities have formed, which are considered free after managing to escape from their situation of bondage and settling on properties near the estates -in some cases purchased by Catholic Church or nongovernmental organizations- or to non-productive lands located on the private estates. However, many of their members have to go back to working as laborers on the estates in order get by, given the scant amount that they manage to produce on their smallholdings, or *chacos*.²⁰⁶

169. The testimony collected on the visits in 2006 and 2008 continued to report physical mistreatment of Guaraní people, such as being lashed with whips or having their crops burned and their animals killed as punishment for “disobedience” or for wanting to end their bondage. This situation has been corroborated by the responses of a number of landowners who were questioned in that regard, who said that Guaranís have no initiative for anything and that it is necessary to “sting them” into work.²⁰⁷ During the visit to the community of Ytacuatia, situated in the aboriginal territory of Alto Parapetí, the Commission noted that the public roads that cross through one estate are kept closed on the orders of the owner. In response, the landowners argued that the road belongs to them because it is private property that they built. Furthermore, testimony received from members of Guaraní communities mention that they are not permitted to move from one place to another because the only roads in the area by which to reach the public highway are “blocked with padlocked barriers or gates” by the owners. They also reported that they are forbidden to organize and that if they attend community meetings they are then refused admittance to the estate, whether to access their properties or to visit family members who still work for the landowner.

170. The Commission was informed that the State has also been prevented from travelling along estate roads by the above-mentioned measures of estate owners. This has made it impossible for state officials to perform their functions and carry out regularization processes and inspections of the working conditions of members of indigenous peoples on the estates. As a result

²⁰³ It should be mentioned that at the 131st Regular Session of the IACHR, the State indicated that there were approximately 449 captive families in the municipalities of Cuevo and Lagunillas in the Department of Santa Cruz and 600 captive families in the municipalities of Huacareta and Muyupampa in the Department of Chuquisaca.

²⁰⁴ American Convention on Human Rights. Article 6; United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

²⁰⁵ IACHR. Press Release 17/08, April 25, 2008. IACHR Deplores Situation of Captive Communities in Bolivia.

²⁰⁶ Bolivian Chapter of Human Rights, Democracy and Development. Situation of the Guaraní Communities in Bolivia. Summary of the 1998-2001 Review.

²⁰⁷ IACHR, *op. cit.* Special Report, par. 263, video testimony prepared by the Yambae Ombudsman *Quiero ser libre sin dueño* [I want to be free, with no owner].

of this situation, various rights of indigenous peoples have been severely curbed. In this connection, the Commission calls on the State take the necessary steps to ensure freedom of movement on estates for members of indigenous peoples and for government authorities so that the latter can carry out their duties as normal.

171. In addition, with respect to the efforts of the Bolivian State since publication of *Access to Justice and Social Inclusion*, the Commission notes that on November 28, 2007, the government decreed the need to expropriate 180,000 hectares of land in the Provinces of Luis Calvo and Hernando Siles, Department of Chuquisaca, in order to turn them over to the more than 12,000 Guaraní persons in the area.²⁰⁸

172. The Commission also notes that the government managed to obtain compensation for more than 150 Guaraní indigenous persons who never received any pay for their work on estates.²⁰⁹

173. The Commission was also informed of Executive Decree 29.292, which was issued on October 9, 2007, creating the Inter-Ministerial Council for the Eradication of Bondage, Forced Labor, and Analogous Forms of Labor.²¹⁰

174. The above Decree created the 2007-2008 Interministerial Transition Plan for the Guaraní People, the purposes of which are to lay the foundations for creating fit living conditions for registered Guaraní families in the Bolivian Chaco region, eradicate forced labor, and stimulate social, cultural, and economic development in the region as part of the National Development Plan. The Interministerial Plan has five components: i) restore the exercise of human rights in the Bolivian Chaco region; ii) move forward with regularization processes and the redesign of the system of ownership of agrarian land, so as to benefit not only indigenous communities but also small and medium-sized landowners; iii) implement a contingency plan to ensure fit living conditions for liberated families until the resettlement process is completed; iv) carry out productive, infrastructure, and environmental programs and projects for liberated families; and, v) create an execution, follow-up, and evaluation mechanism.²¹¹ On December 19, 2007, Executive Decree 29.388 was passed, approving an appropriation of US\$ 2 million to put the Interministerial Plan into effect.²¹²

175. The Commission reiterates that it deplores the situation of the families and communities subjected to contemporary forms of slavery, such as debt bondage. It also notes that various international agencies have confirmed, as the Commission has, that this practice continues and that it is not confined to the estates in the Bolivian Chaco zone,²¹³ but also occurs in other

²⁰⁸ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 54.

²⁰⁹ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 54; 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008, par. 12.

²¹⁰ 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008, pars. 12 – 14.

²¹¹ 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008, par. 3.

²¹² 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008. Annex, Slides.

²¹³ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Preliminary Note on the Mission to Bolivia, 25 November to 7 December 2007. A/HRC/6/15/Add.2. 11 December 2007, p. 3; Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, par. 13.

parts of the country, including the Norte de Amazonico in the context of mining, chestnut production, flower production and livestock slaughtering.²¹⁴

176. The Commission notes the efforts of the Bolivian State to eradicate this unfortunate situation, as well as the multitude of obstacles that government authorities have encountered, in particular the refusal of estate owners -in some cases with the encouragement of local authorities- to recognize the existence of debt bondage on their properties; the acts of violence against indigenous leaders, human rights defenders, and state officials who have sought to take steps to resolve the situation; the blocking of official inspections in the areas concerned;²¹⁵ and the lack of access to justice in rural areas. All of the foregoing increases the state of defenselessness and vulnerability in which these families find themselves. A complete analysis of these issues will be included in the report on the visit made from June 9-13, 2008.

D. Access to justice

177. In *Access to Justice and Social Inclusion*, the IACHR examines the issue of access to justice for indigenous peoples from two perspectives: a) access to the official justice system; and, b) recognition of indigenous law and justice.

178. With regard to the first perspective, the Commission observed difficulties in access to justice in order to press claims relating to ownership of land and territories; access to basic services; recognition of the legal personality of indigenous peoples and communities; enforcement of labor rights for persons who work on large estates; and claims for environmental damages occasioned by projects for development of natural resources.

179. The Commission is concerned that although the Bolivian Criminal Code penalizes “the forcing of persons into slavery or a similar state,”²¹⁶ in practice, the law is not enforced, among other reasons, because of the insufficient coverage of the Prosecutor’s Office and criminal courts, as well as ignorance of the law by the persons affected.²¹⁷ Another aspect worth highlighting is the lack of court interpreters,²¹⁸ despite the fact that Article 10 of the Code of Criminal Procedure requires the judge hearing a case to provide an official translator free of charge for persons who do not speak Spanish. In this connection, the Commission notes that the new Constitution stipulates at Article 235(7) that it is a requirement for all public servants to speak at least two of the official languages, which category includes all the languages of the indigenous and aboriginal nations and peoples and peasant communities.²¹⁹

²¹⁴ Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, par. 14. e).

²¹⁵ Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, par. 14. e).

²¹⁶ Criminal Code, Article 291.

²¹⁷ Information received during the visit of the IACHR from June 9 to 13, 2008.

²¹⁸ Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, par. 33.

²¹⁹ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR, par. 32. The languages mentioned in this provision are Aymara, Araona, Baure, Bésiro, Canichana, Caviteño, Cayuvava, Chácobo, Chimán, Ese Eja, Guaraní, Guarasu’we, Guarayu, Itonama, Leco, Machajuyai-Kallawaya, Machineri, Maropa, Mojeño-Trinitario, Mojeño-Ignaciano, Moré, Masetén, Movina, Pacawara, Puquina, Quechua, Sirionó, Tacana, Toromona, Uru-Chipaya, Weenhayek, Yaminawa, Yuki, Yuracaré and Zamuco.

180. The Commission continued to receive information about other obstacles that indigenous peoples face in accessing justice to protect their rights. During its visit to Bolivia in June 2008, the IACHR received expressions of a lack of confidence in jurisdictional institutions, which are seen as biased toward the interests of the landowners.

181. However, the IACHR considers that the National Agrarian Court is an important judicial mechanism in the Bolivian judicial system given that its jurisdiction covers one of the main issues affecting the human rights situation in the country, namely agrarian land ownership. On its visit to Bolivia in June 2008, the IACHR was informed that the National Agrarian Court is composed of 10 judges, including its president, with expertise in agrarian matters. The Court is divided into three chambers, each of which has three judges pursuant to law 3545. The seat of the Court is in the city of Sucre.²²⁰

182. Specifically, the information states that the Agrarian Court, whose decisions are unappealable, has jurisdiction to hear petitions for nullity and nullification of agrarian property titles that might have served as the basis for issuing titles, processed by the National Council for Agrarian Reform, the National Institute of Colonization and the National Institute of Agrarian Reform. It also presides over contentious administrative proceedings on agrarian matters, *inter alia*, those concerning challenges to decisions adopted by the INRA, as well as on forest- and water-related matters.²²¹ In this connection, during the visit of the IACHR it was explained that the Court only controls legality, particularly in regularization processes, and that its functions include neither any involvement in shaping land policy, nor settlement of disputes concerning the existence of relationships of bondage between landowners and peasants. Accordingly, it would be unable to hear complaints presented by captive communities.²²² In other words, its jurisdiction to covers disputes over possession and ownership of land from the point of view of their legality. Nevertheless, the IACHR was informed that complaints lodged by captive communities could possibly fall indirectly within its jurisdiction in certain cases where questions of ownership were at issue.²²³ According to information received by the Commission during the visit of June 2008, at present the Agrarian Court has before it for review two resolutions adopted by the INRA ordering the reversion to the State of lands because it was found that persons were working in servitude there.²²⁴

183. In that regard, the IACHR values the functions that the aforesaid Court performs and mentions to the State the need for it to continue to support and strengthen the agrarian justice system with the necessary material and human resources.

184. The IACHR regards as positive the strengthening of “justice of the peace” or alternative dispute settlement mechanisms as a means to attempt to offset the lack of judicial coverage in a worryingly high number of the country’s municipalities chiefly inhabited by indigenous people. For example, the Commission notes the good reception had by the Integrated Justice

²²⁰ Information gathered by the IACHR in the course of the visit to Bolivia from July 9 to 13, 2008. See also, Judicial Branch of Bolivia. Agrarian Courts: Powers, Duties and Composition of the Agrarian Courts. Information available at <http://tan.poderjudicial.gov.bo/>.

²²¹ Information gathered by the IACHR in the course of the visit to Bolivia from July 9 to 13, 2008. See also, Judicial Branch of Bolivia. Agrarian Courts: Powers, Duties and Composition of the Agrarian Courts. Information available at <http://tan.poderjudicial.gov.bo/>.

²²² Information gathered by the IACHR at the meeting with the members of the Agrarian Court of Bolivia during its visit to Bolivia from July 9 to 13, 2008,.

²²³ *Idem*.

²²⁴ *Idem*.

Centers and state efforts to improve their coverage. As is mentioned in the section on Administration of Justice, the Commission finds that while these initiatives may help to reduce procedural delays and deliver justice in remote areas where the judiciary has no presence, they should be regarded as supplementary mechanisms and cannot replace the official justice system, whose absence continues to harm the most vulnerable groups. The Commission reiterates that the State should take steps to improve the alarming coverage figures mentioned above.

185. As to the second perspective, namely, recognition of indigenous law and justice, in *Access to Justice and Social Inclusion* the Commission recommended that the Bolivian State adopt measures to ensure in practice recognition for indigenous justice, regardless of the coverage indicators of the official justice system. The Commission also recommended the introduction of guidelines for coordinating official justice with community justice and drew attention to the importance of creating public policies and designing campaigns to raise public awareness about the scope of indigenous justice and its necessary distinction with criminal acts such as lynchings, as examined hereinabove.

186. The Commission notes the efforts of the Vice Ministry of Community Justice -which reports to Ministry of Justice and Human Rights- in the drafting and presentation to Congress of a bill in this respect.²²⁵ The Commission also notes that the new Constitution²²⁶ includes progressive provisions in terms of recognition of the autonomy of indigenous justice and recognizes the need to develop through legal channels guidelines for coordination between the two systems of justice.²²⁷ The Commission also notes that the new Constitution expressly provides that indigenous justice is limited by the right to life and the rest of the constitutional rights and international human rights standards.²²⁸

187. The Commission was also informed that the Ministry of Justice undertook a specific project on community justice, which resulted in a nine-volume publication on the different forms of justice and cultural traditions that exist in Bolivia, together with a tenth volume that completed the research carried out with a concrete proposed law on coordination of jurisdictions. The Commission regards this as a positive step that could contribute to discussions on coordination guidelines and help to remedy the stigmatization that has plagued indigenous justice. However, the Commission

²²⁵ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 61; Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 9.

²²⁶ Article 190 of the new Constitution states: "I. Native peasant indigenous nations and peoples shall exercise jurisdiction and competence through their authorities, and shall apply their own principles, cultural values, regulations, and procedures. Native peasant indigenous jurisdiction respects the right to life, the right to defense, and the other rights and guarantees established in this Constitution."

²²⁷ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR, par. 21. The draft Constitution, which will be submitted to a referendum, has left open the possibility of exercising indigenous jurisdiction, which it regulates under the title Judicial Organ and Plurinational Constitutional Court. Although Article 191.II seeks to move forward by recognizing indigenous jurisdiction on personal, material, and territorial matters, it continues in paragraph 2 with a reference to a "Separate Jurisdictions Law". Furthermore, Article 192 provides at Part III that, "The State will promote and strengthen aboriginal indigenous peasant justice. The Separate Jurisdictions Law shall determine the mechanisms for coordination and cooperation between the aboriginal indigenous peasant jurisdiction and the regular jurisdiction, agrarian and environmental jurisdiction, and all constitutionally recognized jurisdictions." Annual Report. First Half of 2008. Ministry of Justice. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 9.

²²⁸ Similar comments were made by the Special Rapporteur for the situation of human rights and basic freedoms of indigenous peoples. Rodolfo Stavenhagen. Mission to Bolivia from November 25 to December 7, 2007. A/HRC/11/11. January 9, 2009, para. 26.

was informed that this text was not considered by the Legislative Branch with a view to discussion and approval.²²⁹

188. The Commission expects to receive information regarding this issues, specially with respect to the advancement of the Separate Jurisdictions Law project, undertaken by the Ministry of Justice and the Judiciary. According to information provided by the State, the scope of the project is the determination of material, personal and territorial jurisdiction, seeking the coordination and support of ordinary jurisdiction.²³⁰

189. As mentioned, the Commission continued to receive reports that numerous incidents of lynching or “taking justice into one’s own hands” continue to occur.²³¹ According to available information, some sectors of society persist in confusing these deplorable acts with forms of enforcement of indigenous justice. The media, in particular, have portrayed these criminal acts as expressions of community justice.

190. The Commission appreciates a number of awareness-raising and training measures adopted by the Ministry of Justice²³² and the Office of the Ombudsman to inform the public about the nature, practices, and scope of indigenous justice, and its conceptual differences with “mob justice” or lynching. The Commission draws attention to the efforts of the Ombudsman in circulating, in December 2007, a pamphlet clarifying those differences²³³ and underscoring that none of the systems of indigenous justice in the country recognizes the death penalty as a punishment.²³⁴

191. As the IACHR noted in *Access to Justice and Social Inclusion*, acts of this kind constitute gross violations of human rights, must be investigated and punished by the State, and usually occur in areas without a judicial presence.²³⁵ Such acts should not be understood as indigenous justice in the constitutional and internationally recognized sense, given that the fundamental premise for its recognition is respect for human rights.

VII. WOMEN’S RIGHTS

192. The section on Women’s Rights in *Access to Justice and Social Inclusion* noted the progressive consolidation of a legal framework for protection of women’s rights in Bolivia, following the ratification of international instruments in this area and also given the approval of various domestic laws designed to ensure political participation for women, safeguard equality of opportunities, and prevent and punish domestic violence, among other aspects. Consequently, the

²²⁹ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR Par. 21.

²³⁰ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

²³¹ Report of the Ombudsman to Congress 2007. September 29, 2008.

²³² Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 8.

²³³ Ombudsman. Pamphlet on the Legal System of Indigenous and Aboriginal Peoples and Peasant communities, December 2007.

²³⁴ Report of the Ombudsman to Congress 2007. September 29, 2008, pp. 20 and 21.

²³⁵ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 25; Report of the Ombudsman to Congress 2007. September 29, 2008.

IACHR finds that the State of Bolivia has made significant strides in the definition and adoption of a legal and institutional framework designed to remedy historic forms of discrimination and violence against women.

193. Indeed, the Commission acknowledges the ratification by the State of international treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter also “the Convention of Belem do Pará), as well as the adoption of laws to fight violence against women in the home (Law 1674 of 1995) and sexual violence (Law 2033 of 1999). It also recognizes legislative initiatives to eradicate different forms of discrimination against women in different spheres, such as Law 1674 of 1995 on family or domestic violence, the objective of which is to prevent and eradicate violence against women in the public and private spaces; Law 2033 of 1999 on the protection of victims of crimes against sexual freedom, which defines certain crimes and establishes interdisciplinary teams to cooperate in investigations and the establishment of centers of care and support for victims; Law of 1997 on quotas in the electoral system, establishing minimum percentages that must be filled by women in popularly elected bodies; among others.

194. In spite of the foregoing, the IACHR finds that despite the recommendations contained in its report, a twin problem persists with respect to the aforesaid legal framework. Indeed, the IACHR notes that they have not yet been effectively implemented owing to the lack of resources and institutions necessary for that purpose. Furthermore, the provisions that promote gender equity do not extend beyond the declaratory realm, giving rise to a number of restrictions for women, from education to the right to land ownership, access to employment, and equal pay.²³⁶ Furthermore, it has been brought to the Commission’s attention that the provisions identified as contrary to international standards on women’s rights have not been amended or abolished. Accordingly, it expresses its concern, given that discriminatory provisions still remain, particularly in the country’s criminal and civil law. In this regard, particular mention should be made of Article 317 of the Criminal Code, which in cases of rape and other abuses allows culprits to evade punishment by marrying their victims.²³⁷

195. The Commission reiterates that provisions of this type are discriminatory and run contrary to international standards in this area, in particular the Convention of Belém do Pará, which the Bolivian state ratified in 1994.

196. Accordingly, the Commission reiterates to the State of Bolivia the need to adopt measures to implement the aforesaid legal framework for protection of women’s rights together with policies to protect women against acts of violence and discrimination, and their political, economic and social consequences, as well as allocating sufficient funding to enforce them effectively throughout the country. The IACHR also draws attention to the need to adopt measures to introduce the necessary legislative reforms to eliminate cases of *de jure* discrimination, such as those mentioned above, which are recognized as discriminatory at the international and domestic levels. The foregoing is all the more necessary given the added consideration that such changes should include efforts to eradicate practices and conduct that give rise to and perpetuate the notion that women are socially inferior.

²³⁶ Report of the Ombudsman to Congress 2007, September 29, 2008, p. 25.

²³⁷ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 7. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>. See Article 130 of the Family Code.

197. One serious problem affecting women in Bolivia, which the IACHR identified in its report, it is the high levels of violence against them, in particular in cases of homicide and of family/domestic and sexual violence. The IACHR has underlined its concern in this regard, noting an absence of comprehensive prevention policies and effective access to justice to remedy them, which leads to impunity in these cases.

198. The Commission expresses its concern that, according to the information gathered, the various forms of violence against women persist with impunity in the country, noting, in particular, that, on average, seven out of 10 women are victims of violence both in the home and in other spheres of society.²³⁸ In this regard, although Bolivia has adopted a series of legislative and political initiatives to reduce violence against women, in particular violence in the family and sexual violence, the problem remains as widespread as ever.²³⁹ The IACHR was also informed about the lack of budget funding and human resources to implement the legal provisions adopted,²⁴⁰ as well as shortcomings in certain rules and regulations for adequately addressing the problem.

199. In particular, the IACHR received information about flaws in Law 1674 on family or domestic violence and in Law 2033 on protection of victims of sexual violence, especially because of the priority given to reconciliation and family integrity, and to what several sources describe as the practice of some judicial officials of persuading women victims not to press their claims for justice and convincing them that conciliation is the best option.²⁴¹

200. The IACHR also reiterates that Law 1674 is not a criminal statute and that the penalties it provides are exclusively administrative or financial in nature. In this regard, it is important to draw attention to the fact that Bolivia's criminal laws do not recognize the crime of family or domestic violence and that the only means to seek a criminal punishment for such acts is to subsume them under criminal attacks on personal integrity such as injuries or threats.²⁴² According to the foregoing, victims of family violence may pursue the case through the family courts or through the criminal courts, which two channels are mutually exclusive. Legally, only the victim can decide which channel to follow. However, in practice, judicial officials do not advise victims of the fact that two different channels are available to them, or of the consequences of choosing one route over the other, so that they can make a conscious and informed decision.²⁴³

²³⁸ Ombudsman Report to the National Congress. 2007, September 29, 2008, p. 25.

²³⁹ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 24. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>. In this regard, the IACHR has also received information that the Ombudsman and institutions involved in prevention and care for victims of family violence have come up with initiatives to address the problem of family violence, and that groups of experts have been created to propose reforms to Law 1674 on family and domestic violence (see Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*"; La Paz, Bolivia, October 2008; p.).

²⁴⁰ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 11.

²⁴¹ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 24. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁴² USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas. Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006, p. 35.

²⁴³ Participation and Justice Network. Diagnostic study on the situation of justice in Bolivia. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations on November 13, 2006.

201. The Commission reiterates that conciliation presupposes that the parties involved are negotiating under conditions of equality, and this is not true in family violence cases. Indeed it has been found in many cases that agreements reached through mediation increase women's physical and emotional risk, because of the unequal power relationships between the parties. Moreover, such agreements are generally not respected by the aggressor, and they do not address the causes and consequences of violence.²⁴⁴ The Commission urges the Bolivian State to ensure that women who are victims of violence are not pressured into taking part in conciliation processes. Furthermore, the State must ensure that the use of these mechanisms is accompanied by the necessary guarantees so that victims are sufficiently well advised and have the necessary of information to make free and informed decisions.

202. The Commission is encouraged by two initiatives of the Ombudsman of Bolivia to address family or domestic violence. It has received information about the spread of so-called "Family Protection Brigades",²⁴⁵ which has come about as a result of the distribution of kits consisting of a handbook and a poster. The book contains information on family protection brigades and the text of Law 1674, while the poster is designed to encourage victims to report cases of domestic or family violence to the Brigades. In both cases the aim is to inform women about the functions of Family Protection Brigades and provide them with access to the police in charge of raising awareness about these materials to ensure that the law is properly enforced. In addition, an inter-agency team of experts under the Office of the Ombudsman, created to review Law 1674 on family violence and the decree containing its regulations, has reportedly completed a review that includes proposals submitted by different sectors from all over the country on the aforesaid law, and prepared a bill of amendment.²⁴⁶

203. However, the IACHR has been informed that the Family Protection Brigades and comprehensive legal services lack the necessary budget and infrastructure to carry out their protective and advisory functions properly.²⁴⁷ Therefore, the IACHR urges the State to make the necessary efforts to provide them with the resources they need to carry out their functions.

204. The IACHR expresses its concern at information that a series of shortcomings continue to plague investigations into cases of violence against women and that matters are made worse when the victim lacks the necessary wherewithal or information to follow up and ensure that the authorities responsible perform their legal obligations.²⁴⁸ Concretely, the IACHR was informed that a series of obstacles continued to hinder access to adequate and effective judicial protection mechanisms, including a shortage of justice operators and the lack of independence and suitability

²⁴⁴ IACHR. *Violence and discrimination against women in the armed conflict in Colombia*, October 18, 2006, par. 209, citing: Pan-American Health Organization (PAHO) in collaboration with the United Nations Population Fund (UNFPA), United Nations Development Fund for Women (UNIFEM), Inter-American Commission of Women of the Organization of American States (CIM/OAS), Inter-American Parliamentary Group on Population and Development (GPI), Center for Reproductive Rights (CRR), IPAS, ISIS International, Latin American and Caribbean Committee on the Defense of the Rights of Women (CLADEM), Washington, D.C., April 2004, Model Laws and Policies on Domestic Violence against Women, April 2004, p. 20.

²⁴⁵ The function of the Family Protection Brigade is to enforce the law and provide the necessary immediate assistance to the victim. Its legal basis is found in the Constitution, the Code of Criminal Procedure, the Organic Law of the Police, Law 1674, and others.

²⁴⁶ Report of the Ombudsman to Congress 2007, September 29, 2008, p. 30.

²⁴⁷ *Oficina Jurídica de la Mujer de Cochabamba*. Follow-Up Report on the Recommendations of *Access to Justice and Social Inclusion*. p. 19.

²⁴⁸ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, pp. 11 and 12.

of a number of them; high illiteracy rates among women, in particular indigenous women and those who live in poverty and in rural areas; lack of information about their rights; lack of legal assistance adequate to their needs; delays in judicial proceedings and the costs associated therewith; absence of institutionalized training programs for justice administration officials and the police, and lack of statistical data, among other difficulties.²⁴⁹

205. In the light of the foregoing, it is up to the State to rekindle its efforts to train its employees -particularly those involved in processing cases of violence against women- in women's rights and their corresponding obligations to safeguard the dignity of and respect for victims and their next of kin. The State should also design protocols to facilitate and encourage the effective, uniform, and transparent investigation of acts of physical, sexual, and psychological violence.

206. The IACHR has also received troubling information that reveals that since the new Code of Criminal Procedure came into force the rate of cases closed, rejected, or dismissed has risen to more than 70% of complaints received.²⁵⁰ Of that proportion, 40% reportedly corresponds to sex offenses.²⁵¹ It should be stressed that the legal basis for accepting the withdrawal of complaints by victims is provided by Article 317 of the Criminal Code.²⁵²

207. In sum, under domestic and international law the State has a duty to act with due diligence in investigating and clarifying violations of fundamental rights. In particular, the Convention of Belém do Pará establishes that the due diligence obligation has a special connotation in cases of violence against women. This Convention reflects a shared hemispheric concern over the gravity of the problem of violence against women, the relationship between that problem and the discrimination that women have historically endured, and the need to adopt comprehensive strategies to prevent, punish and eradicate violence against women.²⁵³ Consequently, the Commission urges the State to redouble its efforts to effectively ensure due diligence in the investigation, prosecution, and punishment of violations of women's rights, and to give priority attention to designing a comprehensive and coordinated policy aimed at eliminating the *de jure* and *de facto* barriers that prevent women from having access to effective remedies and mechanisms for judicial protection, especially where violence against women is concerned.

208. Accordingly, the IACHR reiterates the recommendations to the State that it adopt additional measures to strengthen and institutionalize coordination and the exchange of information

²⁴⁹ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, pars 16 and 17. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>. See also Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 12.

²⁵⁰ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 12.

²⁵¹ *Idem*.

²⁵² *Idem*, (citing the document *Preocupaciones de instituciones de la sociedad civil respecto a políticas públicas de género en Bolivia* sent to CEDAW in 2008. Coordinadora de la Mujer (Women's Coordinator) Católicas por el Derecho a Decidir (Catholics for a Free Choice) Oficina Jurídica de la Mujer (Women's Legal Department)

CLADEM Bolivia, Ayni Suyo. Article 317 of the Bolivian Criminal Code includes the following provision on the crime of rape: "There shall be no punishment when the perpetrators, in each case and provided there is no impediment for them to do so, marry the victims before the sentence become final.

²⁵³ IACHR. *Access to Justice for Women Victims of Violence in the Americas*, par. 32; Convention of Belém do Pará. Article 7.

among the authorities responsible for investigating acts of violence and discrimination against women; and that it strengthen the institutional capacity of judicial bodies, such as the Prosecutors' Office, the police, the courts and the tribunals, and the forensic medical services, in terms of both human and financial resources, to combat the pattern of impunity in cases of violence against women, through effective criminal investigations followed by appropriate judicial action, thus guaranteeing proper punishment and reparations.

209. As regards participation of women in public affairs, the Commission has said that it welcomes the legal framework consisting of the Elections Code, the 1997 30% Quotas Law, and the 1999 Law on Political Parties. Furthermore, information received on the appointment of a large number of women to leadership positions in the government is an encouraging sign.²⁵⁴ However, the IACHR has been informed that the quotas law has not yet been effectively implemented and that women are underrepresented in positions of responsibility in many spheres of professional and public life,²⁵⁵ such as, for example, the judiciary, especially at the highest levels. In addition, the data available shows that in the legislative branch, of the 130 persons that comprise the House of Deputies, 106 (82%) are men and only 24 (18%) are women; that the Senate only one principal senator is a woman; that there are no women working in the Governor's offices, whose incumbents were for the first time elected by popular ballot; that at municipal government level, of a total of 314 municipalities, 287 (91.40%) are administered by mayors and 27 (8.50%) by mayoresses; and that of a total of 1,804 municipal councilors, only 336 (18.6%) are women.²⁵⁶

210. Moreover, the IACHR has taken note of reports that legislation against gender-based harassment and political violence has been promoted and was to be approved by the House of Deputies.²⁵⁷ The Commission received information that the bill was rejected because of opposition from some lawmakers.²⁵⁸ However, the Commission is encouraged by information from the State that the bill is still pending in the House of Deputies.²⁵⁹ The Commission hopes that processing will be expedited and that when the legislation is approved the necessary steps will be taken for its implementation.

211. Finally, with respect to this issue, it has come to the attention of the IACHR that a high number of women, in particular indigenous women in rural areas, older women, and women with disabilities, do not have identity documents and cannot, therefore, exercise their political

²⁵⁴ Naciones Unidas, Comité para la Eliminación de la Discriminación en contra de la Mujer; Observaciones finales del Comité para la Eliminación de la Discriminación en contra de la Mujer para Bolivia; CEDAW /C/BOL/CO/4; 40 período de sesiones, 14 de enero al 1 de enero de 2008, párr. 30 .Versión en español disponible en la WEB <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain/opendocpdf.pdf?reldoc=y&docid=48e36e012>.

²⁵⁵ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁵⁶ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia". La Paz, Bolivia, October 2008, page. 12.

²⁵⁷ Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo; Comentarios y Seguimiento al Cumplimiento de Recomendaciones de la Comisión Interamericana de Derechos Humanos contenidas en el Documento "Acceso a la Justicia e Inclusión Social: El Camino hacia el Fortalecimiento de la Democracia en Bolivia". La Paz, Bolivia, Octubre de 2008, pág. 13.

²⁵⁸ *Oficina Jurídica de la Mujer de Cochabamba*. Follow up report on Recommendations on Access to Justice and Social Inclusion, p. 19.

²⁵⁹ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

rights, gain access to public institutions, and obtain the services and social benefits to which they are entitled.²⁶⁰

212. Based on the foregoing, the IACHR calls on the States to strengthen women's participation and representation in elected office and other decision-making forums. The Commission also reiterates its recommendation that the State ensure the enforcement of laws that guarantee women's participation in public affairs; that it take the necessary steps to prevent and punish any act of discrimination against women who accede to public office, in all circumstances; and that it make the necessary efforts to move forward with the process of registration of women, in particular indigenous women in rural areas, older women, and women with disabilities, in order to provide them with the necessary documents to enable them to exercise their rights in full.

213. The IACHR has received information about the persistence of high levels of poverty and social exclusion among Bolivian women, particularly among women living in rural areas, indigenous women, older women and women with disabilities, and their insufficient access to land, housing and basic social services. The poverty conditions of women are reflected in their high illiteracy rates, low school enrolment and completion rates, and poor access to health care, including sexual and reproductive health, leading to high rates of maternal mortality.²⁶¹ Indeed, the lack of a gender perspective in the delivery of health services constitutes an obstacle for women of child-bearing age. The IACHR is concerned at the high rates of mortality in the State, caused mainly by pregnancy-related problems and the lack of appropriate medical care, particularly in the rural areas.²⁶²

214. The information also indicates that poverty continues to cause large migration flows abroad. It has reportedly been confirmed that most migrants are women who, in addition to facing the dangers of trafficking in persons, are very often forced to leave their families.²⁶³

215. Furthermore, the information indicates that rural and indigenous women and girls continue to be at a serious disadvantage in terms of access to and quality of education, as well as the number of years they attend school, basically owing to the lack of infrastructure, distance, the risk of violence, the cost of transport and language.²⁶⁴ The Commission has also been informed about the persistence of limited employment opportunities for women and the existence of a huge gap in men's and women's wages, clear-cut job segregation and poor working conditions.²⁶⁵

²⁶⁰ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 18 .Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁶¹ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 11. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁶² United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 42. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁶³ Report of the Ombudsman to Congress 2007. September 29, 2008, p. 26.

²⁶⁴ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 32. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁶⁵ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 34. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

216. Finally, the IACHR has received information about the lack of statistical data disaggregated by sex, age, rural and urban area and ethnicity, which makes it difficult to accurately assess the real situation of women. This also impedes the State's own efforts to design and implement specific policies and programs, and to evaluate their effectiveness.²⁶⁶ The Commission, therefore, reiterates its recommendation that the State create and strengthen systems for recording statistical and qualitative information on incidents of violence against women within the systems for the administration of justice. Strengthen the recording of cases of violence against women to guarantee that such records are uniform, accurate and transparent. The IACHR also reiterates that the State should develop educational programs for citizens, starting at a young age, to promote respect for women as equals and to recognize their particular needs as women, and to respect their right not to suffer violence and discrimination.

VIII. CHILDREN'S RIGHTS

217. In *Access to Justice and Social Inclusion*, the Commission took a positive view of the legal framework for the rights of the child and noted that Bolivia was a party to the United Nations Convention on the Rights of the Child. It also observed that the Constitution established (Article 199) that the State had the duty to protect the physical and mental health of children and to defend their rights to a home and to education, provisions that were regulated by the Juvenile Code [*Código del Niño, Niña y Adolescente*] of 1999.

218. Despite the foregoing, the Commission found that a high proportion of children in Bolivia continued to be victims of human rights violations, affecting their civil and political rights as well as economic, social and cultural rights.

219. First, as regards children's education in Bolivia, the IACHR has received information that in March 2006 the government launched the National Literacy Plan, setting the goal of eradicating illiteracy -which, according to the 2001 National Population and Housing Census, affected 13.3% of the Bolivian population (approximately 1.2 million people)- within 30 months.²⁶⁷ In that respect, it was reported that the Ministry of Education carried out a "census" in mid-2007 to determine how many illiterate persons there were and found, as a result, that the number had declined to approximately 700,000.²⁶⁸ The Commission regards it as a distinctly positive sign that a significant reduction has been achieved since the findings of the above-mentioned 2001 census.

220. The Commission has also received information about an important initiative to boost child attendance in primary education called the "Juancito Pinto Bonus," a school attachment subsidy of 200 bolivianos.²⁶⁹ The subsidy is granted to all children enrolled in state primary schools from first to eighth grade, making a total of 1.2 million children nationwide.²⁷⁰ The aim of the

²⁶⁶ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 46. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁶⁷ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 13.

²⁶⁸ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008; p. 14.

²⁶⁹ Approximately US\$26.

²⁷⁰ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*", La Paz, Bolivia, October 2008, p. 13. See also United

Juancito Pinto program is to provide support to low-income families by enabling them to supplement their limited budgets and purchase more food.²⁷¹ As a result of this initiative, according to figures supplied by the Ministry of Education, school enrolment rose by 9.54%.²⁷² In absolute terms, the information indicates that in 2007 the program benefited more than one million children in more than 13,000 schools.²⁷³ The Commission welcomes this information and urges the State to continue its efforts in this regard.

221. The foregoing notwithstanding, it should be noted that one comment made about the aforementioned subsidy by a number of civil society organizations is that the benefit is confined to primary education when the school dropout rate starts to increase in secondary schools.²⁷⁴

222. Another problem identified in the Report of the IACHR concerns child labor. The conditions of poverty and extreme poverty in Bolivia are such that many children under the age of 14 find themselves in the labor market,²⁷⁵ working in unacceptable conditions. In this connection, the Juvenile Code sets the minimum working age at 14 years and expressly prohibits children under that age from working, in particular in cotton, nut and sugarcane harvesting.

223. The information received is cause for concern since, according to data supplied by the Department of Employment [*Dirección General de Empleo*], there are approximately 38,000 cane harvesters in Santa Cruz and Tarija combined, of whom 9,860 are said to be children and adolescent day workers. Traditional small-scale gold mining, which is confined largely to seven municipalities in Oruro, Potosí and La Paz, is thought to employ more than 38,000 persons, 3,800 of whom are reported to be children and adolescents. The IACHR has also been told that according to a recent study by CEDLA and UNICEF, around 17,800 people work as nut harvesters, including 4,600 children and adolescents.²⁷⁶

224. In this respect, the Commission has been informed that in recent years the Bolivian government has been carrying out a series of initiatives through the Commission for Progressive Eradication of the Worst Forms of Child Exploitation, with the participation of the Ministry of Labour and support provided by the ILO and UNICEF. The measures proposed include, for example, construction of schools, improvement of workplace infrastructure, and student breakfasts programs at cane stockpiling centers. However, these measures have been marked as insufficient as they do not address the core problem, which is exploitation of family labor as a cumulative mechanism used

...Continuation

Nations, Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, par. 36.

²⁷¹ United Nations, Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, par. 36.

²⁷² Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 14.

²⁷³ United Nations, Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, para. 36.

²⁷⁴ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*", La Paz, Bolivia, October 2008, p. 14.

²⁷⁵ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*", La Paz, Bolivia, October 2008, p. 15.

²⁷⁶ *Idem*.

by sugar companies, where children are employed in the form of indirect labor as “assistants of household heads”.²⁷⁷

225. For its part, in the nut industry, child labor is widely used throughout the production chain under the guise of family labor and justified by entrepreneurs who describe child labor as a “cultural feature” of the employment strategies of families in the Amazon region.²⁷⁸

226. Furthermore, in June 2008, as the IACHR was travelling to the community of Itacuafía, situated in the department of Santa Cruz, it received a number of testimonies regarding the work done by children on estates in the Bolivian Chaco region and witnessed firsthand the abject poverty in which children live and that they perform a variety of farm labors.

227. In particular, the testimonies state that, *inter alia*, the work consists of feeding animals, carrying water to houses on the estates, fetching firewood, and helping in the harvest. Girls are made to work from a very young age, helping with household chores and cooking without receiving any pay whatsoever and without being permitted or having the possibility to go to school. The Commission was also told that it is common for them to be taken to the homes of the estate owners in cities to work as unpaid domestic servants. In general, the IACHR was informed that children who work alongside their parents received no pay because employers regard the work they do as helping their parents to complete their allotted tasks.²⁷⁹

228. Consequently, the IACHR emphatically reiterates to the State the need to design policies to eradicate rural and urban labor for children in slavery-like conditions.

229. Another serious problem identified in the report concerns sexual exploitation of children. According to information received by the Commission a comprehensive bill against the sale and trafficking of persons has been presented to Congress. The bill is currently before the House of Deputies for review and approval.²⁸⁰

230. According to the information supplied, there are 1,119 children, including newborn infants,²⁸¹ living in Bolivian prisons. For its part, the Office of the Ombudsman reported that in Bolivia’s 54 prisons and nine police jails, there is a considerable number of persons deprived of liberty who live with children of both sexes.²⁸² According to the figures provided by that entity, children in this situation make up 18% of the prison population, living in unsuitable conditions, given their inadequacies in terms of infrastructure, education facilities, and staff.²⁸³ In view of these circumstances, the Commission considers it apt to reiterate to the State the need for it to ensure that deprivation of liberty is imposed only as a last resort, and that the necessary measures are taken to create establishments for the reeducation of children in this situation.

²⁷⁷ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in “*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*”, La Paz, Bolivia, October 2008, p. 15.

²⁷⁸ *Idem*.

²⁷⁹ Testimony offered by an indigenous Guaraní in Alto Parapetí, during the on-site visit of the Commission to the community of Itacuafía on June 11, 2008.

²⁸⁰ Report of the Ombudsman to Congress 2007. September 29, 2008, p. 21.

²⁸¹ *Oficina Jurídica de la Mujer de Cochabamba*, Follow up on implementation of the recommendations contained in the Report of the IACHR *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, p. 14.

²⁸² *Idem*.

²⁸³ *Idem*.

231. The IACHR also reiterates to the State that it should adopt the necessary measures to ensure that when children are lodged in detention centers together with their father or mother deprived of liberty, the best interest of the child is taken into account upon establishing pertinent policies, and particularly that they have access to special protection, food, health and educational services necessary for their proper development. The Commission draws attention to the fact that states have the obligation to ensure that children are not exposed to abuse and to investigate any complaint in that respect. By the same token, the State is required to adopt measures to safeguard the best interests of children who are in the custody of persons deprived of liberty but do not live in prison with them.

232. Another matter of particular concern has been brought to the Commission's attention. The IACHR has been informed that chronic malnutrition affects more than one in four Bolivian children and that this problem has the following characteristics: the highest levels of malnutrition are amongst Bolivians living in rural areas; children in the poorest households have levels of malnutrition six times that of children born into the richest 20% of households; families of indigenous Quechua, Aymara, Guaraní and other peoples are far more affected by chronic malnutrition (28%) than non-indigenous children (16%); many of Bolivia's minorities, such as *afro-bolivianos*, are also particularly affected by high levels of malnutrition; More than half of Bolivian children suffer from micronutrient deficiencies, particularly of iron, iodine and Vitamin A, and 80% of children between 6 and 23 months suffer from anemia. According to information, child mortality remains high, although there are great disparities among different regions, depending on the level of wealth in each zone.²⁸⁴

233. The Commission applauds the launching of the Zero Malnutrition program in mid-2008,²⁸⁵ and the approval of Supreme Decree No. 0066 of April 3, 2009, which established an incentive for safe maternity and comprehensive development of the child population 0-2 years of age. This initiative has been named the Juana Azurduy Mother's and Children's Grant; it seeks to reduce maternal and child mortality and chronic malnutrition of children in their first two years.²⁸⁶ The Commission hopes to continue receiving information on these programs' effect on the malnutrition statistics provided previously.

IX. RIGHTS OF REFUGEES AND ASYLUM SEEKERS

234. In *Access to Justice and Social Inclusion* the Commission noted a number of shortcomings with respect to due process guarantees for persons seeking asylum, in particular, irregularities in the composition of the National Refugees Commission (hereinafter CONARE); decisions taken without a hearing or interview, and irregularities in the notification and adoption of decisions contrary to the guarantee against forced return.

235. The Commission welcomes the steps taken by the Bolivian State that have improved the situation of refugees and persons seeking refugee status. In particular, the Commission

²⁸⁴ United Nations, Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, para. 6.

²⁸⁵ High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 60.

²⁸⁶ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

underscores that the new Constitution contains an explicit ban on deportation of persons with refugee status.²⁸⁷

236. Given the high number of persons in this situation in Bolivia,²⁸⁸ -in particular Peruvian nationals- the Commission welcomes the signing in La Paz on May 4, 2007, of a Mutual Cooperation Agreement between CONARE and the Office of the United Nations High Commissioner for Refugees. The IACHR was informed that training workshops were held for CONARE officials under this agreement.²⁸⁹

237. The Commission also hails important improvements in the operations of CONARE, particularly the implementation of new administrative documents, the establishment of appropriate physical space,²⁹⁰ training for personnel in the area of international refugee law, diligence in processing of applications for refugee status, respect for the principle of non-deportation, and continuity in the staff of the technical secretariat.²⁹¹

238. With respect to difficulties reported in obtaining documents, the Commission welcomes the issuance of Ministerial Resolution No. 731/2008 of November 26, 2008, which exempts refugees from document legalization fees.²⁹² In addition, the Commission takes note of information provided by the State on the joint work of institutions involved in the process of documentation for the refugees. The State said that there have been meetings with the Ministry of Government and National Police to work on simplification of requirements for delivery of the refugee identity card.²⁹³ The Commission hopes that these efforts will lead to a substantive improvement in the processing of identity documents.

239. In spite of the foregoing, the Commission continued to receive reports of stigmatization and discrimination against refugees, in some cases by state authorities, coupled with an absence of programs to provide them and their families with opportunities for advancement and integration.²⁹⁴

²⁸⁷ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

²⁸⁸ Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Bolivia. CMW/C/BOL/CO/1. 2 May 2008, para. 3.

²⁸⁹ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 41. De acuerdo a la información aportada por el Estado, la CONARE se encuentra actualmente compuesta por los siguientes niveles: i) nivel ejecutivo, conformado por el Ministerio de Relaciones Exteriores, el Ministerio de Justicia y el Ministerio de Gobierno a través del Servicio Nacional de Migraciones; ii) nivel consultivo, a cargo de la Oficina Regional para el Sur de América Latina del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR); y nivel operativo conformado por la agencia de implementación de la Convención sobre el Estatuto de Refugiados de 1951 en la actualidad ejercido por la Pastoral de Movilidad Humana

²⁹⁰ Pastoral de Movilidad Humana. Report on Implementation of the Recommendations Contained in the Report "Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia". October 30, 2008, pp. 1 and 2.

²⁹¹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

²⁹² Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

²⁹³ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

²⁹⁴ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 41; Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Bolivia. CMW/C/BOL/CO/1. 2 May 2008, para. 21.

240. The considers that the State should continue taking all steps necessary to eliminate the obstacles facing asylum seekers in Bolivia, in particular the difficulties in obtaining identity documents, whether provisional or permanent.²⁹⁵

241. As to due process guarantees for asylum seekers, the Commission was informed that significant strides have been made as regards the "right to an interview". However, according to information received this right is not as stringently observed where family groups are concerned.²⁹⁶

242. There has been no change as regards guarantee of the right to challenge decisions refusing refugee status. According to the information available, Executive Decree 28.329 remains in force on this point and the only guarantee it provides is a petition for administrative reconsideration to the same body that initially adopted the decision.²⁹⁷

243. The Commission reminds the Bolivian State that procedures relating to applications for refugee status should be carried out in strict compliance with due process guarantees, in which the right "to be heard" in an interview or a hearing is paramount, as is the possibility of appeal against the respective decisions.²⁹⁸ To that end, it is essential that the State adopt measures to overcome the difficulties reported with respect to notification of decisions lest they prevent the timely presentation of appeals.²⁹⁹

244. A number of civil society organizations expressed concern to the Commission regarding legal restrictions on the right to seek asylum, in particular, due to strict observance of Article 23 of Executive Decree 28.329, which provides, "Anyone who enters Bolivian territory seeking refugee status is required to present themselves within not more than 30 days to the Secretariat of CONARE in order to submit their application. Failure to do so shall make them ordinary immigrants and subject to statutory penalties."³⁰⁰ The Commission hopes to obtain more information about the enforcement of this provision and its effects on the possibility of applying for refugee status.

245. Finally, the Commission received with satisfaction information about measures adopted to ensure the guarantee against forced return. Specifically, the Commission draws attention to a number of decisions of the Supreme Court of Justice that voided arrest warrants for extradition purposes because the person concerned had refugee status. The Commission was also informed of extradition requests which were rejected based on said status.³⁰¹

²⁹⁵ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007, para. 410. 1.

²⁹⁶ Pastoral de Movilidad Humana. Report on Implementation of the Recommendations Contained in the Report "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". October 30, 2008, p. 3.

²⁹⁷ Pastoral de Movilidad Humana. Report on Implementation of the Recommendations Contained in the Report "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". October 30, 2008, p. 4.

²⁹⁸ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007, para. 410. 2.

²⁹⁹ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007, para. 410. 3.

³⁰⁰ Pastoral de Movilidad Humana. Report on Implementation of the Recommendations Contained in the Report "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". October 30, 2008, p. 2.

³⁰¹ Pastoral de Movilidad Humana. Report on Implementation of the Recommendations Contained in the Report "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". October 30, 2008, p. 4.

246. With regard to this point, the Commission reiterates that based on the rule against forced return, the Bolivian State may not deport or extradite individuals who have been recognized as refugees until a procedure has been carried out to assess the risk in their country of origin or any other requesting country, which procedure shall include all the guarantees of due process, including the possibility of review of decisions.³⁰²

X. RECOMMENDATIONS

247. Based on the information and observations contained in this report, the Commission reiterates to the State of Bolivia the need to continue its efforts to implement the recommendations contained in the report *Access to Justice and Social Inclusion* - which are transcribed below - and to maintain the results achieved to date.

Administration of justice

1. Increase the mechanisms of publicity and dissemination for the rights of the citizens and the judicial actions established in the Constitution as an instrument for giving effect to them, as well as the procedures and requirements for accessing them.
2. Adopt the necessary measures to achieve the fullest possible coverage of judges, prosecutors and public defenders, using criteria based on a diagnosis of the real needs in the different areas of the country, both in terms of population and jurisdictions. These measures must include budgetary and human resources so that the respective authority will have not only a physical presence but also permanent and stable personnel.
3. Immediately appoint the judges of the Constitutional Court, the Supreme Court of Justice, and the Attorney General, in keeping with the appropriate constitutional and legal procedures. In the case of the Constitutional Court, the State should design and implement a mechanism to deal with the procedural delays caused by the fact that it has been inoperative for more than one year.
4. Comply strictly with the procedures for appointing judges and prosecutors, established as a guarantee of independence and impartiality both in the Constitution, in the case of members of the high courts, the district Superior Tribunals, the Attorney General and the district prosecutors, and in the laws and regulations governing the judicial and prosecutorial careers in the case of other judicial authorities and the prosecutors.
5. Effectively implement the judicial and prosecutorial careers systems, and eliminate all provisions relating to hierarchy and promotion for these authorities that could increase levels of corruption in the judiciary and in the Prosecutors' Office. In particular, ensure that entry and promotion in those careers is done through public competitions and selection based on exclusively technical criteria.

³⁰² IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007, para. 410. 4.

6. Strengthen the disciplinary system for judges and create coordination mechanisms with the criminal jurisdiction to fill the gaps in the law that have so far prevented effective disciplinary or criminal punishment of judicial authorities who commit acts of corruption, who contribute to procedural delay, who take decisions manifestly contrary to law, or who in general obstruct access to justice.
7. Take the necessary steps to implement the evaluations and other legal mechanisms of internal and external control, with respect to both the performance and the suitability of judicial authorities and the Prosecutors' Office.
8. Conduct a clear analysis of the shortcomings in implementation of the 1999 Code of Criminal Procedure and institute comprehensive measures that include, at least, adequate training; the distinction of investigative functions; decongestion and settlement of cases at the investigation stage; guidelines for cooperation between all authorities involved in all instances, whether police, prosecutors or judges; mechanisms to comply with procedural deadlines, notifications and the holding of public hearings within legal parameters; and implementation of measures for participation by victims and their relatives.
9. Take steps to eliminate the legal uncertainty surrounding the statute of limitations for criminal cases, and establish clearly, in accordance with international standards, that its applicability cannot be determined on the basis of whether the affected person availed himself of the remedies and mechanisms of defense that criminal procedural law provides.
10. Strengthen the National Public Defender System with particular attention to the coverage and quality of service, and to the mechanisms for the hiring and tenure of public defenders.
11. Step up investigations of forced disappearances, police and military repression of public demonstrations, and other violations of human rights, using all the means at its disposal to overcome the obstacles that have to date prevented the establishment of the truth, the identification of the material and intellectual authors of the events, imposition of the corresponding sanctions, and determination of reparations for victims and their relatives.
12. Ensure that investigations of cases of lynching are initiated *sua sponte* and carried out by the appropriate authorities with due diligence in the identification and punishment those responsible.
13. Initiate the necessary investigations to determine the truth of allegations of abuses committed by the police and military during the state of siege in the Department of Pando from September 12, 2008 to November 24, 2008. Furthermore, move forward with the necessary investigations of the officials who, in abuse of their powers under the decree instituting the state of siege, refused to recognize inalienable rights under Article 27(2) of the American Convention and disregarded judicial decisions adopted in the framework of *habeas corpus* proceedings.

Prison conditions and rights of persons deprived of liberty

14. Ensure that the judicial authorities apply preventive detention reasonably and in conformity with the international standards mentioned in the relevant section of this report, and that all accused have access to a judicial remedy to question excessive time in preventive detention.
15. Take the necessary judicial, legislative and other measures to correct the excessive application of preventive detention and the procedural delays that persist in the administration of justice. Among other measures that the State may deem pertinent, these should include the release of all detainees who have not been sentenced within a reasonable time without prejudice to the continuation of the proceedings against them.
16. Take judicial, legislative and other measures with a view to reducing overcrowding and improving living conditions in Bolivian prisons, while ensuring that prisoners are treated with the respect due to the inherent dignity of human beings.
17. Establish effective systems to ensure that accused persons are segregated from those who have been convicted, and create mechanisms for classifying persons deprived of liberty according to sex, age, reason for detention, special needs, and applicable treatment.
18. Put an immediate halt to the practice of keeping minors under the age of 18 years, accused or convicted, in prison together with accused or convicted adults, even temporarily.
19. Adopt the necessary measures to immediately regain control of internal areas of prisons in the country, and monitor – also through serious investigations – cases of corruption observed. Also, establish special recruitment and training programs for all personnel in charge of the administration, supervision, operation and security of prisons and other places of deprivation of liberty, which must include education on international human rights standards related to prison security, the proportionate use of force, and the humane treatment of persons deprived of liberty.
20. Adopt measures with a view to improving infrastructure in those prisons where conditions are precarious and do not meet the minimum requirements with respect to drinking water, sanitary facilities, personal hygiene, floor space, light and ventilation; sufficient and adequate food; and adequate bedding.
21. Take the necessary steps to ensure that persons deprived of liberty have access to adequate medical attention, which requires the presence of a medical team sufficient in relation to the number of inmates, with the capacity to respond to medical emergencies, and the availability of medications; in particular, for immediate attention to the elderly, the sick and children living in prisons.
22. Take steps to provide and facilitate educational and working opportunities for persons deprived of liberty with a view to assisting in their reform, social readaptation, and personal rehabilitation.

23. Take the necessary measures to ensure that when children are lodged in detention centers together with their father or mother deprived of liberty, the best interest of the child is taken into account upon establishing pertinent policies, and particularly that they have access to special protection, food, health and educational services necessary for their proper development. Also, take measures to guarantee, in the same terms, the best interest of children not living in prison with the parent deprived of liberty who has custody of the child. In this context, the State shall carry out serious and diligent investigations whenever there is a complaint of sexual abuse to the detriment of persons that live in prisons.
24. Ensure that detention conditions are effectively controlled by criminal enforcement judges in the case of convicted persons, and by the respective judges in cases of persons under preventive detention.
25. Make available adequate and effective remedies of an individual and collective nature for judicial control of overcrowding and violence in prisons. Those remedies must be accessible to persons deprived of liberty, their relatives, their private or public defenders, NGOs, the Ombudsman and other competent institutions.

Rights of indigenous peoples and peasant communities

26. Take all necessary steps to eradicate any kind of discrimination based on the indigenous and/or peasant status of persons subject to its jurisdiction, particularly in access to justice, education and health, and to the benefits of other state policies intended to increase the coverage of economic, social and cultural rights.
27. Ensure that all measures taken in connection with the right to education and health for indigenous peoples are compatible with their particular worldview and the maintenance and strengthening of their cultural identity, and that they in no way imply a form of assimilation of indigenous peoples into the non-indigenous culture.
28. Guarantee effective enforcement of the new law relating to agrarian reform, adopting the necessary measures to eliminate the obstacles cited by the Commission that have prevented access to land and territory for all sectors of Bolivian society. As part of this process, it is essential that the State bear in mind the particular relationship that indigenous peoples have with the land and that consequently, in the process of land titling, it must give priority to recognizing their ancestral lands and territories as essential for the survival of their cultural identity.
29. Ensure that all judicial proceedings concerning such matters before the National Agrarian Tribunal comply strictly with due process guarantees and, in particular, that they be disposed of within a reasonable time.
30. Incorporate the provisions of ILO Convention 169 on this issue in Bolivia's domestic legislation on development projects, and adopt measures for their effective enforcement.

31. Consistent with its international obligations, guarantee the participation of indigenous peoples and communities concerned in projects for exploration and exploitation of natural resources, through prior and informed consultations designed to obtain their free consent in the design, execution and evaluation of such projects, as well as in determining benefits and compensation for damages, according to their own development priorities.
32. In the context of projects underway, implement participatory mechanisms to determine the environmental damage they may be causing and their effects on the basic subsistence activities of indigenous peoples and peasant communities living in the vicinity of such projects. If their lives or personal integrity are threatened, such projects should be immediately suspended and the appropriate administrative and criminal penalties imposed. If the projects continue, the State must guarantee that the persons concerned share in the benefits from those projects, and it must determine and enforce compensation for such damage.
33. Guarantee access to an adequate and effective judicial remedy to enable collective challenges against environmental damages, so that, in addition to criminal action, there is also a judicial mechanism available to seek an immediate response in circumstances where irreparable damage is being caused to groups of persons.
34. Give priority to measures for eradicating forced labor and bondage, and take immediate steps to strengthen the recognition and regularization of property for persons affected by this situation, and to prevent any weakening of labor and social rights for persons working in the rural sector.
35. Conduct an immediate analysis of the situation of bondage analogous to slavery and/or forced labor in various parts of Bolivia, including data on all families and persons subjected to this form of life, the related social, cultural and psychological factors, and the various private and State players involved, particularly weaknesses in the various administrative and judicial bodies.
36. Adopt necessary measures to guarantee that recognition of community justice does not depend on the coverage or procedural workload of official justice, but stems from the pluricultural nature of the Bolivian State and from respect for the autonomy of indigenous peoples.
37. Establish, in the short term, guidelines for coordinating official justice with community justice, taking into account as a minimum the parameters set out in the respective section of this report.

Women's rights

38. Enforce existing national legislation and policies to protect women against acts of violence and discrimination, and their political, economic and social consequences, and allocate sufficient funding to enforce them effectively throughout the country.
39. Design a comprehensive and coordinated policy, with sufficient public funding to permit continuity, to ensure that the victims of violence have full

access to adequate judicial protection to remedy their suffering and to prevent, investigate, punish and provide reparations for acts of violence.

40. Implement public awareness measures and campaigns on the duty to respect women's civil, political, economic, social, cultural, sexual and reproductive rights; on the judicial services and remedies available for women whose rights have been violated; and on the legal consequences for the perpetrators.
41. Develop educational programs for citizens, starting at a young age, to promote respect for women as equals and to recognize their particular needs as women, and to respect their right not to suffer violence and discrimination.
42. Identify and institutionalize new forms of training for public employees in all sectors (justice, security, health and education) that include a comprehensive approach to women's right to live free of violence and discrimination, and the need for public servants to respect women's physical and psychological integrity, in the exercise of their functions.
43. Ensure effective enforcement of laws that guarantee women's participation in public affairs, and take the steps necessary to prevent and punish any act of discrimination against women who accede to public office, in all circumstances.
44. Create and strengthen systems for recording statistical and qualitative information on incidents of violence against women within the systems for the administration of justice. Strengthen the recording of cases of violence against women to guarantee that such records are uniform, accurate and transparent.
45. Strengthen the institutional capacity of judicial bodies, such as the Prosecutors' Office, the police, the courts and the tribunals, and the forensic medical services, in terms of both human and financial resources, to combat the pattern of impunity in cases of violence against women, through effective criminal investigations followed by appropriate judicial action, thus guaranteeing proper punishment and reparations. This will involve the purchase of the necessary technical equipment to conduct chemical and forensic tests, as well as all the evidence required to clarify the facts investigated.
46. Take immediate steps to provide effective training on women's rights to all public officials involved in handling cases of violence against women (including prosecutors, police officers, judges, court-appointed lawyers, administrative officials and forensic medical professionals) so that domestic and international standards can be applied for prosecuting these crimes, and so that the integrity and dignity of victims and their relatives will be respected when they complain of such events and during their participation in the judicial process.
47. Take steps to institutionalize cooperation and information sharing among the authorities responsible for investigating acts of violence and discrimination, in particular between the Prosecutors' Office and the police.

48. Design protocols to facilitate and promote effective, uniform and transparent investigation of acts of physical, sexual and psychological violence, including a description of the complexity of the evidence, and a detail of the minimum proof that must be compiled to substantiate charges, including scientific, psychological, material and testimonial evidence. It is important to encourage multidisciplinary investigation of such crimes.

Children's rights

49. Give priority to implementing policies for preventing the situations described in this section and others that constitute gross violations of the human rights of Bolivian children, through a clear analysis of the situation that afflicts this sector of society.
50. Guarantee access to the civil registry free of charge, as established in the Constitution, and take steps to identify all children who have been prevented by various means from obtaining an identity document.
51. Take all steps necessary to expand the coverage of public education as far as possible, both in terms of access and in terms of educational continuity and quality.
52. Adopt measures to expand the coverage of the Juvenile Defenders' Offices and other institutions provided for in the legislation, both for protection and for the prevention, investigation and punishment of crimes of all kinds committed against children.
53. Adopt all necessary measures to ensure that children are protected from all forms of violence, making certain that national norms do not include any ambiguous wording, for example, "abuse of corrective measures" or "discipline" or "disciplinary," since such terms raise doubts about the criteria used to determine when corrective measures are excessive and harmful to children. In their place, it must be established clearly that corporal punishment of children is prohibited.
54. Design policies to eradicate labor in rural and urban areas for children under the age of 14, and to ensure strict compliance with the rules according to which the employment of persons under 18 years is allowed, in terms of their social rights and restrictions on working hours and activities performed.
55. Take immediate steps to prevent and eradicate all forms of sexual exploitation of children, and to investigate and punish such conduct. To that end it is essential to take steps for the effective enforcement of existing legislation.
56. Ensure that, in applying the so-called "social responsibility" or criminal liability of juveniles, deprivation of liberty is imposed only as a last resort, and that the necessary measures are taken to create establishments for the reeducation of children in this situation.
57. Take steps necessary to grant special guarantees of due process enshrined in domestic legislation in accordance with international standards, and in particular the effective implementation, with the widest possible coverage, of specialized courts for determining the criminal liability of children.
58. Repeal the provisions of the Juvenile Code that establish "public threat" as grounds for preventive detention of children. The State must guarantee that this measure is used only exceptionally and for exclusively procedural purposes.

Rights of asylum seekers

59. Take all steps necessary to eliminate the obstacles facing persons who apply for refugee status in Bolivia, and facilitate the processing of applications and the obtaining of identity documents, whether provisional, in the case of persons whose applications are being processed, or permanent, in the case of persons already recognized as refugees.
60. Ensure strict compliance with due process in administrative procedures relating to application for refugee status or its revocation. In this respect, the State must establish mechanisms whereby the applicant may submit all the evidence he deems pertinent and present arguments in favor of recognition.
61. Ensure that decisions denying or revoking refugee status are adopted through due process, with sufficient substantiation and in full observance of the notification and publicity mechanisms that allow the interested party to present an appeal within the legally established time limits.
62. Refrain from returning a person to his country of origin, by any means, if that person has valid refugee status in Bolivia, and in all cases ensure that before any decision on his deportation or extradition is taken there is an adequate assessment of the situation of risk facing the person, using the legally established procedure for this purpose that allows the person to participate and defend himself and to file an appeal with suspensive effect.