

BOLIVIA

CCPR A/44/40 (1989)

405. The Committee considered the initial report of Bolivia (CCPR/C/26/Add.2) at its 896th, 897th and 900th meetings on 11 and 13 July 1989 (CCPR/C/SR.896, 897 and 900).

406. The report was introduced by the representative of the State party, who referred to the historical development of his country's institutions and legal system, and to the fundamental human rights principles that had been embodied in the first Bolivian Constitution of 1825 and had been maintained in all succeeding constitutions up to the one that had entered into force in 1967. He emphasized that Bolivia's acceptance of the instruments that made up the International Bill of Human Rights constituted further testimony of his country's political will to promote political co-existence and respect for the individual.

407. He stated that the rights guaranteed by the Bolivian Constitution were reinforced by the régime of separation of the executive, judicial and legislative powers. The articles of the Constitution relating to guarantees for the individual and to fundamental freedoms took precedence over any other law in respect of their application by the courts, judges and the authorities in general. Any person who considered that his fundamental rights had been violated had access to legal remedies, notably those of amparo and habeas corpus. The International Covenants on Human Rights formed an integral part of Bolivian legislation and their provisions could be invoked in the courts. Cases relating to human rights fell within the jurisdiction of either the criminal courts or the labour tribunal.

408. He described the social, political and economic difficulties that his country had repeatedly encountered since its independence. He stated that, despite those difficulties, Bolivian society had never abandoned the idea of representative democracy and that, in the course of its history, persecution and the restriction of fundamental freedoms had rarely assumed massive proportions. Like other developing countries, Bolivia was still characterized by substantial social inequalities, flagrant imbalances in the income distribution and serious shortcomings in infrastructure, particularly in rural areas. Since the restoration of a representative and pluralist democracy in his country, the Bolivian public authorities had pursued a policy of structural adjustment with the aim of overcoming the economic and social crisis, and strengthening and developing the role of the State in safeguarding human rights.

409. Members of the Committee considered that the report of Bolivia had been drafted in full conformity with the Committee's guidelines; they nevertheless expressed regret that, while giving information on the implementation of the Covenant in Bolivian legislation, the report did not contain any details on its implementation in practice, especially in the context of the Bolivian judicial system, and did not describe the difficulties encountered in its implementation. Members noted that significant measures had been taken by the Government to improve the economic situation and, consequently, the situation of fundamental rights in Bolivia, but they would have liked information on other factors that might impede the implementation of the Covenant in Bolivia, such as the drug

problem or the effects of legislation that was in some respects outdated.

410. Referring to article 1 of the Covenant, some members of the Committee observed that, in the report, reference was made to the right of the State to determine its political, economic and social system, whereas the Covenant spoke of the right of self-determination of peoples. Clarification of Bolivia's position on that point was requested.

411. In connection with article 2 of the Covenant, members of the Committee asked several questions about measures to implement the Covenant's provisions in Bolivian legislation and about the operation of the country's judicial system. They asked the following specific questions: whether the law enforcement authorities and, in particular, members of the armed forces were aware of the guarantees and freedoms established in the Constitution and referred to in the Covenant, and whether they were instructed to respect those rights; whether the possibility of direct enforcement of the Constitution by the courts implied a tacit declaration of unconstitutionality in the case of laws deemed to be at variance with the Constitution; what domestic provision empowered the legislature to approve treaties and confer the status of laws on treaties; whether the provisions of the Covenant could be applied directly by the courts in Bolivia, and in what case they would be invoked; what provision would be applied in the event of a contradiction between the Covenant and the Bolivian Constitution or other laws; and whether it was possible for the legislature to denounce a treaty to which Bolivia was a party, at least with regard to its application in domestic law. Clarification was also requested on emergency courts, the competence of the military courts and the obligatory character or otherwise of Supreme Court decisions regarding, notably, the constitutionality of a decision by the supreme military court. It was also asked what measures had been adopted by the Bolivian authorities to give effect to the observations made by the Committee on 2 November 1987 on communication No. 176/1984 (Peñarrieta).

412. In connection with article 3 of the Covenant, questions were asked about the equality of the spouses in the choice of the conjugal home and in the custody of children in the event of dissolution of the marriage. It was asked whether, in general, there still existed in Bolivia legal provisions that were not completely consistent with the principle of equality of rights as between men and women, in what way equality was achieved in practice and what difficulties were encountered in the process of achieving such equality. It was also noted that, according to information received by the International Labour Organisation, the Bolivian General Labour Act provided that the proportion of women in an enterprise which could not exceed 45 per cent, except in enterprises that by their nature required a higher proportion, and it was observed that such a provision appeared to be incompatible with articles 3 and 26 of the Covenant.

413. As to article 4 of the Covenant, members of the Committee noted that, on several occasions, Bolivia had exercised the right of derogation provided for in paragraph 1 of that article. In that connection they requested clarification of the provisions governing the state of siege in Bolivia and those governing its suspension. They asked, in particular, which authority was empowered to order the arrest of persons suspected of conspiracy against law and order; what guarantees were available during a state of siege to a person whose rights had been infringed; what authority could determine the civil or international nature of a conflict; and what was the nature of the incidents that had provoked the proclamation of a state of siege on numerous occasions in Bolivia in recent years. Noting that, in the notification received by the Secretary-General concerning the state of siege

proclaimed in 1986, the Bolivian authorities had given as grounds for that proclamation serious political and social disturbances, some members observed that a protest movement or general strike did not fulfill the conditions for proclamation of a state of siege as set forth in article 4, paragraph 1, of the Covenant.

414. In connection with article 6 of the Covenant, clarification was requested concerning the existence in Bolivia of capital punishment, which, according to a note to article 17 of the Constitution, still appeared to be in force. Clarification was also requested concerning the expression “homicide committed ... for motives honour”, which was contained in the report, the definition of “political offences”, the authorities that were empowered to amnesty political offences and the possibilities of recourse in the event of refusal by the competent authorities to enforce a presidential decree of amnesty. Similarly, information was requested about cases of enforced disappearance in Bolivia and about the role of the Comisión Nacional de Investigaciones de Desaparecidos (National Commission for Investigations of Disappearances). Details were further requested about legislative measures concerning abortion, which seemed to be quite widespread in Bolivia.

415. In connection with article 7 of the Covenant, members of the Committee wished to know why the penalty imposed on any person engaging in torture that led to the death of the victim was only 10 years of hard labour in Bolivia, whether investigations were envisaged in connection with cases of torture of detainees, such cases having been recently reported in Bolivia, whether there were any statistics about the approximate number of violations committed by law enforcement officials and what the result was of any investigations into those violations. It was also asked what measures had been taken by the Bolivian authorities to ensure that a confession obtained through torture could not be used in the trial, to provide redress and compensation for the victims of acts of torture, and to comply in general with the general comments made by the Committee about the implementation of article 7 of the Covenant.

416. In connection with article 8 of the Covenant, members of the Committee asked what penalty was imposed on persons who refused to serve as scrutineers, such service being compulsory in Bolivia, and on persons who refused to perform military service. They also requested clarification of the provisions of the Bolivian Penal Code, which laid down penalties consisting of the performance of labour for certain offences; those penalties seemed to be incompatible with article 8, paragraph 3, of the Covenant. In addition, information was requested about the regulations governing relations between employers and employees, and in particular about criminal provisions in Bolivia to prevent the exploitation of an employee who was financially indebted to his employer.

417. With regard to article 9 of the Covenant, it was asked whether persons arrested by the police for “vagrancy” were able to invoke habeas corpus and amparo, whether they had the right to assistance by a lawyer and what was the maximum length of pre-trial detention in Bolivia. It was remarked that the power of the police to classify a person as a “vagrant” and to detain him without trial for long periods did not appear to be in conformity with the provisions of articles 7, 9 and 14 of the Covenant or with those of article 16 of the Bolivian Constitution. Detailed information was requested on the Bolivian legislative provisions that contained a definition of “vagrancy”, on the Police Act of 1986, the organizational law of 1985, the functions of the juzgados policiales and the availability of remedies against their decisions.

418. Concerning article 10 of the Covenant, members of the Committee requested details concerning the Bolivian prison system, in particular the treatment of pregnant women detainees, the criteria used for setting remuneration for work by prisoners, the distribution of prisoners awaiting trial and convicted prisoners according to the “stage of the investigation” and the functioning in practice of the prison system for minors. In particular, it was asked whether the treatment of prisoners awaiting trial was in keeping with the Standard Minimum Rules for the Treatment of Prisoners, especially with regard to medical supervision, and whether other United Nations instruments concerning treatment in detention were implemented in Bolivia.

419. Regarding article 12 of the Covenant, members wished to know what criteria were used for granting refugee status to foreigners in Bolivia, especially when they had no international document attesting to their refugee status, and what overall policy the Government of Bolivia followed regarding the granting of refugee status.

420. In connection with article 13 of the Covenant, it was asked whether a foreigner could appeal only against a decision concerning him by a judicial body or also against a decision by the executive, and whether a court or administrative body was empowered to reconsider an expulsion order.

421. With regard to article 14 of the Covenant, members of the Committee requested details concerning the application in Bolivia of the principle of the presumption of innocence and concerning delays in the conduct of trials. Details were also requested on the procedures used by emergency courts, such as the military courts, and on their conformity with the provisions of the Covenant and with the Committee’s general comment No. 13 (21). It was also asked whether the provisions of article 117 of the Bolivian Constitution concerning the independence of judges also applied to emergency court judges and in what way the independence of military court judges was guaranteed in legislation and in practice.

422. With regard to article 17 of the Covenant, members of the Committee wished to know the exact meaning of article 20 of the Bolivian Constitution, which concerned the inviolability of correspondence and private papers. With reference to what was stated in the report, it was asked whether in Bolivia telephone-tapping or bugging by electronic devices was prohibited in all circumstances or whether the security police would be permitted to use such methods in certain cases, whether houses could be entered by public officials in cases where State security was endangered and what type of protection was guaranteed for journalists’ sources of information.

423. Referring to article 18 of the Covenant, members of the Committee requested clarification of support by the Bolivian State for the Catholic religion and the position of other religious denominations in Bolivia. Statistics on religious groups in Bolivian society were also requested.

424. Regarding article 19 of the Covenant, members of the Committee asked whether the provisions set forth in that article had been invoked in the Bolivian courts in cases concerning charges of defamation against the President of the Republic by members of the political opposition and what the outcome of such cases had been. Clarification was also requested concerning Bolivian legislative provisions relating to freedom of expression and cases of derogation involving the press or other media. Information was also requested about ownership of the media, the measures being considered to avoid the formation of a monopoly by the media and journalists’ access to the public

authorities' information sources.

425. Concerning article 20 of the Covenant, members of the Committee asked how international provisions prohibiting propaganda for war were reflected in Bolivian national legislation.

426. With regard to articles 21 and 22 of the Covenant, explanations were sought concerning the types of punishment that would be imposed on associations having illegal aims or acting with criminal intent. It was also asked what restrictions were imposed by law on the right of assembly, how a meeting or association was determined to be lawful, under which law such a determination could be made and which body was empowered to make it, what conditions trade unions were required to fulfill in order to be officially registered and whether it was true that there could be no more than one trade union in a single company, whether trade union activity was respected in practice in conformity with the provisions of article 22 of the Covenant and what the Bolivian authorities' attitude was towards strikes.

427. With reference to article 23 of the Covenant, members of the Committee asked what the difference was in Bolivia, from a legal standpoint, between free or de facto unions and marriage, whether the country had an information policy on methods of contraception or whether such information was prohibited. They also asked for details concerning the criminal responsibility of a mother in the event of failure by her to fulfil her duty of assistance to her minor child.

428. Concerning article 24 of the Covenant, it was asked what the working age for children was under Bolivian labour legislation. It was also asked to what extent the National Board for the Protection of Minors was concerned with minors in detention, what was being done for abandoned children and street children and, with regard to the right of children to acquire a nationality, what the legal position of a child born in Bolivia would be if neither of the child's parents was of Bolivian nationality.

429. With regard to article 25 of the Covenant, members of the Committee noted that in Bolivia only citizens who could read and write could be elected to public office. In that connection, they asked how that basic requirement was verified, what percentage of the Bolivian population was literate and, among the illiterate population, what was the percentage of indigenous inhabitants, persons of mixed race and whites. They also asked under what conditions foreigners could participate in municipal elections, whether the obligation of every citizen to vote, as set forth in article 219 of the Bolivian Constitution, was of a legal or merely moral nature, what the consequences were of a refusal to exercise the right to vote, what conditions of eligibility were set forth by the laws in addition to those set forth in the Constitution, which authority was empowered to verify them and what conditions must be fulfilled in Bolivia in order to form a new political party. In this connection, more information was requested on the criteria for granting civic groups juridical personality in order to form fronts or coalitions for purposes of political activity.

430. In connection with article 27 of the Covenant, members of the Committee wished to know the reasons why the indigenous Aymara and Quechua peoples in Bolivia were not regarded as ethnic minorities, which indigenous languages were taught in school and whether it was possible to use languages other than Spanish in relations with the authorities. Statistics were requested to determine the percentage of indigenous inhabitants in relation to the total population of Bolivia, their economic

situation, especially in the light of the national agrarian reform, the proportion of such inhabitants among persons pursuing advanced studies and their participation in national political activities.

431. In reply to questions asked by members of the Committee, the representative of Bolivia referred generally to the main difficulties his country was encountering in its development process, such as a very low life expectancy, high infant mortality, a high illiteracy rate and a high rate of inflation.

432. Replying to the question asked in connection with article 1 of the Covenant, he explained that there was no difference of interpretation concerning that article's provisions: the State was in fact the outcome of the people's exercise of its right of self-determination.

433. Referring to the questions on article 2 of the Covenant, he said that the Covenant, as a treaty incorporated into Bolivian legislation, had the same authority as the other laws, but a treaty law could not take precedence over the Constitution. The law incorporating a treaty could not be modified unless there had been a prior denunciation of the treaty. The constitutionality of the laws was guaranteed in Bolivia by the principle of the primacy of the Constitution, which required judges and authorities to apply the Constitution in preference to the other laws and the law in preference to other decisions and resolutions; it was also guaranteed by the action of unconstitutionality, which could be pursued before the Supreme Court of Justice. He gave details on the structure of the judicial bodies and on the types of remedies available in Bolivia to guarantee the exercise of human rights; they consisted principally of habeas corpus, amparo, ordinary remedies, by way of appeal, and extraordinary remedies, such as application for annulment or review, or automatic review. He also explained the order of precedence as between internal laws and decree laws issued by the President of the Republic and the Government. In that connection, the Bolivian Congress had begun a review of national legislation with a view to standardizing it.

434. With regard to article 3 of the Covenant, he said that, in the legal sphere, there was complete equality between the spouses in Bolivia and the conjugal home was chosen by both spouses; in cases of disagreement, they could ask a judge to decide. He referred to divorce procedure in his country and explained that, when a marriage was dissolved, custody of the children was determined by mutual agreement of the parents, with the judge's approval; in the absence of agreement, the judge would take a decision in conformity with the law. Bolivian women were not subordinate to their husbands, but in practice, because of ancestral customs, Bolivian society believed in the supremacy of the family and of the father as head of the family. However, a growing number of women had jobs and were participating in public life.

435. Regarding the state of siege in Bolivia, he explained that it was a limited emergency régime, as it did not apply throughout the country and only certain rights were limited or suspended and only in the case of certain persons. The proclamation of the state of siege was within the competence of the executive and was effected by decree, with the agreement of the Council of Ministers; it was then submitted for approval to Congress, which either authorized it to be maintained or decided to suspend it. The executive was also required to ask Congress's consent to the extension of the state of siege beyond 90 days. During the state of siege, persons suspected of participating in activities liable to jeopardize public order who were the subject of a summons or arrest warrant had to be brought before a judge within 48 hours at the most. Such persons could be the subject of a restricted

residence order. He stressed that the state of siege decreed in 1985, and again in 1986, was necessary because of the country's total economic collapse.

436. Concerning article 6 of the Covenant, he explained that capital punishment, which was not provided for in the Bolivian Constitution, had in fact been re-established by the Penal Code. In that conflict of laws, the Constitution took precedence over the law, and if a death sentence was handed down by a court, it was commuted to a sentence of 30 years' imprisonment by the higher court. The Bolivian Constitution contained no definition or criminal characterization of political offences: such offences were classified subjectively, in the light of the motives underlying them. However, there were no longer any political detainees in Bolivia and there had been no amnesty for political offences in five years. There had been no problem of enforced disappearances in his country since its return to a democratic régime. The Ad Hoc Committee of Inquiry into Pending Cases of Disappearance, which had been established by the Government of Bolivia, had ceased to function, but procedures for finding disappeared persons remained open. Abortion was prohibited in Bolivia, apart from exceptional cases authorized by law.

437. With regard to article 7, he said that the Bolivian Ministry of the Interior was organizing training and information courses for its personnel, including police personnel, on the Covenant and on domestic legal provisions concerning the rights of individuals.

438. In reply to the questions relating to article 8 of the Covenant, he said that persons who refused to serve as scrutineers were not liable to serious penalties.

439. As far as administrative procedures concerning vagrants was concerned, he pointed out that they only applied to habitual offenders and to criminals of no fixed abode and without employment, the so-called vagos, who should not be confused with ordinary unemployed persons. The persons concerned were entitled to be assisted by a lawyer, but were not provided with free legal assistance.

440. In connection with article 10 of the Covenant, he said that there were practical problems in Bolivian prisons, and that the provisions concerning the separation of juvenile offenders from adults and the provision of medical supervision and welfare were not always observed. However, a number of improvements had been made, in particular with regard to visiting rights and the possibility of parole in exceptional circumstances.

441. Referring to article 12 of the Covenant, he said that the international document attesting to refugee status was not a sine qua non for Bolivia to receive a foreigner as a refugee.

442. Turning to article 14 of the Covenant, he observed, in respect of the presumption of innocence, that Bolivian law and jurisprudence clearly illustrated that the burden of proof was not on the accused.

443. In connection with article 17 of the Covenant, he pointed out that under Bolivian law, private papers could be seized only when necessary for criminal cases and only with prior authorization. The tapping of telephone conversations was unlawful in all cases.

444. In respect of article 18 of the Covenant, he explained that State recognition of, and support for,

the Catholic religion was more dogmatic than practical. In fact, the Catholic Church received its material support from believers. The State was also involved in certain plans of other religious denominations and there were 519 religious sects in Bolivia.

445. Regarding freedom of information, he said that the need was felt in Bolivia to adjust existing legislation to modern information techniques and to regulate, in particular, the conflict between the 1925 Act and the Decree Law of 1951. There was no monopolistic trend in ownership of the media in Bolivia: morning daily papers belonged to the private sector, there was no State-owned newspaper and there were at present 40 television channels in the country.

446. In connection with articles 21 and 22 of the Covenant, he said that in Bolivia trade unions were required to possess legal personality, in accordance with the provisions of the General Labour Act. However, under a more recent act, prior authorization was no longer required in order to set up a trade union. As to other conditions required by the General Labour Act in order to set up trade union, the Bolivian Trade Union Federation considered that any amendment to the current provisions would be contrary to the interests of workers and would create dissent. There were many unions in Bolivia and the right to strike was recognized, subject to observance of the relevant procedure, which provided for prior direct negotiations between the parties to the conflict.

447. With reference to article 23 of the Covenant, he said that in Bolivia free or de facto unions were subject to the same laws as marriage, including those relating to inheritance and succession, albeit with slight variations. There was no official Bolivian government policy in respect of contraception, although there was no prohibition on the dissemination of information on birth control.

448. With regard to article 24 of the Covenant, he pointed out that the Bolivian Labour Code set the minimum age for employment at 14. However, it was difficult to ensure that the provisions concerning work by minors were observed in a poor country such as Bolivia. A number of private organizations were actively combatting the phenomenon of juvenile vagrancy, which had seriously worsened, on account of cocaine trafficking. As far as the nationality of children was concerned, Bolivia applied the jus sanguinis rule.

449. Concerning article 25 of the Covenant, he said that in Bolivia voting was considered to be a civic duty, but the consequences of failure to vote were negligible. The requirements regarding the ability to read and write in order to stand for office in certain elections concerned only political office and did not apply to persons wishing to enter the civil service. Candidates' abilities were checked when they submitted their candidature. There was no law in Bolivia specifically governing the operation of political parties, although there were a number of general provisions setting out, for example, the minimum number of members required for a political party to present candidates.

450. With regard to article 27 of the Covenant, he explained that the indigenous nations living on Bolivian territory were not, unless otherwise specified, considered as minorities because they represented, in numerical terms, a majority and were not subject to any separate régime. Since 1952, it had been easier for the indigenous populations, most of whom lived in rural areas, to acquire real estate thanks to an extremely progressive agrarian reform and the introduction of universal suffrage, under which they had gained the right to vote. They were currently fully involved in national life

while preserving their cultural identity and traditions. Furthermore, the authorities were striving to facilitate the access of all sectors of the population to education.

451. He said that the remarks made by members of the Committee concerning the implementation of the Covenant in his country would be transmitted to the Bolivian authorities and that the answers to certain questions asked by the Committee, which it had not been possible to provide immediately, would be given in the next report by Bolivia or in subsequent submissions by his Government.

452. Members of the Committee thanked the representative of Bolivia for the frank and co-operative manner in which he had answered many of their questions. They nevertheless observed that, even though the current Bolivian Government had made considerable progress in respect of the observance of human rights, there were still certain causes for concern regarding the effective implementation of the Covenant in Bolivia and a number of questions remained unanswered. In that connection, they expressed the hope that the Bolivian legal system inherited from the past would be amended and updated. They also expressed the hope that the Bolivian authorities would be able to make improvements, bearing in mind the relevant provisions of the Covenant, in major areas of national life such as declaration of the state of siege, the treatment of detainees, prison conditions, the administration of justice, the regulations governing freedom of information, the right to freedom of assembly and association, the jurisdiction of military courts, police powers in respect of the detention of suspects and the exercise of political rights.

453. On completion of the consideration of the initial report of Bolivia, the Chairman also thanked the representative of the State party for his co-operation and expressed the hope that the Bolivian authorities would be able to answer a number of questions raised by the Committee in the near future, either in the form of supplementary information, or in the second periodic report of Bolivia.

CCPR A/52/40 (1997)

191. The Committee considered the second periodic report of Bolivia (CCPR/C/63/Add.4) at its 1562nd and 1563rd meetings (fifty-ninth session), held on 25 March 1997, at its 1582nd meeting, on 9 April 1997, adopted the following comments.

1. Introduction

192. The Committee welcomes the second periodic report submitted by the State party and the delegation's willingness to engage in a frank dialogue with the Committee. The Committee regrets, however, that although the report provides information on general legislative reforms in Bolivia, those reforms remain largely unadopted by Parliament. The delegation candidly admitted that there have been difficulties in the implementation of all the reforms which would, when approved, create a legal system more compliant with the Covenant. The Committee appreciated the presence of a highly competent delegation which provided in-depth helpful information to the Committee in response to its questions and thus allowed it to obtain a clearer view of the overall human rights situation in Bolivia.

193. The Committee commends the State party for the core document (HRI/CORE/1/Add.54), which set out many of the problems existing in the country.

2. Factors and difficulties affecting the implementation of the Covenant

194. The Committee recognizes that the State party, which is emerging from a change of government that ended a long period of dictatorial rule, is undergoing a transition towards democracy in which the infrastructure necessary for the implementation of the Covenant has not been fully developed. The Committee notes that many encouraging legislative initiatives with respect to human rights are meeting with difficulties and that a full assessment of their implementation is not yet possible.

195. The Committee notes that social and economic disparities are all-pervasive in the country and result in high levels of poverty and illiteracy, as well as lack of opportunity, especially for the indigenous population, women and the poor.

3. Positive aspects

196. The Committee notes with satisfaction the efforts of the Government to introduce democracy and to match the country's level of human rights protection with international standards.

197. The Committee particularly welcomes the promulgation of the 1994 Constitution, which incorporates provisions for the protection of civil and political rights. It also welcomes the Government's declared intention to put an end to serious violations of human rights and to create a better political, constitutional and legal framework to allow the full implementation of the rights enshrined in the Covenant.

198. The Committee notes with satisfaction the reform of the Penal Code which abolishes the death

penalty.

199. The Committee also welcomes the legal reforms undertaken, notably constitutional amendments to bring Bolivian law into conformity with international human rights standards, the adoption of legislation to abolish imprisonment and physical constraint for the enforcement of economic obligations (Ley de Abolición de Prisión y Apremio Corporal por Obligaciones Patrimoniales), the new Bail Act (Ley de Fianza Juratoria contra la Retardación de Justicia Penal), the law against domestic violence (Ley contra la Violencia Intrafamiliar o Doméstica) and the reforms in the legislation governing the electoral system (Ley de Reformas y Complementación al Régimen Electoral), the legal aid programme (Programa de Defensa Pública) and habeas corpus and amparo.

200. The Committee welcomes the reinstatement, after 100 years, of the Ministry of Justice, as well as the establishment of the Human Rights Department within the Ministry of Justice and the establishment of the Gender Department. It also welcomes the creation of the necessary legal machinery to receive complaints and manage various aspects of human rights issues, including through the Ministry of Justice, the Parliamentary Commission for Human Rights, Legal Aid and the Public Prosecutor's Office, and the creation of a human rights office in the Chapare area.

201. The Committee welcomes the information that torture, forced disappearances and extrajudicial executions are punishable offences in Bolivia. It also welcomes the information that military tribunals have no jurisdiction except within the military institution and that cases of human rights violations by member of the army and the security forces fall under the jurisdiction of civil courts.

202. The Committee further welcomes the fact that the number of persons being held in pre-trial detention has significantly decreased.

203. The Committee notes the penal reforms that have abolished discrimination against the Amazon Indians where it was considered that they were not criminally responsible by mere reason of their Indian origin. It also welcomes the reforms that have introduced legislation which allows the indigenous populations to receive education in their mother tongues, and the enactment of measures which permit the Indian communities to maintain their traditional means of livelihood.

4. Principal subjects of concern

204. The Committee is concerned that the State party's legislation in respect of the state of siege does not comply with the provisions of the Covenant. There is no constitutional provision which prohibits the derogation of the relevant rights of the covenant and the expression "conmoción interior" ("internal disturbance") is much too wide to fall within the scope of article 4 of the Covenant. Furthermore, the Committee is concerned that minimum guarantees were not complied with during the state of siege declared in 1995.

205. The Committee is concerned that the current legislation for combatting impunity has proven to be ineffective in the identification, trial and punishment of those responsible for human rights violations and in the payment of compensation to the victims. It also notes that members of the armed forces and other government officials who were involved in the most serious human rights violations have not always been dismissed and continue to take advantage of their positions, thus

reinforcing impunity within the State party. It is also concerned at the delays and failures of the process of law and at the non-compliance by the police with United Nations minimum standards.

206. The Committee notes with concern that members of various social sectors, particularly human rights activists and members of trade unions, are subject to intimidation and thus face serious obstacles in the legitimate exercise of their rights.

207. The Committee is concerned that national laws in conflict with the Covenant remain on the books, in particular the Coca and Controlled Substances Law (Law No. 1008). The Committee is particularly concerned that articles 86 and 116 of that law remove the investigating process from judicial control, that the right to bail is severely restricted, that articles 74 and 125 deny the right of detainees who are ill to be treated with humanity, and that other provisions undermine the presumption of innocence (arts. 82 and 117), the right to an impartial tribunal (arts. 82 and 127), the right of defence (art. 117), the right to be present at one's own trial (art. 113) and the right to challenge any aspect of the process (art. 128).

208. The Committee is particularly concerned that release on bail is never possible for those charged with offences that carry a penalty of two or more years of imprisonment and that the presumption of innocence is not respected under current Bolivian legislation.

209. The Committee expresses concern about the lack of independence and efficiency of the judiciary and the long delays in the administration of justice, which do not conform with the requirements of articles 9 and 14 of the Covenant.

210. The Committee notes with concern the conditions in places of detention.

211. The Committee is concerned that, despite constitutional guarantees of the rights of women and laws attempting to put an end to discrimination, women continue to receive unequal treatment in Bolivia owing in part to the continuation of traditional attitudes and outdated laws that clearly contradict the provisions of the Covenant. It further notes that labour laws do not protect the rights of women adequately, particularly those engaged in domestic work.

212. The Committee expresses its concern about the very high level of maternal mortality referred to in the report, much of which arises as a result of illegal abortion. It regrets that the State party could not provide information about the effect of laws that criminalize abortion on this high level of deaths.

213. The Committee is also concerned about the exploitation of children in employment, including the practice of the "criadito" and the growing number of street children.

214. The Committee is concerned at the curtailment of the rights of members of trade unions to freedom of association, of assembly and of expression, at the high level of violence against trade union members, at the intimidation by police agents of persons taking part in peaceful demonstrations, and at the large number of strikes that are deemed illegal. It is particularly concerned about the incidents that occurred in Potosí and Chapare.

215. The Committee expresses concern at the impact of violence on the part of the security forces, which curtails the enjoyment by members of indigenous groups of their rights under article 27 of the Covenant. The Committee is also concerned that despite the legislation enacted to allow the indigenous communities to enjoy the use of their traditional lands in a communal way, discrimination and other obstacles to the full enjoyment of the rights protected under article 27 of the Covenant continue to exist.

5. Suggestions and recommendations

216. The Committee strongly encourages the Government to enact the new draft legal framework for the protection of human rights in Bolivia so as to ensure full conformity with the Covenant, in particular the new Code of Criminal Procedure, aimed at the modernization of the Bolivian legal and judicial structures and allowing the investigation and punishment of human rights violations.

217. The Committee urges the State party to put into place the necessary mechanisms to avoid a recurrence of the events surrounding the 1995 state of siege, in which the police used excessive violence against the members of teachers' unions.

218. The Committee urges the State party to investigate allegations of human rights violations in order to bring to justice perpetrators of past and present human rights abuses. It recommends that an independent mechanism be instituted for dealing with complaints of police violence and that the existence of that mechanism be publicized. It further urges the State party to act on the findings of its investigations, to bring to justice the perpetrators and to provide proper compensation to the victims, particularly with respect to continuing occurrences of torture and ill-treatment by the police and security forces.

219. The Committee recommends that the State party amend Law No. 1008 in order to make it compatible with the State party's obligations under the Covenant.

220. The Committee urges the State party to comply with article 10, paragraph 2, of the Covenant by separating accused persons from convicted persons in prison, and juvenile offenders from adults.

221. The Committee recommends that the Office of Ombudsman and the Constitutional Court be put into place as soon as possible and that both be given broad jurisdiction and sufficient resources to guarantee the enjoyment of human rights.

222. The Committee urges the State party to take effective measures to abolish the practice of the "criadito".

223. The Committee recommends that an educational programme be devised so that all segments of the population, in particular members of the army, the security forces, the police and the judiciary and lawyers, are better acquainted with international standards for the protection and observance of human rights and human dignity.

224. The Committee recommends that the independence of the judiciary be ensured and a law regulating it be enacted. It further recommends that the nomination of judges be based on their

competence and not their political affiliation. The Committee also recommends that responsibility for the judicial police be transferred from the executive to the judiciary.

225. The Committee recommends that further measures, such as those of the "Justicia Communal", be taken to ensure that members of indigenous groups are protected against violence within the country and enjoy fully their rights under article 27 of the Covenant, particularly with regard to preservation of their culture, language and religion. Legislation on indigenous communities should be enacted without delay.

226. The Committee recommends that the State party include in its next report comprehensive information on the issues raised during the consideration of the present report, particularly on the effectiveness of the laws under review or in existence, the evolving roles of the institutions established for the protection of human rights, and the system of coordination of the various institutions. In this regard, the Committee recommends that the Government draw on the assistance available through the programme of technical cooperation of the United Nations High Commissioner for Human Rights/Centre for Human Rights.

227. The Committee urges that respect for human rights be institutionalized at all levels of government, and recommends that human rights education be provided in schools at all levels and that the present concluding observations be widely disseminated.