



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Forty-fifth session

1–19 November 2010

### List of issues prior to the submission of the second periodic report of the Plurinational State of Bolivia (CAT/C/BOL/2)\*

### Specific information on the implementation of articles 1 to 16 of the Convention, particularly with regard to the Committee's previous recommendations

#### Articles 1 and 4

1. Further to the Committee's previous recommendations<sup>1</sup> (para. 97 (a)), please indicate whether the definition of torture as set forth in the Convention has been incorporated into the legislation of the Plurinational State of Bolivia, whether torture has been made a crime, and describe the sanctions that apply.

#### Article 2<sup>2</sup>

2. Please indicate whether the indigenous, native and *campesino* system of justice is competent to try cases of torture and cruel, inhuman or degrading treatment. If so, please

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\* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

<sup>1</sup> The paragraph numbers in brackets refer to the previous concluding observations of the Committee, published in document A/56/44.

<sup>2</sup> The issues raised under article 2 could have implications for other articles of the Convention, including but not only article 16. As general comment No. 2, paragraph 3, states: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. (...) In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

provide information on the cases tried, the sentences pronounced and the penalties imposed, as well as the compensation awarded to victims.

3. According to information before the Committee, more than 70 per cent of inmates in prisons in the Plurinational State of Bolivia are in pretrial detention. Please inform the Committee of the measures taken by the State party to guarantee that the judicial authorities use pretrial detention only with good reason and respect the legal maximum detention period. Please indicate what efforts the State party has made to promote the use of alternatives to the deprivation of liberty. Please also provide information on the contents and current status of the proposed amendments to Act No. 2298 on remission of sentences.

4. According to information before the Committee, the Plurinational State of Bolivia has no specialized courts for juveniles in conflict with the law.<sup>3</sup> Please provide information on any planned or adopted measures to address this issue.

5. Please provide information on the so-called “legal forms of immunity”, such as current procedural privileges and special criminal jurisdictions, describing the procedures followed when high-level State officials are involved in court cases. Please indicate whether these legal forms of immunity affect or have affected the prosecution of State officials accused of torture or cruel, inhuman or degrading treatment.

6. Please provide information on the measures the State party has taken to address the issue of violence against women, including domestic and sexual violence, the scale, intensity and prevalence of which in the State party borders on femicide. Please provide information on any measures planned or adopted to amend or repeal legal provisions that are contrary to international standards, such as article 317 of the Criminal Code, or that suffer from serious shortcomings, such as Act No. 1674 on domestic violence and Act No. 2033 on the protection of victims of sexual abuse.<sup>4</sup>

7. According to information before the Committee, political harassment and violence against women in government posts are prevalent in the Plurinational State of Bolivia.<sup>5</sup> Please provide information on the status of the bill on gender-based harassment and political violence, as well as on any other measures planned or adopted to address this issue, including details of mechanisms designed to protect and provide psychological assistance to women and children who have been victims of this type of violence.

8. Please comment on the current legal framework and the measures taken by the State party to eradicate trafficking in women and children for the purposes of sexual and labour exploitation. Please provide information on the comprehensive bill to combat human trafficking and smuggling.

9. Kindly provide detailed information on the measures taken by the State party to facilitate the lodging of complaints in cases where violent acts have been committed against persons deprived of their liberty. Please include detailed information on the number of complaints received during the review period and their outcomes. In this regard, the Committee requests the State party to provide statistical data on the number of complaints lodged and the results of the corresponding investigations, disaggregated by, inter alia, gender, ethnic group, region, location and the type of detention facility in which the incident took place.

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<sup>3</sup> National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Plurinational State of Bolivia (A/HRC/WG.6/7/BOL/1, para. 30).

<sup>4</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/BOL/CO/4), paras. 24 and 25.

<sup>5</sup> *Ibid.*, para. 31.

10. The Committee has received information regarding flaws in the State party's system of administration of justice. It has been alleged that public bodies within the judicial system lack impartiality and independence. In particular, there have been allegations of irregularities in the appointment of judges, the use of the judicial system for partisan ends and high levels of corruption among judges, police officers and prison staff. Please provide information on the measures which the State party has taken to address the flaws in the justice system, and particularly measures taken to ensure the complete independence of the judiciary and to report, and properly investigate, cases of corruption involving judicial, police and prison staff.

### **Article 3**

11. Please provide detailed information on the efforts made to implement the Committee's previous recommendation (para. 97 (i)) that the State party should adopt adequate measures to ensure that no person can be expelled, returned or extradited to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture. Please indicate whether such persons can appeal against the decision on expulsion and, if so, what the procedures and time limits are for doing so. Does the option of an appeal before the supreme judicial authority exist in cases involving the violation of fundamental rights?

12. In cases of extradition, return or expulsion, please indicate whether the Plurinational State of Bolivia accepts diplomatic guarantees and, if so, what the criteria are for accepting them. Please provide data on cases of extradition or transfer registered since 2000, whether subject to receiving diplomatic guarantees or not. Please also provide detailed information on cases in which requests for extradition, return or expulsion have been refused because the individual was in danger of being subjected to torture or ill-treatment.

13. Please provide information concerning the implementation of article 3 of the Convention in cases of expulsion or return (refoulement) of foreigners, indicating, in particular:

- (a) The number of persons seeking asylum and the number of persons returned;
- (b) Whether and how the probable risk of torture is assessed in reaching a decision and in procedures to appeal against the decision;
- (c) The procedure for the examination of asylum requests submitted at the border.

14. Please provide information on the specific procedures to guarantee adequate care and assistance for unaccompanied and separated children seeking asylum.

### **Articles 5, 6, 7 and 9**

15. Please provide information on the national legislation that establishes universal jurisdiction over acts of torture. Please indicate whether or not that legislation fully meets the requirements of the Convention.

16. Please provide information on the treaties on mutual judicial assistance currently in effect. Is the Convention invoked as a legal basis for extradition with regard to crimes of torture or when the State party receives a request for extradition from another State with which it does not have a bilateral agreement? If so, please provide examples of those cases.

## Article 10

17. Please provide information on the measures taken to implement the Committee's previous recommendations (para. 97 (b)) that the State party should step up vocational training activities for all law-enforcement officials. Please indicate the budget available for these training programmes, which groups of officials have received training so far, and whether there has been any evaluation of the impact of these training activities, particularly on prohibiting torture and with regard to medical personnel.

18. Please provide detailed, up-to-date information on the measures taken to make effective use of the Istanbul Protocol to investigate and document torture and other ill-treatment in the State party. Please indicate the number of cases in which the Istanbul Protocol has been applied and how this information has been used, both in the courts and in the treatment and rehabilitation of victims.

## Articles 11 and 12

19. Regarding the Committee's previous recommendations (para. 97 (c)), please provide information on the necessary legal and administrative measures taken to set up a national public register of persons deprived of liberty, indicating the authority which ordered such deprivation, the grounds for the relevant decision and the type of proceedings.

20. Regarding the Committee's previous recommendations (para. 97 (d)), please provide information on the measures taken to ensure effective compliance by government prosecutors with the duty to conduct criminal investigations into any complaint of torture and cruel, inhuman or degrading treatment in a prompt and impartial manner. Please indicate whether the accused officials are suspended from their duties during the investigations.

21. In 2008, political violence broke out in various regions of the Plurinational State of Bolivia, including Santa Cruz and Sucre, where certain groups attacked and assaulted members of the local population, in particular indigenous persons and peasants, with total impunity.<sup>6</sup> Please provide information on measures taken to guarantee that such acts are investigated promptly and impartially, that the guilty parties are prosecuted and that appropriate penalties are imposed.

22. According to information before the Committee, 11 people were killed and about 50 injured in a massacre involving torture and ill-treatment which took place in the department of Pando on 11 September 2008.<sup>7</sup> The Committee also has information before it on complaints concerning abuse carried out by police officers and soldiers during the state of emergency in Pando between 12 September and 24 November 2008.<sup>8</sup> Please provide information on the measures taken to guarantee:

(a) The prompt and impartial investigation of those acts, including the abuse carried out by police officers and soldiers during the state of emergency;

(b) The safety, access to justice and right to redress of victims and witnesses;

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<sup>6</sup> Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Bolivia (A/HRC/10/31/Add.2), paras. 13 to 20.

<sup>7</sup> See "Report of OHCHR on the violent events in Pando in September 2008", March 2009, (OEA.SER.L/V/II.135, doc. 40), paras. 32 to 53 and recommendation 13.

<sup>8</sup> Inter-American Commission on Human Rights, "Access to justice and social inclusion: The road towards strengthening democracy in Bolivia", paras. 42–53 and recommendation 13.

(c) Accountability throughout the chain of command, including the disciplinary measures adopted.

23. According to information before the Committee, lynching has become widespread in the last decade. Please provide information on the measures taken to guarantee that such acts are investigated promptly and impartially, that the guilty parties are prosecuted and that appropriate penalties are imposed. Please also describe any measures planned or adopted to address this issue, particularly with regard to strengthening the national police force and providing it with human and material resources.<sup>9</sup>

### Article 13

24. Please provide information on the measures adopted to implement the Committee's previous recommendation (para. 97 (e)) that the State party should set up a centralized public register of complaints of torture and ill-treatment and of the results of the investigations. Has such a register been established? If so, please provide detailed statistical data, disaggregated according to type of offence, region, ethnic origin and gender, on complaints relating to torture and ill-treatment allegedly committed by the forces of law and order, as well as on subsequent investigations, prosecutions, convictions and compensation offered to victims.

25. Please indicate the number of allegations of torture in the army, particularly those lodged by persons performing compulsory military service. Please provide information on the steps being taken to prevent and investigate such acts.

### Article 14

26. Please provide information on measures taken to compensate or indemnify and rehabilitate victims of acts of torture or cruel treatment, indicating who provided the rehabilitation services and how they did so. Please provide information on the current situation of victims within the framework of criminal law, including information on the preliminary draft of the proposed law on comprehensive protection and assistance for victims of violent crime and on the work of the Technical Evaluation Committee to assess the case files of victims of political violence. Kindly also include updated information on the number of victims who have benefited from these programmes and the type of compensation they have received, including the amounts awarded.

27. Please provide information on the procedures for declassification or opening of the files of the Second Army Department requested by the Permanent Human Rights Assembly and other stakeholders in order to shed light on the human rights violations that took place during the military dictatorships, including forced disappearances, torture and arbitrary arrest and detention.

### Article 15

28. Please provide information on efforts to ensure that, in accordance with article 15 of the Convention, judicial authorities do not admit as evidence any confession obtained using physical or mental violence. Please indicate whether any cases have been dismissed by the courts following allegations that the information was obtained under torture and, if so, please provide information on those cases.

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<sup>9</sup> A/HRC/10/31/Add.2, paras. 45–47.

## Article 16

29. Regarding prison conditions in the Plurinational State of Bolivia, the Committee has before it information on the widespread overcrowding in prisons.<sup>10</sup> Kindly provide detailed and updated information on measures taken to:

- (a) Improve the prison infrastructure;
- (b) Improve prison food;
- (c) Guarantee prisoners access to medical personnel and court-appointed counsel;
- (d) Ensure that detainees in pretrial detention are separated from convicted prisoners;
- (e) Ensure that men, women and juveniles are detained separately.

30. Please include detailed information on the budget the State party has allocated to the country's prison system and detention facilities during the period under review.

31. Regarding the Committee's previous recommendations (para. 97 (h)), please provide information on the review of disciplinary procedures and rules in prisons. Please comment on the measures taken by the State party to ensure internal oversight and security in prisons. Please include detailed information on the number of guards in each prison and the professional training they receive.

32. According to information before the Committee, a number of irregular detentions were carried out by the State security forces in the Plurinational State of Bolivia, during which the agents wore hoods, produced no arrest warrants and used disproportionate force.<sup>11</sup> Please provide information on the measures taken to ensure that national police and the armed forces respond in a proportionate manner and respect international human rights norms and standards.

33. Pursuant to the ratification by the Plurinational State of Bolivia of the Optional Protocol to the Convention on 23 May 2006, please provide information on the current status of the legal and administrative framework necessary to establish a national mechanism for the prevention of torture, in accordance with articles 17 to 23 of the Optional Protocol.

34. Please provide information on the legislative, political and administrative measures taken to implement the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to eliminate the persistent problem of servitude, forced labour and the holding captive of some indigenous communities in the country, as in the case of the Guaraní people.<sup>12</sup> Please provide information on the complaints received and the measures taken to ensure that those acts are investigated promptly and impartially, that the guilty parties are prosecuted and that appropriate penalties are imposed.

35. According to information before the Committee the number of threats and attacks against human rights defenders in the Plurinational State of Bolivia has risen in recent

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<sup>10</sup> Report of the Working Group on the Universal Periodic Review, Plurinational State of Bolivia (A/HRC/14/7), recommendation 28.

<sup>11</sup> A/HRC/10/31/Add.2, para. 33.

<sup>12</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/11/11), para. 79.

years.<sup>13</sup> Please provide information on cases of attacks against human rights defenders and the measures taken to implement the Committee's previous recommendation (paragraph 97 f) that the State party should adopt all necessary measures to guarantee the protection and free exercise of the rights of human rights defenders.

36. According to information received by the Committee, the conditions in which the majority of minors admitted to drug rehabilitation centres for street children are held amount to inhumane or degrading treatment. Please indicate what measures the State party has taken to ensure the prompt and impartial investigation of these allegations, as well as the implementation of appropriate sanctions. Please also indicate the measures taken to improve the infrastructure and conditions in rehabilitation centres for street children and drug addicts and to ensure their full rehabilitation.

37. Please comment on the fact that corporal punishment remains lawful in the home and in residential or institutional care settings. Please indicate whether the traditional, indigenous, native and *campesino* system of justice imposes corporal punishment and, if so, of what type. What legal and administrative measures are planned to address this issue and to expressly prohibit this practice, in both positive law and indigenous, native and *campesino* law?

### **Other issues**

38. Please indicate what steps have been taken by the State party to disseminate widely, including in indigenous languages, through the media, official web pages and non-governmental organizations, the reports submitted by the State party to the Committee, and the latter's conclusions and recommendations.

39. Please provide information on the legislative, administrative and other measures the State party has taken to combat terrorism, as well as on efforts to ensure that cases, and the Rózsa case in particular, are investigated. Please indicate whether these measures have had any impact on human rights safeguards in law and practice. In this respect, the Committee would like to recall Security Council resolution 1456 (2003), paragraph 6, which establishes that States must "ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law".

### **General information on the national human rights situation and on the exercise of human rights at the national level**

40. Please provide detailed information on any legal and institutional changes in the area of the promotion and protection of human rights that have been made in the Plurinational State of Bolivia since the last periodic report was submitted, including all relevant jurisprudential decisions.

41. Please provide detailed information on any political, administrative or other measures that have been adopted in the Plurinational State of Bolivia to promote and protect human rights at the national level. Please provide information on the efforts being made to strengthen the mechanisms for the effective implementation of the National Human Rights Programme.

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<sup>13</sup> A/HRC/10/31/Add.2, paras. 39 to 41 and 101.

42. Please provide any additional information on new measures taken to implement the Convention and the Committee's recommendations since the consideration of the last periodic report in 2001, including the necessary statistical data, as well as any other events that may have occurred in the State party which are relevant under the Convention.

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