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مجلس حقوق الإنسان  
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التقرير السنوي لمفوضية الأمم المتحدة السامية لحقوق الإنسان،  
وتقارير مفوضية الأمم المتحدة السامية والأمين العام

إضافة\*

تقرير مفوضية الأمم المتحدة السامية لحقوق الإنسان

بشأن أنشطة المفوضية في بوليفيا\*\*

\* تأخر تقديم هذه الوثيقة.

\*\* يُعمَّم موجز هذه الوثيقة بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذه الوثيقة، فيعمَّم باللغة التي  
قُدِّم بها وباللغة الإسبانية.

## موجز

عملاً بالاتفاق الموقع في شباط/فبراير ٢٠٠٧ بين مفوضية الأمم المتحدة السامية لحقوق الإنسان وحكومة بوليفيا، يقدّم هذا التقرير لمحة عامة عن حالة حقوق الإنسان في بوليفيا ويوجز الأنشطة الرئيسية للمفوضية في بوليفيا في عام ٢٠٠٨. وترد في التقرير أيضاً مجموعة من التوصيات.

وقد نفذ مكتب المفوضية في بوليفيا ٤١ مهمة ميدانية لرصد تطورات حقوق الإنسان في البلد. وقدم المكتب أيضاً خدمات استشارية وتدريبية إلى مؤسسات حكومية وإلى المجتمع المدني. وقدم مكتب المفوضية في بوليفيا بصفة خاصة تعليقات تقنية عن مشروع الدستور الجديد إلى جانب عدة مقترحات تشريعية، كما قدم مساعدة تقنية إلى وزارة العدل تتعلق بوضع خطة العمل الوطنية لحقوق الإنسان.

ويرحب مكتب المفوضية في بوليفيا بالخطوات الإيجابية التي اتخذتها الحكومة في مجال الحقوق الاقتصادية والاجتماعية والثقافية، بما في ذلك البرنامج الاجتماعي المسمى "معاش الكرامة" - وهو استحقاق لا يقوم على المساهمة ويمنح للأشخاص الذين تتجاوز أعمارهم ٦٠ سنة - وبرامج "سندات التعليم - خواسيتو بينتو"، إضافة إلى مبادرة "نعم، أستطيع" التي مكّنت الحكومة من إعلان تغلب البلد على الأمية في مناسبة شاركت فيها منظمة الأمم المتحدة للتربية والعلم والثقافة. ومما تجدر الإشارة إليه أن إعلان الأمم المتحدة بشأن حقوق الشعوب الأصلية قد اعتُمد كقانون وأن العمل جارٍ لإدراج هذه الحقوق في السياسات والبرامج العامة. ومن الإنجازات أيضاً اعتماد خطة العمل الوطنية لحقوق الإنسان.

ورغم التقدم المحرز فإن التحديات القائمة تبقى عديدة. ففي عام ٢٠٠٨، برزت توترات من جراء العملية المتعلقة بالجمعية التأسيسية، التي شهدتها عام ٢٠٠٧ وأثارت كثيراً من الجدل. ومما زاد من حدة التضاربات سعي أجزاء من المناطق الجنوبية والشرقية من البلد إلى الحصول على الحكم الذاتي. وفي ذروة التوترات حدثت مجزرة باندو في ١١ أيلول/سبتمبر، حيث قتل فيها ١١ شخصاً على الأقل وأدت إلى إعلان الحكومة حالة الطوارئ في المقاطعة. وفي تشرين الأول/أكتوبر ٢٠٠٨، تمكنت الحكومة والمعارضة من بلوغ اتفاق بشأن إدخال تعديلات على الدستور الجديد، بما في ذلك ما هو متعلق بالحكم الذاتي في المقاطعات. وأدى هذا الاتفاق إلى موافقة مجلس النواب بأغلبية الثلثين على قانون يدعو إلى تنظيم استفتاء للبت في الدستور الجديد واعتماد نطاق الأراضي التي يمكن لأي شخص فرد امتلاكها.

وكانت حالة حقوق الإنسان موضع قلق في عام ٢٠٠٨ نظراً إلى تزايد الأعمال والممارسات العنصرية والتمييزية ضد السكان الأصليين، حسيماً بلغ عنه؛ وتزايد الهجمات التي تطال المدافعين عن حقوق الإنسان؛ وتقويض حرية التعبير وحرية الصحافة؛ والاستعمال المفرط للقوة من جانب قوات الأمن في بعض الحالات، وضعف إقامة العدل والتدخل في الإجراءات القانونية.

**Annex****REPORT OF THE UNITED NATIONS HIGH COMMISSIONER  
FOR HUMAN RIGHTS ON THE ACTIVITIES OF HER  
OFFICE IN BOLIVIA****CONTENTS**

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## **Introduction**

1. On 13 February 2007, the Government of Bolivia and the Office of the United Nations High Commissioner for Human Rights (OHCHR) signed an agreement to establish an OHCHR office in the country. The agreement was approved by the National Congress on 13 July 2007 in Law 3713. OHCHR Bolivia formally initiated its activities in August 2007.
2. The agreement provides OHCHR Bolivia with a broad mandate that comprises, inter alia, the provision of technical assistance to public institutions and civil society organizations; the promotion of human rights; and the monitoring and reporting on the status of human rights in the country.
3. This report provides an overview of the human rights situation in Bolivia, highlighting progress and issues that were of concern in 2008. The report also details the main activities carried out by OHCHR Bolivia and makes recommendations on how to further advance the human rights agenda in the country.

## **I. NATIONAL CONTEXT**

4. After a highly controversial Constituent Assembly process, Bolivia approved a new draft constitution in December 2007. Throughout the following year, the opposition contested the approval procedure of the new draft constitution as well as much of its content. This dispute prevented the Government from putting the new draft constitution to a referendum in 2008. Ultimately, an agreement reached in Congress at the end of the year permitted a referendum to be scheduled for January 2009.
5. Another issue of contention was the struggle for political autonomy promoted by the Departments of Beni, Pando, Santa Cruz and Tarija. Between May and June 2008, these departments called for consultations on their proposal for statutes of autonomy. The latter took place even though the National Electoral Court ruled that the prefectures did not have the authority to call for such a vote and that they were infringing the Constitution. The Government contested these consultations, considering them illegal and unconstitutional.
6. Various confrontations occurred during and after each of these consultations, including attacks on human rights defenders, clashes between opposing groups, and assaults on freedom of expression and opinion.
7. Two electoral events occurred in 2008. The first was the election of a new Prefect for Chuquisaca on 29 June, which was won by the main opposition candidate. The other was a recall referendum in August to determine whether the President, the Vice-President, as well as eight of the nine prefects of the country should remain in office.<sup>1</sup> The results of the recall referendum demonstrated the high and broad popular support for the President and his Vice-President. They

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<sup>1</sup> Chuquisaca did not hold a referendum given its recent prefectural election.

were confirmed in office by 67.41 per cent of the electorate. The Prefects of Potosí, Santa Cruz and Beni also obtained highly favourable voting scores. The Prefects in La Paz and Cochabamba were recalled.

8. Once the results of the recall referendum were made public, President Morales invited the prefects from the opposition to discuss contentious issues related to departmental autonomy, and the Government plan for distribution of income from the direct tax on the sale of hydrocarbons known as IDH.<sup>2</sup> Following the collapse of these talks, the prefectures seeking autonomy, with the support of local civic committees, began to organize protests against the Government, including an attack against the departmental police command in Santa Cruz on 15 August and a call for a civil strike in four departments on 17 August. Members of the civic committees, along with officials and supporters of the departmental prefectures, multiplied these acts by occupying, looting and setting fire to national public offices and institutions. They also occupied oil facilities and caused damage to the fuel distribution network.

9. In response to the riots, the Government ordered the country's law enforcement authorities to protect public facilities and called upon the population to defend democracy, the national institutions and the socio-political process of change known as *proceso de cambio*. It denounced the protests as a "*civic-prefect coup d'état*" and declared the Ambassador of the United States of America in Bolivia persona non grata, accusing him of fostering the coup and forcing him to leave the country.

10. In this spiral of violence, a massacre occurred on 11 September in the Department of Pando, with at least 11 persons killed and around 50 wounded. The former Prefect of Pando, Leopoldo Fernández, as well as employees of the Pando Prefecture and members of the local civic committee have been charged in connection with these events. In the immediate aftermath of the massacre, the Government declared a state of emergency in Pando and detained and transported to La Paz 38 individuals, including the then Prefect.

11. The will to prevent further violence triggered a national dialogue, first between the Government and the prefects, and later on between the Government and the whole political opposition in Congress. This dialogue led to an important agreement and modifications were made to the new draft constitution, taking into consideration demands for departmental autonomy.

12. This agreement led two thirds of Congress to approve, on 21 October 2008, Law 3942, which calls for a referendum to decide on the new draft constitution as well as to determine the maximum size of land to be owned by any one person. The referendum is set to take place

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<sup>2</sup> On 28 November 2007, Congress approved law 3791 which created the *renta dignidad*, a new non-contributory benefit for persons over the age of 60. This pension began to be distributed in February 2008, financed through the use of 30 per cent of the income accrued from the IDH. This last measure was rejected by pro-autonomy prefects and they have since claimed these funds.

on 25 January 2009. However, certain political sectors have maintained their opposition to the new draft constitution, particularly with regards to the issues of autonomy and distribution of resources between the Government and the departments.

## II. HUMAN RIGHTS SITUATION

### A. Political violence

#### 1. Activities of the *grupos de choque* or “clash groups”

13. The differences between the Government and the pro-autonomy departments have polarized the country and led to social and ethnic tensions. Politically motivated groups of civilians have begun to organize themselves into *grupos de choque* or “clash groups” and contributed to the violent environment. The majority of these groups support departmental autonomy whilst some have acted in defence of the national Government.

14. Many groups have been increasingly aggressive in their opposition to the Government and in their support of pro-autonomy prefectures. The Santa Cruz Youth Union (*Unión Juvenil Cruceñista - UJC*) is an older organization which has recently been involved in clash group activities.

15. During the departmental consultation in Santa Cruz, on 4 May 2008, the UJC with other clash groups were involved in various disturbances and clashes against supporters of the Government party *Movimiento al Socialismo* (MAS). Many members of these groups were seen walking freely with shields, sticks, firecrackers and slingshots. Even though no major incidents occurred on that day, their actions and belligerent behaviour were considered justifiable by the prefect and the civic committee.

16. These groups acted with total impunity. In the Department of Santa Cruz, the police and the Public Prosecutor’s Office did not take effective measures to control them. It was reported to OHCHR Bolivia that these groupings enjoy the protection of important political or economic power groups, which have influence over local judicial authorities.

17. Violence has also been exercised by groups that support the national Government. In La Paz, the Popular Civic Committee was reportedly responsible for verbal and physical aggressions against journalists, policemen and the Ombudsman. Even though some of the perpetrators have been reportedly identified, the competent authorities have not detained those responsible nor tried to prevent new attacks. Only at the end of the year were two members of the Committee investigated.

#### 2. Violence in Sucre

18. On 24 May 2008, violent incidents broke out in the city of Sucre, after youth groups and a number of supporters of the opposition tried to prevent the visit to the city by President Morales for the independence call festivities. Clashes also occurred with police and military forces that had been deployed to safeguard the arrival of the Head of State. Some indigenous persons who

sympathize with the Government were captured, insulted, kicked, clubbed, humiliated and forced to kneel down in the main square. More than 30 indigenous persons and peasants were injured that day. All of these attacks had serious racist undertones. The aggressors, mainly members of the political opposition, acted with total impunity.

19. OHCHR Bolivia has received a number of allegations that members of the Inter-Institutional Committee, a pro-autonomy group, and of the San Francisco Xavier University were involved in the violent outbreaks of 24 May. OHCHR Bolivia has collected testimonies and video images which suggest that members of this Committee were present during the incidents and were giving orders to the youth participating in the fighting.

20. There were eight cases under investigation by the Chuquisaca District Prosecutor's Office in connection with the Sucre incidents. In three of them, a number of individuals have been charged with criminal offences, including two employees of the prefecture. The other five cases were dismissed by the District Prosecutor's Office. Some victims have been reluctant to testify to the Prosecutor's Office for fear of reprisals from the civic committee.

### **3. Massacre in Pando**

21. On 11 September, a group of peasants and indigenous persons heading to a meeting in the city of Cobija<sup>3</sup> was stopped in the surrounding area of El Porvenir by members and supporters of the Pando Prefecture as well as affiliates of the civic committee. Violent incidents occurred, leaving at least 11 dead and around 50 wounded.<sup>4</sup> Nine of the victims were indigenous peasants and *normalistas* (i.e. students who are studying to be teachers) and two were supporters of the Prefecture.

22. OHCHR Bolivia has gathered first-hand testimonies from victims, their relatives, witnesses, local authorities and some of the persons involved in the violence. In El Porvenir, shots were fired indiscriminately against the gathering of peasants and indigenous people, killing nine of them. It is alleged that some of the victims, well-known indigenous leaders, were purposely targeted and killed, that in addition several victims were prevented from receiving medical treatment and at least 15 indigenous peasants were captured and subjected to torture, ill-treatment and humiliation. It is further alleged that the armed attack and subsequent aggression were executed by civil servants and supporters of the Pando Prefecture, including

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<sup>3</sup> Between 7 and 9 September, approximately 400 peasants gathered in Riberalta (Beni) and Puerto Rico (Pando) before heading out to a meeting in Cobija. Another group of around 600 peasants came from Filadelfia.

<sup>4</sup> The Public Prosecutor's Office informed the Office of the United Nations High Commissioner for Human Rights (OHCHR) that at this point in its investigation it can confirm 11 fatalities in El Porvenir and surrounding areas. Some reports, including those of the Ombudsman's Office and the Union of South American Nations (UNASUR), indicate that the number of fatal casualties could be higher.

members of the civic committee. On the other hand, six supporters of the Prefecture were also captured and beaten, and then released by the peasants following the intervention of the police. OHCHR Bolivia found that what occurred in El Porvenir was a massacre, constituting a grave violation of human rights.

23. The Ombudsman's Office and the Union of South American Nations (UNASUR) conducted their own investigations and made their findings public on 29 November and 3 December respectively.<sup>5</sup> Both organizations concluded that a massacre was committed by members and supporters of the Prefecture of Pando and qualified it as a crime against humanity.

24. It was reported to OHCHR Bolivia that the police tried to mediate between opposing groups in El Porvenir, yet allegedly it did not try to disarm those involved nor use all necessary measures to prevent and stop the violence. The armed forces did not intervene in this case.

25. OHCHR Bolivia has observed that several legal initiatives have been started in the investigation of those responsible for the violence in Pando. Among these are the initial investigation by the Attorney-General, complaints filed by lawyers on behalf of victims' relatives, and the investigation conducted by a Special Commission of the Chamber of Deputies which was created by Chamber resolution 54/2008. Although this Special Commission is pursuing its investigation with powers similar to those of the Prosecutor's Office, OHCHR Bolivia is concerned that uncertainty as to the procedures to be followed in the ensuing judicial investigation of this case could possibly flaw the due process of law and lead to impunity.

26. On 12 September, the Government proclaimed a state of emergency in Pando. Two persons - a soldier and an evangelical pastor - died on the day the state of emergency took effect, following an exchange of fire between the supporters of the Prefecture and the army, when the latter took control of the airport of Cobija.

27. The state of emergency declared in Pando was in line with the State's obligations under international law and it contributed to improving security conditions in Pando. However, OHCHR Bolivia considers that some abuses may have been committed. According to testimonies, excessive force was used by the armed forces during some of the 38 arrests. Moreover, those deprived of their liberty were not brought before a judge after their arrest, except in the case of the former Prefect. Throughout their administrative detention, they would have had difficulty in securing the attorneys of their choice. OHCHR was able to determine, however, that although the prisoners were being held in military quarters, they were nonetheless accorded humane treatment, were provided with food and medical care, were visited by the Ombudsman and were finally able to contact their families. In sum, their conditions of detention were in accordance with international standards.

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<sup>5</sup> The investigation by the Ombudsman's Office was carried out in accordance with Law 1818. The investigation by the UNASUR commission was carried out according to the La Moneda Declaration of 15 September 2008.

28. The state of emergency was lifted on 23 November by the Government. The Prosecutor's Office decided to file criminal charges in relation to the incidents in Pando against 19 of the confined persons. The other persons deprived of their liberty during the state of emergency were released on 24 November.

29. As a positive measure, it should be highlighted that, on 24 September, the Government approved and executed a decree to provide medical and social assistance to those who were injured in Pando, to grant financial assistance to the relatives of the victims deceased during the incidents, and to offer humanitarian aid to those that were affected by the violence.

## **B. Rule of law and impunity**

### **1. The justice system**

30. The justice system and the Public Prosecutor's Office face many challenges: they have been shown to be susceptible to political interference, are not accessible to a majority of the population and are also subject to delays and corruption. This situation has serious implications for the penitentiary system, as according to information obtained by OHCHR Bolivia, 78 per cent of the 7,433 prisoners in Bolivia are awaiting trial.<sup>6</sup>

31. The political tensions between the Government and the prefectures have weakened the administration of justice and put at risk the rule of law. OHCHR Bolivia has observed that despite established procedures and due process, both the Government and the opposition have tended to file suits only in courts where they are likely to gain a favourable ruling. There have also been reports that the Government would have sued or threatened to prosecute judges who issued decisions unfavourable to its own interests.

32. Furthermore, the political impasse in Parliament has prevented new high-level appointments from being made, namely the designation of nine magistrates to the Constitutional Tribunal, one judge to the Supreme Court of Justice, the Attorney-General and two members of the National Electoral Court. The most important vacancies that should have been filled in 2008 are those in the Constitutional Tribunal, which has been paralysed for more than one year as a result. OHCHR Bolivia is concerned by this situation, given that the Constitutional Tribunal is the main body responsible in Bolivia for the protection of fundamental rights and freedoms.<sup>7</sup>

### **2. Arbitrary detention**

33. Although no policy or systematic practice of arbitrary detention is in place, there was concern over a number of irregular detentions carried out by the security forces against political opponents, who allegedly committed common (i.e. non-political) crimes. According to allegations received by OHCHR Bolivia, some of these arrests were carried out by hooded agents acting

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<sup>6</sup> Data gathered by OHCHR in August 2008.

<sup>7</sup> Between December 2007 and January 2008, several magistrates resigned due to political pressure, and the Constitutional Tribunal did not have a quorum to operate. On 10 November 2008, 3,168 cases were still pending.

without warrants and using disproportionate force. Such practices would be in clear contradiction of constitutional guarantees and international human rights standards.

34. In June, a judge ruled against the illegal nature of the arrest of an individual who had been arrested in Sucre and transported to La Paz. This person was being accused by the Government of attacking members of the executive. No similar ruling on the legality of detention has occurred in any of the other cases brought before the judiciary.

### **3. Reparation for human rights violations**

35. Some progress was achieved during 2008 with respect to reparations to victims of serious human rights violations. Among a number of actions taken by the Government, OHCHR Bolivia welcomed the adoption of laws and decrees that guarantee reparations to victims of the violent political confrontations that occurred prior to or during the mandate of this Government. For example, in November 2008, President Morales promulgated Law 3955 which guarantees reparations to the victims of the violence of February, September and October 2003. According to the law, reparations are to be funded with resources from IDH.

36. There have been difficulties, however, in processing the applications and disbursing compensation for the more than 6,000 persons who are seeking reparation within the framework of Law 2640.<sup>8</sup> The deadline for processing these applications and paying compensation expired in 2007. Lack of funds is one of the main stumbling blocks for the enforcement of this law, which stipulates that 80 per cent of the required financial resources should be secured by the Government from international cooperation agencies. Many donor agencies, however, have already stated that compensation should fall solely under the responsibility of the State. Several victims' organizations have reported this situation to the special procedures of the Human Rights Council.

37. It is important to recall that the concept of integral reparation entails not only economic compensation but also the right to truth and the prosecution of those responsible for human rights violations. It is also essential that the investigations and trials for serious human rights violations are conducted free from procedural obstacles and political influence, as the latter would only favour impunity in the long run.<sup>9</sup>

38. OHCHR Bolivia acknowledges the efforts made by the Government to solve and reach a friendly settlement on complaints filed before the Inter-American Human Rights system. It welcomes the acknowledgement by the Government of international responsibility and the public apology issued this year in the cases of *M.Z. v. Bolivia*,<sup>10</sup> *Rainer Ibsen Cárdenas and José Luis*

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<sup>8</sup> Law on Exceptional Reparation for Victims of Political Violence during Periods of Unconstitutional Governments of 11 March 2004.

<sup>9</sup> Worth highlighting are the cases of former President Sánchez de Lozada and his collaborators in the various confrontations that took place in 2003; the investigation of those accused of the violence of November 2007 and May 2008 in Sucre; and the investigation of the events that took place in Pando in September 2008.

<sup>10</sup> See *M.Z. v. Bolivia*, case 12.350, report No. 73/01, OEA/Ser.L/V/II.114 Doc. 5, rev. at 121 (2001).

*Ibsen Peña v. Bolivia*<sup>11</sup> and *Renato Ticona Estrada et al. v. Bolivia*. In the latter, the Inter-American Court of Human Rights issued a decision against the Bolivian State.<sup>12</sup> Likewise, OHCHR Bolivia welcomes the successful search and return of the remains of four persons - including those of Rainer Ibsen - who died three decades ago under the de facto regime of President Banzer. OHCHR Bolivia suggests these efforts continue to be made and that the confidential military files from the time of the dictatorship be declassified.

#### **4. Human rights defenders**

39. During 2008, there was an increase in the number of threats and attacks against human rights defenders. Civil society organizations promoting the rights of indigenous peoples and peasants in Beni, Santa Cruz, Tarija and Chuquisaca were particularly targeted. According to the information collected by OHCHR Bolivia and testimonies from the victims, the perpetrators of these attacks and acts of intimidation were members of the civic committees and local opponents to the Government. In some cases, it was reported that these groups sent written warnings to human rights institutions to leave a given locality.

40. Of particular concern were the attacks on 11 and 12 September on the premises of the *Centro de Estudios Jurídicos e Investigación Social (CEJIS)* in Santa Cruz and the *Centro de Investigación y Promoción del Campesinado (CIPCA)* in Guarayos (Santa Cruz), organizations which promote the rights of indigenous persons. In both cases, there was considerable material damage, valuable documentation was burned, and office equipment was looted. Members of both institutions are still at risk, as threats have continued to be made and there has been a lack of police protection and thorough investigation of these incidents.

41. Also of concern is the fact that representatives from the Ombudsman's offices in Chuquisaca and Santa Cruz, as well as various human rights activists, have been tagged as "traitors" by the civic movements in these departments and have suffered a number of offences, insults and aggression related to their work. Staff from the Ombudsman's Office in La Paz also suffered offences and aggression from members of the Popular Civic Committee (*Comité Cívico Popular*).

### **C. Security and human rights**

#### **1. Security forces**

42. According to a study conducted by UNDP,<sup>13</sup> the majority of citizens do not trust the National Police. The operational capacity of the police is insufficient in terms of infrastructure, human and financial resources. This is especially the case in rural areas. This lack of trust might also be a result of the incapacity of the security forces to comply with its duty to prevent human

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<sup>11</sup> See case 786/03, report No. 46/05, IACHR, OAS/Ser./L/V/II.124 Doc. 5 (2005).

<sup>12</sup> See Inter-American Court, *Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgement of 27 November 2008.

<sup>13</sup> "*Policia Nacional y seguridad ciudadana*", UNDP Bolivia, July 2006 available at <http://idh.pnud.bo/webportal/Publicaciones/EncuestaparaelDesarrolloHumano/tabid/258/Default.aspx>.

rights violations, as observed by OHCHR Bolivia in the racist incidents of 24 May in Sucre and the massacre in Pando.

43. During the violent protests and confrontations that occurred throughout 2008, civilians often attacked members of the police and the military. In August, the departmental commander of the police force in Santa Cruz and other policemen were attacked and beaten by supporters of the local civic movement. Several police and military officers were also insulted and mistreated by civic groups supporting autonomy in the departments of Beni, Chuquisaca, Pando, Santa Cruz and Tarija. These same groups are also allegedly responsible for occupying, looting and setting fire to public institutions in September. In Sucre, military officers were obliged to march carrying the flag of Chuquisaca during the incidents of 24 May.

44. It is commendable that senior security officials usually opted for a more conciliatory line and chose not to use force in order to avoid an escalation of violence and reprisals. In some cases however, and especially at the outset of the riots and clashes, the police should have been able to intervene legitimately to prevent further damage and attacks against civilians and security personnel.

## **2. Lynching**

45. Lynching has been a widespread phenomenon especially during the last decade and in most cases in impoverished urban areas of the Departments of Cochabamba, La Paz, Santa Cruz, Chuquisaca and Potosi. At least 23 cases of lynching were reported by the press during 2008, mainly against delinquents suspected of having committed common crimes, with 20 persons being killed and 23 injured.

46. The fact that a majority of the population has limited access to the justice system, compounded by the fact that the police and the Public Prosecutor's Office are not equally present across the country, may have contributed to citizens taking justice into their own hands. The methods used to punish alleged delinquents have most of the time been severe. Three policemen suspected of extortion in Epizana (Cochabamba) were stoned and hanged by a group of locals. In Achacachi (La Paz), the victims of a lynching were sprayed with gasoline and burned alive.

47. Lynching is wrongfully associated with traditional indigenous justice. Indigenous justice is acknowledged in national legislation and is recognized in the new draft constitution. Certain media and sectors of the opposition have contributed to creating confusion over traditional indigenous justice, further stigmatizing indigenous peoples. Some indigenous groups which have threatened to use violence and lynching against their opponents have also contributed to this confusion. The Government and civil society organizations launched awareness campaigns in 2008 to condemn lynching and to explain the scope of traditional indigenous justice. Although it would seem the above-mentioned cases are being processed in the justice system, OHCHR issued two press releases on this matter expressing concern and condemning lynching, in addition to calling for the prosecution of those responsible so as to avoid impunity and prevent further incidents.

## **D. Indigenous peoples**

### **1. Rights of indigenous peoples**

48. According to the last census of 2000, 62 per cent of the Bolivian population over the age of 15 identify themselves with one of the 36 indigenous peoples that exist in the country. The indigenous population is the most affected by extreme poverty. During the past years, many indigenous groups have worked towards improving their social and political status. These groups had a high level of participation during the deliberations of the Constituent Assembly, and in the dialogue that culminated with the call for the referendum to approve the new constitution.

49. This process of social and political inclusion is not occurring at the same pace in all regions of the country. In the Eastern and Amazon regions for example, indigenous leaders are constantly subject to threats and attacks. In September, OHCHR Bolivia observed the damage caused by the takeover of the offices of the Federation of Bolivia's Indigenous Peoples (*Confederación de Pueblos Indígenas de Bolivia*) and the destruction of the offices of the Coordinator of Santa Cruz Ethnic Peoples (*Coordinadora de Pueblos Étnicos de Santa Cruz*). Both acts were committed by members of the civic movements in Santa Cruz who oppose the Government.

50. Among the measures adopted to improve the situation of indigenous peoples, OHCHR Bolivia would like to commend Bolivia for being the first country to enact the United Nations Declaration on the Rights of Indigenous Peoples as law; for the incorporation of a broad catalogue of collective rights in the proposed new constitution; for the decision to incorporate indigenous rights into public policies and programmes;<sup>14</sup> for the creation of a National Commission for the Eradication of Servitude and Forced Labour; and for the continuation of the process of land distribution.

51. The report of the visit by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to Bolivia was presented in June 2008 to the Human Rights Council. It offers a series of recommendations aimed at tackling the uneven relations that have lasted for so long between indigenous and non-indigenous populations.

### **2. Racism and discrimination**

52. Historically, indigenous persons have been discriminated against and excluded from participating in political and public affairs. Since taking office, President Morales has put in place a series of measures aimed at remedying this situation. These new policies, however, have not been welcomed by certain groups, particularly in the Departments of Beni, Chuquisaca, Pando, Santa Cruz and Tarija. The Office has noted an increase in acts of racism and discrimination against peasants and indigenous peoples in some departments, often leading to violence.

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<sup>14</sup> The new National Human Rights Action Plan has a specific section on indigenous peoples and indigenous matters are considered as a cross-cutting issue throughout the Plan.

53. The incidents that occurred in Sucre and Pando in 2008 had serious racist and discriminatory connotations. In Santa Cruz, there has been a proliferation of racist speeches and assaults by some members of the civic committee and the media against indigenous migrants from the highlands. Furthermore, members of the opposition have made a number of offensive remarks about the President and government officials due to their indigenous origins.

54. Several public institutions, as well as civil society, have tried to combat the proliferation of racist attitudes and actions. At the beginning of 2008, the Ombudsman's Office and the University La Cordillera (La Paz) came together to create a new network known as the Observatory of Racism. Since its inception, the Observatory has undertaken several studies and promoted various campaigns in the media to tackle the issue of discrimination. A draft law on anti-discrimination, which would make important modifications to the Penal Code, is being considered in Congress.

### **3. Servitude and contemporary forms of slavery**

55. OHCHR Bolivia undertook two field missions in July and October 2008 to the Chaco region and found that numerous Guaraní people are still subjected to servitude and other contemporary forms of slavery.

56. One of the most alarming situations is that of 20 communities in Alto Parapetí in Santa Cruz (approximately 450 Guaraní families), where the situation has in fact worsened due to the resistance of landlords and local opponents to the attempts by the Government to end the degrading living and working conditions that persist there.

57. These families have an irregular labour relationship with local landlords. They receive their salary in kind (clothing and food) and are automatically indebted to their employers for the goods they receive. This debt often ends up being permanent and can be inherited. Working hours and activities are not defined beforehand, and are generally excessive. Children are subjected to the same working conditions as adults. Some Guaraní leaders have reported having their right of freedom of association restricted and of being forced to waive their affiliation to the Assembly of Guaraní People (*Asamblea del Pueblo Guaraní*). Freedom of movement of workers to other communities is also restricted by landlords.

58. The Guaraní living under conditions of servitude have no access to private or collective property. Several of more than a dozen requests and pleas for titles to native community lands have been processed and approved by the authorities, entitling the Guaraní people to recover some of their original property rights. The Government has begun to carry out the first land restitution processes and is looking into buying back land from landlords so as to solve any conflict. This work is being done through the National Institute of Agrarian Reform (INRA) and according to Law 3545 and its complementary regulations.

### **E. Economic, social and cultural rights**

59. OHCHR Bolivia welcomes the fact that the rights enshrined in the International Covenant on Economic, Social and Cultural Rights and in the Protocol of San Salvador,<sup>15</sup> including the rights to water and to basic public services, were included in the new draft constitution.

60. Furthermore, OHCHR Bolivia notes with satisfaction the consolidation and expansion of several social programmes initiated before 2008, such as the “dignity pension”, as well as the Juancito Pinto Bonus Programme which has increased school attendance of elementary schoolchildren, notably amongst girls in rural areas. The Zero Malnutrition initiative was launched in mid-2008, and has helped increase the availability of health services throughout the country. On 20 December 2008, the Government declared the country free of illiteracy in the presence of UNESCO. This achievement was reached thanks to the “*Yo, sí puedo*” (“Yes I can”) programme that was launched in 2006 and which according to the Government has helped over 800,000 persons learn to read and write.

61. These programmes have helped the country to progress on many fronts, but Bolivia still faces many challenges. In spite of Government efforts, many groups are still underserved by social programmes, particularly indigenous communities, women and children. The country is still far from reaching all of the Millennium Development Goals, especially in terms of reducing extreme poverty and child malnutrition, and in improving access to health and education.

### **F. National Human Rights Action Plan (PNADH)**

62. In 2008, the Ministry of Justice following consultations with civil society began to elaborate PNADH 2009-2013 - the second in more than 10 years. OHCHR Bolivia provided technical advice in the design and formulation of the Plan, including some inputs and recommendations regarding its content, structure and logical framework. The completion of the Plan constitutes a significant achievement. The Plan, which was adopted through Supreme Decree 29581, was presented on 10 December in the framework of the sixtieth anniversary of the Universal Declaration of Human Rights.

63. The Plan identifies many human rights concerns in the country and delineates some actions that seek, inter alia, greater protection for collective and indigenous rights. Implementing PNADH will be one of the main challenges for the Government in the years to come. OHCHR Bolivia believes that the Government should be praised for the content of the Plan as well as the participatory nature of its preparation (departmental workshops and thematic round tables). At the same time, the plan needs a stronger commitment from various governmental offices, mainly the Ministries of Foreign Affairs, Interior, Education, Labour and Finance in order to guarantee its sustainability. Thus, it is of the utmost importance that the monitoring mechanism of the Plan is speedily implemented through the Human Rights National Commission with the full participation of State entities, social organizations and civil society to make sure that its objectives are met.

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<sup>15</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

### **G. Freedom of expression, freedom of the press and the right to information**

64. The relations between the Government and the private media were uneasy throughout 2008. The Government has increasingly accused the mass media of conspiring against it. In turn, many media outlets have adopted a strong line of opposition to the Government.

65. OHCHR Bolivia has noted that certain members of the media critical of the Government have broadcast biased and distorted information and, in some cases, publicized news and opinions which have incited others to resort to racist or political violence, as was the case during the racist incidents of 24 May in Sucre. On the other hand, State media has also engaged in practices which may go against professional ethics and the right to information. Of special concern was an audio montage done over images of peasants fleeing through the Tahuamanu River during the incidents in Pando, as well as a Government advertising campaign that anticipates a 30-year jail term for the former Prefect of Pando, Leopoldo Fernandez, who is the main person accused in the Pando incidents. In December, the President asked the editor and a journalist of *La Prensa* for explanations regarding an article which claimed he had carried out negotiations with smugglers in the Government Palace for permission for the passage of contraband goods. The President criticized media owners for their coverage of these corruption allegations and this led to a strong reaction from media outlets.

66. In terms of attacks on the mass media or their workers, according to the *Observatorio Nacional de Medios* a total of 117 journalists suffered verbal and physical assaults between June 2007 and August 2008.<sup>16</sup> In May 2008, a radio broadcaster from the municipal radio station in Pucarani was murdered, presumably by opponents of the local mayor. Although suspects involved in the murder have been identified, OHCHR Bolivia is concerned by the fact that this case has not been clarified due to a series of delays, change of prosecutors and conflict over jurisdiction.

67. Some victims worked for the State-controlled media and their attackers were often supporters of departmental autonomy or members of different civic movements that oppose the Government. Most of the journalists that were attacked, however, worked for the private media. Many of these media have been tagged as enemies by government officials. In certain cases, these public denunciations may have exacerbated the animosity of government followers towards the mass media.

68. Throughout the year, communication facilities were attacked and destroyed, transmission and broadcasting equipment was intentionally damaged and there were several television networks which were arbitrarily restricted from broadcasting. One of the attacks occurred in June, in Yacuiba (Tarija), where a bomb was detonated in the building of a major television channel.

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<sup>16</sup> See report on attacks against journalists and the media at <http://www.unirbolivia.org/>.

69. There has been no satisfactory investigation of the few complaints filed by journalists and the national press guild, nor does it appear that adequate measures have been taken to effectively prevent further attacks.<sup>17</sup>

70. Political debate was generally free and fair and with ample public participation during the various electoral processes that occurred in the country. There were several cases however in which freedom of expression was affected in some way. For example, in Chuquisaca, the tense political environment limited the ability of candidates to campaign freely for the prefecture. While the ruling party had problems in organizing rallies and setting up campaign houses in Sucre, given the pressure exercised by some supporters of the Inter-Institutional Committee, the main opposition group (*Alianza Comité Interinstitucional - Movimiento Popular Ciudadano*) in turn received constant threats that prevented it from campaigning in several of the rural areas.

### **III. MAIN ACTIVITIES OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS IN BOLIVIA**

71. Pursuant to its mandate, OHCHR Bolivia conducted 41 missions to monitor the human rights situation throughout the country.

72. OHCHR Bolivia monitored the human rights situation in several departments, including Pando, particularly in the aftermath of the violent events that took place on 11 September. The Office maintained a constant dialogue with national and departmental authorities and civil society and, on several occasions, established direct contact with witnesses, victims and their families. OHCHR Bolivia also visited the individuals that were detained and transported to La Paz as a result of the state of emergency in Pando.

73. OHCHR Bolivia conducted training for human rights defenders on international human rights protection mechanisms and basic monitoring techniques and provided technical advice to the Ministry of Justice in the design and formulation of the new PNADH which was adopted in December 2008.

74. OHCHR Bolivia closely followed the issue of reparations to the victims of the 1964-1982 military regimes and facilitated their access to the special procedures of the Human Rights Council. The Office maintained regular contacts with victim associations, national authorities and members of the National Commission for the Reparation to Victims of Political Violence (CONREVIP)<sup>18</sup> and assisted in speeding up the processing of applications. OHCHR Bolivia also assisted in the preparation of a project funded by the Danish Government aimed at strengthening the human resources of CONREVIP in order to process applications faster.

75. Regarding the fight against racism and discrimination, OHCHR Bolivia organized a series of technical meetings with representatives from Government, civil society, academia and the

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<sup>17</sup> Of the cases of violence against press officers identified by the *Observatorio Nacional de Medios*, only 13.6 per cent were officially filed with justice officials, and no one so far has been held accountable.

<sup>18</sup> The National Commission for the Reparation to Victims of Political Violence is the body in charge of processing and determining if a victim's application for compensation is valid.

Ombudsman's Office, aimed at facilitating the formulation of proposals for the Regional Conference for Latin America and the Caribbean Preparatory to the Durban Review Conference in Brasilia (17-19 June 2008). OHCHR Bolivia also provided technical advice to the newly established Observatory of Racism and shared similar experiences from other countries.

76. Within the framework of the new draft constitution, OHCHR Bolivia provided advisory services to the members of the Constituent Assembly and shared with them a comprehensive study on the human rights-related clauses contained in the proposed new constitution. The study was also discussed with certain senior officials of various ministries, lawmakers, prefects and the Ombudsman's Office. OHCHR Bolivia underscored the positive aspects of the new constitutional text but also highlighted some of the elements which could be interpreted as going against universal human rights standards. The final version of the draft constitution includes a number of the main recommendations put forward by OHCHR Bolivia.

77. OHCHR Bolivia also provided technical advice to Congress in the formulation of the following five bills: (a) mandatory military service, (b) reparation to the victims of the events that took place in September and October 2003, (c) State policy against torture and establishment of the national preventive mechanism,<sup>19</sup> (d) indigenous justice, and (e) public policy and criminal sanctions against all forms of discrimination. Of the above-mentioned bills, only the legislation on reparations has been enacted.

78. OHCHR Bolivia was part of a technical working group composed, inter alia, of the Ministry of Justice, the Ombudsman's Office and several legislative committees that worked on the anti-discrimination bill. A public presentation of this bill was held on 27 November 2008.

79. OHCHR Bolivia promoted the ratification of human rights international treaties. With the *Asociación de Familiares de Detenidos y Desaparecidos y Mártires por la Liberación Nacional*<sup>20</sup> and the Ombudsman's Office, it fostered the adoption of Law 3935, which approved the International Convention for the Protection of All Persons from Enforced Disappearance. OHCHR Bolivia followed up on the deposit of this Convention and recommended that the Government consider accepting the competence of the Committee on Enforced Disappearance to process individual and inter-State communications. The same recommendation was made regarding the Committee on Migrant Workers (CMW).

80. OHCHR Bolivia promoted the deposit of the instrument of ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, approved by Congress in 2006. The Ministry of Foreign Affairs submitted to OHCHR Bolivia a copy of the orders and the mandate provided by the President to his Permanent Representative to the United Nations to proceed with the deposit.

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<sup>19</sup> In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>20</sup> An association of relatives of persons that were detained and or disappeared under previous regimes.

81. OHCHR Bolivia and the Ombudsman's Office have been promoting within Congress the adoption of the Convention on the Rights of Persons with Disabilities and its Optional Protocol. Approval in Congress is still pending.

82. With regards to the United Nations treaty body system, OHCHR Bolivia called on the Ministry of Foreign Affairs to submit a response to the list of questions formulated by CMW and the Committee on Economic, Social and Cultural Rights (CESCR), prior to the review of Bolivia's reports in April and May 2008, respectively. OHCHR Bolivia shared with NGOs and State institutions the final observations adopted in January by the Committee for the Elimination of Discrimination against Women, as well as those issued by CMW and CESCR. OHCHR Bolivia also collaborated with the Ministry of Justice in the preparation of the Government's outstanding reports to the Committee on the Elimination of Racial Discrimination.

83. OHCHR Bolivia also provided advice to several organizations and individuals on how to work with the special procedures of the Human Rights Council.

84. To commemorate the sixtieth anniversary of the Universal Declaration of Human Rights, OHCHR Bolivia organized various activities, individually and together with other institutions. On 10 December, the Office held the "Declarathon", an event during which the 30 articles of the Declaration were read out by more than 400 persons, in 18 languages, during 24 hours. Other commemorative activities included a photography competition on human rights.

85. In terms of public information, OHCHR Bolivia issued statements on lynching, on the conflicts over land in the Chaco region, on the acts of racism committed against peasants and indigenous people in Sucre, and on the violent incidents which occurred in the eastern departments at the beginning of September. In each case, OHCHR Bolivia condemned all human rights violations, requested clarification and called for dialogue.

86. At the end of the year, OHCHR Bolivia launched a pilot version of its website.<sup>21</sup>

87. Within the framework of the United Nations system in Bolivia, OHCHR Bolivia has been coordinating the Intercultural Thematic Group which advocates an intercultural approach and promotes the rights of indigenous peoples. The group also coordinates action with five of the most important indigenous organizations which are members of the National Council for Dialogue.<sup>22</sup> Through the Intercultural Thematic Group, the Office provided technical assistance to the Government for the elaboration of the Guaraní Development Plan, a process involving six ministries and the *Asamblea del Pueblo Guaraní* aimed at eradicating servitude.

88. OHCHR Bolivia has also participated in the Gender Thematic Group, which aims to promote a gender approach in the work of United Nations agencies, programmes and funds.

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<sup>21</sup> See <http://bolivia.ohchr.org>.

<sup>22</sup> The National Council for Dialogue is a mechanism established by the agencies of the United Nations system in Bolivia and five organizations of indigenous peoples.

#### **IV. RECOMMENDATIONS**

##### **Preventing political violence**

89. The High Commissioner calls upon the Government, the prefectures, the Congress and other political actors to promote tolerant attitudes and to address political, social and regional demands in a constructive manner, respecting democratic institutions, the rule of law and fundamental rights.

##### **Rule of law and impunity**

90. The High Commissioner urges the relevant authorities to investigate and prosecute all cases of human rights violations. The competent authorities must ensure that victims have access to independent, impartial and timely justice, and that they are guaranteed adequate reparation. All investigations and legal procedures must be conducted respecting due process of law. This is particularly relevant with regard to the incidents of May in Sucre and the massacre in Pando in September. The High Commissioner recommends that the competent authorities conduct an impartial and expeditious investigation into all the killings and other human rights abuses in these two cases and ensure accountability.

91. The High Commissioner calls upon the relevant authorities to adopt all necessary measures to combat impunity and prevent the reoccurrence of human rights violations such as the ones described in this report.

92. The High Commissioner calls upon all branches of the State and the Public Prosecutor's Office to comply with and enforce judicial decisions, to no longer delay the appointment of judiciary authorities and to ensure that the principles of independence and impartiality prevail in all the institutions of justice.

93. The High Commissioner calls upon national authorities to urgently identify sources of funding that will allow it to comply promptly with the reparation commitments it has undertaken through Law 2640, as was done for the victims of political violence covered by Law 3955.

##### **Security and human rights**

94. The High Commissioner recommends that the Government and the institutions of justice consolidate their presence throughout the country's nine departments so as to guarantee security and the full enjoyment of human rights.

95. The High Commissioner calls upon the Government to urgently strengthen the National Police Force so it can carry out its duties adequately and prevent further human rights violations.

96. The High Commissioner calls upon the Government, the National Police Force and the armed forces to clearly define rules of engagement during public protests, so that their actions are always proportional, timely and effective in their aim of preventing violence and respecting international human rights norms and standards.

97. The High Commissioner urges that in its fight against lynching the Government improve the coordination of different entities within the justice system, such as between the Public Prosecutor's Office and the judiciary. It should also seek to build the capacity of the security forces to enable them to intervene rapidly in situations which could lead to a lynching.

#### **Rights of indigenous peoples, racism and discrimination**

98. The High Commissioner calls upon the Government to adopt all necessary short- and long-term measures to prevent and combat racism and discrimination. The High Commissioner calls upon the Congress to approve legislation to combat all forms of discrimination.

99. The High Commissioner encourages the Government to continue to strengthen policies aimed at including indigenous peoples in all areas of public life.

100. The High Commissioner calls on the authorities and all concerned to adopt an attitude of openness and tolerance in implementing the measures necessary to address the problem of land distribution in Bolivia and to eradicate forced labour and servitude, and other situations which could be analogous to slavery.

#### **Human rights defenders**

101. The High Commissioner calls upon law enforcement authorities, including the judiciary, to ensure that human rights defenders enjoy full protection and that violations committed against them are promptly and fully investigated. Damages suffered by human rights defenders shall be duly compensated.

#### **Freedom of expression**

102. The High Commissioner calls upon the Government to respect and guarantee freedom of expression, freedom of the press and the right to information. The High Commissioner also calls upon all public and private media to exercise their professions according to the highest norms of professional ethics.

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