



**University of Oklahoma College of Law  
International Human Rights Clinic  
The United States of America**

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Report on the Plurinational State of Bolivia to the 20<sup>th</sup> Session of the Universal Periodic Review, Human Rights Council, October 2014

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**March 13, 2014**

## **EXECUTIVE SUMMARY**

The International Human Rights Clinic of the University of Oklahoma College of Law (IHRC-OU) submits the following report to the 20<sup>th</sup> Session of the Universal Periodic Review, Human Rights Council. This Report concerns the indigenous communities of Bolivia and surveys Bolivia's compliance with certain human rights obligations. The report focuses on the selected areas of Consultation, Access to the Justice System, Forced Labor, Land Rights, and Children's Rights. The purpose of this report is to provide a balanced view of indigenous concerns in Bolivia and recommend measures to address those concerns. The IHRC-OU notes the commitment expresses by Bolivia to develop and expand programs and policies for the protection of the indigenous peoples.

### **1. THE RIGHT TO CONSULTATION ON MAJOR PROJECTS ON INDIGINOUS LANDS**

**Normative and Institutional Frameworks: International Provisions:** In the April 2013 Report, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, noted that the implementation of the right to consultation, particularly in the context of major development projects in indigenous territories, needed to be strengthened. There has not been a systematic application of the consultation process, and consultations often did not comply with the standards set by the Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169).

**Domestic Undertakings:** In the February 2013 Report, the High Commissioner for Human Rights recommended that the government and the Legislative Assembly increase efforts to adopt a legal framework on the constitutional right to consultation of indigenous peoples, in accordance with international standards and through a participatory process. The recommendation specified that the government and concerned indigenous communities should create an atmosphere conducive to encouraging productive dialogue. This was specifically recommended for building durable agreements on the development of the Isiboro Sécure National Park and Indigenous Territory (TIPNIS). According to this same High Commissioner's Report, notable progress is being made in relation to the implementation of a first consultation process for the TIPNIS, as well as initiation of a participatory process to develop a general right of indigenous peoples to consultation.

**Human Rights on the Ground.** Concerns have been raised regarding consultation and large scale development projects which include building a road through the TIPNIS and National Park, a national park covering more 1.2 million hectares covering the southern part of the Department of Beni and the northern part of Cochabamba. Many indigenous groups live in the area and have expressed concerns about the potential negative impacts of the project, including the effect on indigenous life and culture, pollution from the increase in traffic, destruction of protected forest, and damage to animals and plants. On the other hand, Bolivian authorities defend the project as one that will bring increased development and better access to health, education and commerce for the isolated communities. Though the government has recognized the need for indigenous consultation on the project through the passing of Law No. 222, some groups have reported the consultations as inadequate and refused to participate. Thus, there is concern that not all of the 69 indigenous communities in the TIPNIS are being adequately represented in consultations. Additionally, reports of excessive force by the police and harassment of indigenous leaders during peaceful demonstrations such as a September 2011 march in Chaparina, Beni, evidence an ineffective consultation process.

#### **Recommendations**

- Take necessary measures to ensure indigenous peoples affected by planned economic or development projects are adequately and fairly consulted, in accordance with ILO Convention No. 169.
- Incorporate special provisions into project contracts that ensure affected indigenous peoples and communities directly benefit from the projects.
- Include all the communities living in the TIPNIS in the consultation process, as no permanent and fair agreement is possible without comprehensive indigenous input.

## **2. ACCESS TO THE JUDICIAL SYSTEM**

**Normative and Institutional Frameworks: Domestic Undertakings:** In the February 2013 report, the High Commissioner for Human Rights stated that the main problems faced by the Bolivian judicial system were the organizational system and a lack of geographical coverage by the courts. Additionally, the efficiency of the system is being hindered by a lack of Public Prosecutors and forensic physicians. The High Commissioner recommended that the government implement a new judicial framework through a transparent participatory process, that a professional career system be instituted by the Public Prosecutor's office and that the geographical coverage of the system should be widened to increase access to justice. Based on the April 2013 report from the Human Rights Committee, the government has taken steps regarding the judicial system's framework and the office of the Public Prosecutor.

**International Provisions:** In February 2013 report on the activities of her office in Bolivia, the High Commissioner for Human Rights, recommended that the government adopt a plan of action to investigate the large-scale practice of corruption within both the judicial and prison systems and implement steps to prevent such practice in the future. Bolivia is taking steps to combat corruption, such as the 2010 Marcelo Quiroga Santa Cruz Act, which was designed to limit corruption. In the April 2013 report, the Human Rights Committee requested additional information concerning the effectiveness of the steps the government has taken to combat corruption, within the judiciary and the police and prison systems. Due to the recent date of the report, there is no clear information that can be used to determine the effectiveness of these steps.

**Human Rights on the Ground.** In February 2011 report, the Human Rights Council reported that the judicial system in Bolivia faced a number of problems. The system was open to political and economic pressures, corruption was prevalent and access to the system was difficult and limited. While the government has taken steps to improve all of these areas; these steps have only been somewhat successful. The newly passed judicial reforms were designed to help increase access to the system as well as insulate it from economic and political pressures. In February 2013 report however, the Council stated that the geographical range of the system and number of courts had not increased since 2011, despite a budget for the creation of 29 new courts. Corruption is still a problem and while the government has taken steps to combat it, an extortion ring was recently discovered within the executive and judiciary. A second issue is the delays in the system caused by the volume of cases many of which include political opponents, which have been brought. This problem is further compounded by the lack of prosecutors and forensic physicians, which makes it difficult to protect the rights of due process and presumption of innocence. The indigenous legal system is often not afforded the creditability that it deserves. The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, said in its April 2013 report that cases are being funneled away from indigenous into normal courts, even though in the eyes of the Constitution, they are on equal footing.

**Recommendations:**

- Ensure participation of all social groups in decisions concerning their present and future access to justice
- Increase the coverage and jurisdiction of both the traditional justice system as well as the coverage of the indigenous courts.
- Increase funding to the office of the Public Prosecutor to ensure that the office has the ability, funds, and personnel to handle important cases including the recently discovered extortion ring within the executive and judiciary

### **3. FORCED LABOUR**

**Normative and Institutional Frameworks: International Provisions:** In the UPR Working Group 2010 report, Bolivia examined and supported the recommendation continue to strengthen measures to eliminate all forms of servitude and forced labour, with the assistance of international organizations. In April 2011, the Committee on the Elimination of Racial Discrimination recommended that Bolivia intensify its efforts to prevent and prosecute contemporary forms of slavery and guarantee access to justice for the Guarani people. It also encouraged Bolivia to establish as a matter of urgency a comprehensive and adequately funded development plan that specifically addressed the needs of the Guarani people. They asked Bolivia to undertake initiatives to raise the general public's awareness of the need to eradicate forced labour and servitude and that it continue its cooperation with the relevant specialized agencies of the U.N.

**Domestic Undertakings:** In February 2009, the Report of the Special Rapporteur on the situation of indigenous people found forced labour and servitude of indigenous communities to still be an issue in certain parts of Bolivia. The Report emphasized that urgent attention must be given to eliminating servitude and forced labour. In April of 2013, The Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, expressed similar concerns on this subject. According to the same report, various past and ongoing initiatives taken by successive governments, organizations of indigenous peoples and civil society to eradicate servitude and forced labour had not produced sufficient outcomes, despite some progress.

**Human Rights on the Ground:** Forced labour and servitude has continued to be an issue in Bolivia especially for the Guarani people. Many Guarani families and communities are still defined as “captive communities” today and are subjected to contemporary forms of slavery by landowners. The Guarani people are primarily located in the eastern Chaco region of Bolivia. According to the April 2013 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, it is estimated that approximately 600 Guarani families still live in conditions of captivity and forced labour on the various estates of the Chaco. In 2007 the government established the Inter-Ministerial Council for the Eradication of Servitude, Forced Labour and Slavery-like Practices by Supreme Decree No. 29292 with a view to implementing the 2007-2008 transitional inter-ministerial plan for the Guarani people. The Inter-ministerial Plan came to an end in 2009 without meeting all of its objectives and without provisions for its continuation by means of comprehensive measures.

In 2012, Guarani representatives denounced delays in carrying out consultations and in complying with agreements. According to the Annual report of the High Commissioner for Human Rights in Relevant from February 2013, efforts were underway between Government authorities and Guarani representatives to implement existing agreements about land titling, waste recovery, assistance to indigenous autonomies, and a new governmental plan to eradicate the forced labour and servitude that was still affecting Guarani families in the Chaco region.

**Recommendations:**

- Investigate and Prosecute contemporary forms of slavery
- Implement measures to fulfill the purpose of the inter-ministerial plan for the Guarani people.
- Continue to work with the Guarani on recovering land titles
- Undertake initiatives to raise the public's awareness of the need to eradicate forced labour and servitude

**4. LAND RIGHTS**

**Normative and Institutional Frameworks: International Provisions:** In the UPR Working Group 2010 report, Bolivia has examined and supported the recommendation to continue efforts to implement the provisions of the new Constitution in order to ensure that indigenous peoples fully enjoy their rights. In 2008, CESCR expressed concern at the widespread housing shortages and the forced evictions of indigenous populations caused by the Bolivian government's support and implementation of a wide reaching mining and timber operation. Additionally, in 2007, the Special Rapporteur on indigenous peoples highlighted the difficulties the Bolivian indigenous populations suffer with regard to the use and enjoyment of their land. The Special Rapporteur recommended that the government commit more resources to titling the original community lands, or indigenous Tierras Comunitarias de Origen. The government has made only minimal progress in retitling lands, although efforts have been made to begin the process.

**Domestic Undertakings:** In the UPR Working Group 2010 report, Bolivia has examined and supported the recommendation to implement concrete measures consistent with the Covenant on Civil and Political Rights, ensuring the participation of indigenous peoples in the decisions affecting their natural environment, measures of subsistence, culture and spiritual practices. In 2009, the Bolivian people approved a new Constitution, the country's seventeenth. Chapter four, Article thirty of the Constitution addresses "Rights of the Nation and Rural Native Indigenous Peoples". Section II (6) calls for "the collective ownership of land and territories." Since its ratification, aligned with the aforementioned recommendations, Bolivia has begun implementation of this Constitutional provision.

**Human Rights on the Ground:** Bolivia has made limited progress with respect to land designation. The government has displayed a commitment to returning land to the indigenous populations in accordance with the Constitution, but actual re-designation is not wide spread. Land title has been granted to six campesino communities for a total of 30,314 hectares. Eight titles to land for schools and 180 individual titles have been granted. Additionally, in the Porvenir region of Bolivia, seventeen productive projects have been implemented, helping 650 families through projects to save the local tree nurseries and other agro-forestry industries. While some communities have reaped the benefits of these commitments, many more remain without unencumbered title and with no property rights other than temporary possession. Without the rights to exclude, include, and enjoy the fruits of the land, many indigenous communities are left seeking their heritage. As a part of the National Agrarian Reform Institute, three different schemes were enacted to return the agricultural lands on the estates of Ñacamiricito, Inti Pilcomayo- Ñaca Pucu, and Itane. Additionally, five estates have been designated native community lands in Santa Cruz.

**Recommendations:**

- Engage with leaders of indigenous populations to identify heritage lands that harbor political or cultural value.

- Consult with local landowners and business operations to identify land disputes for those lands that harbor political or cultural value.
- Develop a strategy to cede title of noncontroversial heritage lands to indigenous populations.
- Coordinate with the local judiciary to build a legal structure for land inheritance.

## **5. RIGHTS OF THE CHILD**

**Normative and Institutional Frameworks: International Provisions:** In the UPR Working Group 2010, Bolivia has examined and supported the recommendation to reinforce the policy of promoting children’s rights and the implementation of the Guidelines for the Alternative Care of Children. Bolivia has drafted a law on human traffic and smuggling that includes child protection measures and is based on commitments under the Palermo Protocol and other international human rights instruments.

**Domestic Undertakings:** In the UPR Working Group 2010 report, Bolivia has examined and supported the recommendation to devote special attention to protection and promotion of children’s rights in the process of developing and implementing national policy. The government states that is working to implement the Child Development Project- a program for the protection of children's rights comprising education, health care, and housing components- that forms part of the new draft Plurinational Children's Plan. Bolivia claims that the offices of the children's ombudsmen are fully operational and children living in detention centers have access to nutrition, health care, and educational services. The Code on Children and Adolescents has been modified to comply with the Constitution and the Convention on the Rights of the Child.

**Human Rights on the Ground.** Bolivia has not to date taken an official position on child labor and economic exploitation. Many disadvantaged and marginalized children, including those from indigenous families, must work to provide for their families. The worst forms of child labor, including sugar and chestnut harvesting and mining claim 800,000 children as laborers. Numerous more children work in industries that are not considered the “worst of child labor”. Cultural beliefs and customs have led to a standstill on the establishment of policies regarding child labor. Indigenous groups have traditionally had children work from a young age. Children are not only used for physical labor, but also for prostitution, pornography, and sex tourism. Trafficking of women and children is a problem in Bolivia that has only been recognized in recent years. The government has created a National Council against Human Trafficking, but the organization is in early stages and the effectiveness is yet to be seen. The Constitution prohibits all forms of violence against children and adolescents, their forced labor and exploitation. It also punishes human trafficking and smuggling. Effective policies, however, have not been put into place and enforced.

### **Recommendations:**

- Create special juvenile courts to better serve the special circumstances regarding juvenile justice.
- Establish programs to promote the protection and social reintegration of children and adolescents in conflict with the law or placed in institutions for economic or social reasons.
- Create policies on child labor that guarantee the best interests of children and adolescents.
- Take measures to protect children from exploitative forms of labor and dangerous work.
- Strengthen policies on sexual violence against children, the sale of children, sexual exploitation, and trafficking.