



UNIVERSAL PERIODIC REVIEW SUBMISSION FOR BOLIVIA NGO Submission

March 28, 2019

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ABOUT HRF

The Human Rights Foundation (HRF) is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies. HRF unites people in the common cause of defending human rights and promoting liberal democracy. Our mission is to ensure that freedom is both preserved and promoted around the world.

We focus our work on the founding ideals of the human rights movement, those most purely represented in the 1948 Universal Declaration of Human Rights (UDHR) and the 1976 International Covenant on Civil and Political Rights (ICCPR).

The Human Rights Foundation Center for Law and Democracy (HRF-CLD) is a program of the Human Rights Foundation (HRF). HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law.

ABOUT RÍOS DE PIE

“We are Standing Rivers. We are citizen's brain and muscle. We are collective and nonviolent intelligence to make change in our country”. Our Vision is a Bolivia with Freedom and Justice, a transparent Government, strong and clean security forces, and committed to the protection of the environment. Founded in 2017, we are a citizen movement committed to nonviolence, because change in society can only happen with unity, planning and discipline. We believe every single Bolivian should be able to participate in the process to bring this change because it is YOUR change and YOUR country. Nonviolence allows for this inclusion and effectiveness to happen.

INTRODUCTION

This submission was prepared by the Human Rights Foundation (HRF) and Ríos de Pie for the Universal Periodic Review (UPR) of Bolivia. In this submission, HRF evaluates Bolivia's

implementation of recommendations made in the previous UPR as it relates to the current state of human rights in the country, which are mainly related to a systemic attack of Bolivia's democratic institutions and restriction of individual liberties through: attacks to freedom of expression and freedom of the press, political persecution, and violations of constitutional order.

FOLLOW UP TO THE PREVIOUS REVIEW

At its 38th meeting, the Human Rights Council, on March 18, 2015, considered and adopted the outcome of the review of the Plurinational State of Bolivia. Bolivia supported 178 recommendations made during the October 2014 UPR working group session and noted that 132 recommendations are already implemented or in process of implementation; while not supporting 15 recommendations, arguing they were not updated and did not reflect the national reality.ⁱ

Despite the fact that Bolivia accepted a large number of recommendations, among the 15 recommendations that the government rejected were the violations of the right to freedom of expression and the lack of judicial independence and guarantees for the protection of human rights defenders.ⁱⁱ Some members lamented that these recommendations were not accepted considering, for example, the profound crisis in the administration of justice in Bolivia.ⁱⁱⁱ In response, Bolivia said that it's working on implementing recommendations and presented information on its alleged progress in this regard.^{iv} Also, Bolivia announced its plans to hold a national meeting with key actor within the justice system, and the implementation of the 2015-2020 Human Rights Action Plan, which includes all recommendations received from treaty bodies of international instruments ratified by Bolivia, as well as the recommendations from the Universal Periodic Review. In this regard, Bolivia was encouraged to submit a voluntary mid-term report.^v

Despite having rejected the recommendation to protect human rights defenders and journalists,^{vi} Bolivia reiterated that it was fully committed with human rights, as recognized in the constitution and in the international human rights conventions to which it is a party to,^{vii} stating that no journalist were persecuted, in prison or being prosecuted.^{viii} However, there is an overall hostile environment towards human rights defenders and journalists, embodied in the declaration made in August 2015 by the Vice-President when he discredited the work of local organizations for criticizing the government, and threatened international NGOs based in the country with expulsion should they get involved in what the authorities consider domestic politics.^{ix} The expulsion or dissolution of organizations is possible under the Law N° 351, which governs the operation of civil society organizations and ultimately interferes with the capacity of human rights defenders to work independently.^x

Bolivia stated that it would work to improve the promotion and protection of human rights by fostering dialogue between the government and the civil society.^{xi} Civil society organizations,

particularly LGBTQ rights organizations, welcomed Bolivia's support of most recommendations regarding non-discrimination. Yet, regretted its rejection to recommendations to derogate legislation limiting the rights of persons on the grounds of sexual identity.^{xii}

Bolivia stated that the re-election of the President, in October 2014, would allow for the consolidation of the democratic and cultural revolution aiming to achieve the concept of "Living well" for all the people. However, relevant stakeholders are still concerned that Bolivia may not be fully committed or doing enough to address the systemic issues within its judiciary, the lack of institutional independence in general, and the silencing of critical voices.^{xiii}

BOLIVIA'S NATIONAL FRAMEWORK FOR PROTECTING HUMAN RIGHTS

Civil and political rights in general are safeguarded in the constitution and pertinent laws in Bolivia. The laws contain a sufficient framework for protecting the rights of citizens; however, the Bolivian government often employs them capriciously to tackle dissent.

In its 2018 report, Freedom House categorizes Bolivia as "partly free," and gives it low ratings on freedom, political rights, and civil liberties. Similarly, HRF has categorized Bolivia a competitive authoritarian regime because there are some democratic institutions in place, elections are still a primary route to power, and some independent media operates from within the country. However, there are worrying signs that Bolivia could soon transition from a hybrid regime to a fully authoritarian country.

Today, the incumbent significantly disadvantages the opposition as the rules of political competition are tilted in a way that favors President Evo Morales' political party. There are few limitations on the power of the executive body, as President Morales' powers also extend to other government bodies. Despite the celebration of a referendum in 2016 in which a majority of Bolivians voted against an amendment to the constitution allowing President Morales' third illegal bid for office, the president will be allowed to participate on the upcoming elections later this year. The electoral, legislative, and judicial bodies sanctioned this decision.

The 2009 constitution incorporated provisions to further the protection of indigenous rights and the conservation of the environment. In the following years, Bolivia also enacted laws to tackle discrimination. However, the indigenous communities, whose role was key in the election of President Evo Morales to office, remain one of the most vulnerable segments of the Bolivian civil society.

Corruption levels in Bolivia reached an all-time high in 2018. According to Transparency International, Bolivia ranks in 132 (out of 180, from least corrupt to more corrupt) in the

Corruption Perceptions Index. Despite allegedly adopting a ‘zero tolerance’ posture and implementing anti-corruption laws in 2010,^{xiv} the country has still yet to overcome the generalized normalization of corruption. Bolivian institutions continue to be undermined by a system that fosters opportunities and incentives for corruption, mostly due to lack of capacity and resources, low salaries, lack of training, and burdensome bureaucracy.

FREEDOM OF EXPRESSION AND FREEDOM OF THE PRESS

There is an overall hostile environment for dissident voices, which are often discredited and accused of engaging in international conspiracies to undermine the government.^{xv}

Non-governmental organizations, human rights defenders, journalists, indigenous leaders, people with disabilities and even incumbents critical of the government face intimidation from the regime or groups affiliated to regime. Media outlets that are not aligned with the government often face attacks, and authorities, including the president and vice-president, have gone as far as threatening them with closure, along with singling out and discrediting journalists.^{xvi} Last year, the Bolivian national journalists association acknowledged that self-censorship has become a pervasive problem.

In 2016, the deputy minister of Decolonization publicly threatened to close the privately owned news outlet Activa TV, after a renowned political commentator and journalist further linked President Evo Morales to a former romantic partner, Gabriela Zapata, who according to the journalist’s investigation, had benefited from political influence to land a position in one of the major state contractors, the Chinese company CAMC Engineering.^{xvii}

High-ranking officials, including Vice President Alvaro García Linera, publicly threaten NGOs with expulsion for publicly criticizing government policies. Noteworthy cases include arbitrary policies that seek to allow hydrocarbon activities in national parks.^{xviii} In 2013, President Morales enacted a presidential decree that expanded its administration’s overall ability to obstruct the work of non-compliant NGOs and foundations.^{xix}

Peaceful protests criticizing the government are met with violent repression. In 2016, protesters clashed with police forces during a demonstration by people with disabilities,^{xx} resulting in multiple injured, and rising claims of use of excessive force by the police.^{xxi}

In November 2018, police apprehended construction worker Rafael Chambi for shouting “Bolivia dijo no” at President Morales in reference to the 2016 referendum results in which Bolivians rejected his third illegal bid for office. Prosecutors accused Chambi of allegedly

attacking the president with a bottle of water. Prosecutors were unable to prove the case; still, Chambi was placed on house arrest.^{xxii}

In 2019, authorities arbitrarily detained 14 Venezuelan refugees after they organized a peaceful demonstration in front of the Cuban Embassy in Bolivia to denounce human rights violations in Venezuela. They were accused of “conspiracy” and “engaging in political activities in exchange for money.” Six of them were deported on the same day.^{xxiii} According to Amnesty International: “the refugees were never taken before a judicial authority, did not have access to a lawyer and were interrogated without a present lawyer representing them and, in consequence, were not allowed to prepare their defense. Officers also did not give them the chance to challenge their deportation.”

POLITICAL PERSECUTION

Members of the opposition, dissidents, and even incumbents constantly face threats from government officials and individuals and organizations affiliated to the government.

In 2015, Enrique Calderon, a sergeant in the air forces,^{xxiv} and police department’s sergeant Javier Quispe^{xxv} were discharged after criticizing the government and asking for better working conditions.

In 2016, former Ombudsman Rolando Villena denounced political persecution after the government launched a campaign to discredit him for denouncing violations to the right of freedom of expression and the non-governmental organizations’ inability to work freely in the country.

In 2018, Mayor Soledad Chapetón was accused of corruption for allegedly being involved in a case of privatization of public land that took place 27 years ago, when Chapetón was barely a teenager. She denounced the case as a political attempt to remove her from office, and that she’d seek precautionary measures with the IACHR.^{xxvi} It is important to highlight that Chapetón has faced facing political harassment since she became mayor of El Alto in 2015, a city that has historically been under the political control of President Morales’ party. Government officials manifested that they wouldn’t work alongside Chapetón due to her affiliation to “Unidad Nacional,” one of the main opposition parties.^{xxvii} In 2016, Chapetón was accused of being responsible of the violent assault at El Alto’s Town Hall in 2016 by an incumbent senator^{xxviii} despite the fact that the protests^{xxix} were carried on by organizations affiliated to the government.

It has been reported that as of May 2018, 10 opposition leaders and politicians are facing 161 criminal charges against them, compiled over the 12 years of Morales’ government.^{xxx}

VIOLATION OF CONSTITUTIONAL ORDER

In February 2016, the majority of Bolivians voted against a referendum,^{xxxii} called by President Morales himself, to amend Article 168,^{xxxiii} that prohibits the President and the Vice-president to run for office for two consecutive times. Despite this, on November 29, 2017, the Plurinational Constitutional Tribunal magistrates authorized President Morales's third bid for office. It is important to have into account that Morales has been in power since 2006, and has already been re-elected two times consecutively; thanks to a Constitutional reinterpretation authorized by the Tribunal.^{xxxiii}

ADMINISTRATION OF JUSTICE

Steps towards justice reform are being taken as it continues to be one of the most pressing issues; however, it continues to be one of the most unreliable and underperforming systems in the region.^{xxxiv} Despite the attempts, corruption, delays, and political interference are still common.

In 2016, a "National Justice Summit" recommended, among other things, the reform of the selection process for high court judges, the creation of a new body to supervise judges, and the assessment of the work of current judges and prosecutors.^{xxxv} In spite of the creation of a commission to implement these recommendations, five of the commission's nine members are either supporters of Morales in the Plurinational Assembly or government officials directly appointed by him,^{xxxvi} which still raises concerns regarding its capacity to act independently.

The lack of proper funding, training, and police presence, mostly in rural areas, also affects the State's capacity to exert its faculties. In August 2016, Rodolfo Illanes, deputy interior minister was beaten to death by mineworkers after being taken hostage during clashes between striking mine workers and police forces sent to clear their roadblock.^{xxxvii} Also, in May 2017, a mob lynched an alleged killer while a judge was questioning him;^{xxxviii} and yet again in November 2018, another lynching occurred in the same locality^{xxxix} elucidating on how this practice is often regarded as a real mean to bring about justice.

Bolivia remains as one of the countries in the region with the highest rates of unconvicted prisoners. The OHCHR expressed its concerns on its 2015 annual report, concerning the high rates of unconvicted prisoners and the criminal justice's constant dilatory practice.^{xl} The same report, exhorted Bolivian authorities to conclude the case of what today is known as the "Porvenir Massacre",^{xli} which in 2017 was finally closed, after 8 years; sentencing Leopoldo

Fernández to prison.^{xiii} However, as of 2018, the people responsible for the brutal “repression of Chaparina” haven’t yet been convicted.^{xiii}

RECOMMENDATIONS

HRF and Ríos de Pie call on the Bolivian government to:

1. Conduct thorough investigations and hold people responsible of lynching accountable, while taking the precautionary measures needed to prevent them and provide guaranties to ensure proper investigation, prosecution, and reparation to the victims.
2. Hasten the efforts to reform the judicial system, addressing specially the crisis of pretrial detention and trial delays that continue to contribute to overcrowding and poor conditions in prisons.
3. Redouble efforts to eliminate corruption and political influence in the justice system, ensuring clear and effective institutional independence and due process, in accordance to the constitution and international law.
4. Condemn all forms of persecution, discredit and defamation against journalists and critical thinkers; and lift any financial or administrative restriction on the exercise of free speech, access to information and association.
5. Ensure effective and free political participation without discrimination of party or ideology. Strongly condemn all forms of harassment to opposition leaders and critical voices, guaranteeing the free exercise of their basic freedoms.
6. Review Law N° 351 and Supreme Decree N°1597, guaranteeing NGOs and non-for profit organization’s ability to work independently and carry out their work.
7. Guarantee the people’s human right to peaceful protest; and conduct thorough investigations to hold those responsible for excessive use of force by the police.
8. Honor the constitutional principle of alternation in power, respect democratic values and institutions, and regard the popular will by complying with the results of the February 21 referendum.

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- ⁱ Human Rights Council, *Report of the Human Rights Council on its Twenty-Eighth Session, A/HRC/28/2, July 8, 2015, para 493.*
- ⁱⁱ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Bolivia, A/HRC/28/7, December 17, recommendations 115.2 (Croatia), 115.11-115.15 (Slovakia, Hungary, Israel, Czech Republic, United States of America).*
- ⁱⁱⁱ Human Rights Council, *Report of the Human Rights Council on its Twenty-Eighth Session, A/HRC/28/2, July 8, 2015, para 520.*
- ^{iv} Human Rights Council, *Report of the Human Rights Council on its Twenty-Eighth Session, A/HRC/28/2, July 8, 2015, para 494-495*
- ^v Human Rights Council, *Report of the Human Rights Council on its Twenty-Eighth Session, A/HRC/28/2, July 8, 2015, para 520.*
- ^{vi} Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Bolivia, A/HRC/28/7, December 17, recommendations 115.14 (Czech Republic).*
- ^{vii} Human Rights Council, *Report of the Human Rights Council on its Twenty-Eighth Session, A/HRC/28/2, July 8, 2015, para 506.*
- ^{viii} Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Bolivia, A/HRC/28/7, December 17, para 111.*
- ^{ix} Amnesty International *Annual Report 2015-2016*, page 89.
- ^x Human Rights Council, *Report of the Human Rights Council on its Twenty-Eighth Session, A/HRC/28/2, July 8, 2015, para 530.*
- ^{xi} Human Rights Council, *Report of the Human Rights Council on its Twenty-Eighth Session, A/HRC/28/2, July 8, 2015, para 538.*
- ^{xii} Human Rights Council, *Report of the Human Rights Council on its Twenty-Eighth Session, A/HRC/28/2, July 8, 2015, para 526.*
- ^{xiii} Human Rights Council, *Report of the Human Rights Council on its Twenty-Eighth Session, A/HRC/28/2, July 8, 2015, para 527-528, 530-531, 534*
- ^{xiv} Law N°004 “Marcelo Quiroga Santa Cruz”
- ^{xv} Amnesty International *Annual Report 2015-2016*, page 31
- ^{xvi} El Diario, Newspaper of Bolivia available at http://www.eldiario.net/noticias/2016/2016_03/nt160303/politica.php?n=34&-quintana-amenaza-con-cierre-de-medios-de-comunicacion
- ^{xvii} Bolivian Observatory of Human Rights *Annual Report 2016*, page 145
- ^{xviii} El Pais, Newspaper of Spain available at https://elpais.com/internacional/2015/08/18/actualidad/1439856355_636776.html
- ^{xix} Human Rights Watch *Report 2016*, page 121
- ^{xx} Human Rights Watch *Report 2017*, page 129
- ^{xxi} UN Committee on the Rights of Persons with Disabilities *Report*, art.17, subsection 45
- ^{xxii} Pagina Siete, Newspaper of Bolivia available at <https://www.paginasiete.bo/opinion/editorial/2018/11/16/el-abuso-contra-rafael-chambi-200274.html>
- ^{xxiii} Amnesty International release, AMR 18/0121/2019 Bolivia. See <https://www.amnesty.org/download/Documents/AMR1801212019ENGLISH.pdf>
- ^{xxiv} Bolivian Observatory of Human Rights *Annual Report 2015*, page 18
- ^{xxv} Bolivian Observatory of Human Rights *Annual Report 2015*, page 87
- ^{xxvi} Bolivian Observatory of Human Rights *Annual Report 2015*, page 102
- ^{xxvii} Bolivian Observatory of Human Rights *Annual Report 2015*, page 126
- ^{xxviii} Movimiento Al Socialismo is Evo Morales’ political party
- ^{xxix} Página Siete, Newspaper of Bolivia available at <https://www.paginasiete.bo/nacional/2016/3/16/pedro-montes-llama-chapeton-esa-carajito-responsabiliza-muertes-alto-90066.html>
- ^{xxx} Bolivian Observatory of Human Rights *Annual Report 2018*, page 74
- ^{xxxi} Plurinational Electoral Organ, official 2016 Constitutional Referendum results: 51.3% NO, 48.7% YES. <https://www.oep.org.bo/procesos-electorales-y-consultas/referendos/referendo-constitucional-2016/>
- ^{xxxii} Article 168 of the Constitution provides that “The President’s and Vice President’s term in office is five years, and they may be reelected for one consecutive term only.”
- ^{xxxiii} Excerpt from the Plurinational Constitutional Declaration 003/2013 of February 25, 2013, published on February 29 of the same year: “The new order is different from the previous one. The new order represents a new political and legal era based on the re-founding of the State. Therefore [the Tribunal] concludes that it is absolutely reasonable and in accordance with the Constitution to compute the terms for the exercise of the Presidency and Vice Presidency of the Plurinational State of Bolivia from the moment in which the Constituent Assembly re-founded the State. Thereby creating a new legal and political order.”

^{xxxiv} World Justice Project Rule of Law *Index 2019*, page 48

^{xxxv} Human Rights Watch *Report 2017*, page 128

^{xxxvi} Human Rights Watch *Report 2018*, page 78

^{xxxvii} El Deber, Newspaper of Bolivia available at

<https://www.eldeber.com.bo/bolivia/A-un-ano-de-la-muerte-del-vice-ministro-Illanes-20170825-0009.html>

^{xxxviii} Human Rights Watch *Report 2018*, page 77

^{xxxix} El Deber, Newspaper of Bolivia available at

<https://www.eldeber.com.bo/bolivia/No-era-un-bandido-quien-era-el-brasilenolinchado-en-San-Julian-segun-su-familia-20181121-9382.html>

^{xi} Annual report of the OHCHR on the situation of human rights in Bolivia (A/HRC/28/3/Add.2), page 13

^{xii} Annual report of the OHCHR on the situation of human rights in Bolivia (A/HRC/28/3/Add.2), page 14

^{xiii} La Razón, Newspaper of Bolivia available at

http://www.la-razon.com/nacional/Leopoldo-Fernandez-condenado-carcel-Porvenir_0_2670333001.html

^{xiiii} Human Rights Watch *Report 2017*, page 127