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Human Rights Committee

Concluding observations on the third periodic report of the Plurinational State of Bolivia

Addendum

Information received from the Plurinational State of Bolivia on the follow-up to the concluding observations*

[Date received: 13 February 2015]

Follow-up to paragraph 12 of the concluding observations

1. As the administrative body of the country's Armed Forces, the Ministry of Defence is guided in its work by the Constitution and domestic and international regulations ratified by the State with a view to eradicating human rights violations and social injustice while advancing the equal opportunities policies of the Plurinational State of Bolivia.¹
2. The Directorate-General for Human Rights and Interculturality in the Armed Forces was established under Supreme Decree No. 29894 of 7 February 2009 as part of the organizational structure of the Ministry of Defence with responsibility in particular for:
 - Promoting and coordinating measures in support of human rights, international humanitarian law, social inclusion, gender equity, equal opportunities, transparency and interculturality in the Armed Forces and the Armed Forces' observance of the principles and values of the Plurinational State of Bolivia;
 - Formulating and proposing policies and international agreements to promote a culture of peace and the right to peace.
3. The Directorate-General for Human Rights and Interculturality in the Armed Forces, attached to the Office of the Minister of Defence, is developing prevention, awareness-raising and discussion programmes around these issues for all military and civilian personnel of the Ministry.

* The present document is being issued without formal editing.

¹ See Ministry of Defence note MD-SD-DG.DD.HH.E INT.FF.AA. No. 0096/2015.



4. With regard to the concerns expressed, Ministerial Resolution No. 0316 issued by the Ministry of Defence on 19 May 2009 provides as follows:

Article 1: The Armed Forces High Command is authorized to provide, upon request, access to archives, public records and current documents of the Armed Forces to victims of regimes under military dictatorship and their relatives who can prove their legitimate interest.

Article 2: Requesting parties who consider that they have a legitimate interest in information contained in the Armed Forces' archives should appear in person before the Armed Forces High Command, be duly identified and produce documentation attesting to their legitimate interest.

II. Applications may be submitted verbally or in writing, without legal assistance being required.

III. Once the identity and legitimate interest of the requesting party have been established, the Armed Forces High Command shall authorize him or her to enter the place where the Armed Forces' military archives are held, accompanied by a representative of the Human Rights Assembly of Bolivia (APDHB), a representative of the Ministry of Justice and a Notary Public.

5. As part of the National Mental Health Plan 2009–2015, the Ministry of Health and Sports carried out a community mental health project which began with the training of community mental health workers. Between April and October 2010, 10 community mental health workers in the Nicolás Suárez, Manuripi and Madre de Dios provinces received training in respect of mental health, trauma, psychology, physical injury, substance addiction, violence, confidentiality and listening skills and in cross-cutting gender and domestic violence issues.² Community psychological and social support was provided to persons affected by the violent events of September 2008 in the Pando department.

6. In 2011, the project was repeated for communities in the Federico Román and Abuna provinces not included in the first phase. This second phase of the project, carried out between May and October 2011, was directed towards health-care personnel in those communities and also entailed the monitoring of the community workers trained in 2010.

7. Steps were then taken to transfer the project to the departmental health services in Pando in order to ensure its sustainability and carry forward the work of the community workers in coordination with health-care professionals, particularly specialists and mobile teams in all the provinces of the department, within the framework of community family health policy.

8. Since the second half of 2012, community mental health-care workers have been receiving the same training in the Alto Parapetí region in the Santa Cruz department in view of the acts of racial violence that it has witnessed.

9. A training handbook for mental health workers is being developed and will set a standard nationwide for working with communities that have experienced racial violence throughout the country.

The Truth Commission bill

10. In respect of the active investigation of human rights violations during the period of de facto governments between 1964 and 1982, the Government has prepared a bill on the establishment of a Truth Commission against the following background:

² See Ministry of Health and Sports report MSD/VSP/DGPS/UPS/II/21.

Background

11. In August 2012, the Ministry of Justice convened a meeting of the Inter-Agency Council of Inquiry on Enforced Disappearances at which the Association of Relatives of Detainees, Disappeared Persons and Martyrs for National Liberation in Bolivia introduced the draft Truth Commission bill. In accordance with the conclusions of that meeting, the Vice-Ministry of Justice and Fundamental Rights submitted the proposed draft Truth Commission bill to State agencies and human rights organizations for their comments and recommendations.

12. In 2012 and 2013, meetings were held under the auspices of the Ministry of Justice to review the draft bill, with the participation of representatives of State agencies and human rights organizations. After making adjustments to the draft bill, the Ministry of Justice referred it to the Ministry of the Office of the President in July 2013 for analysis and processing by the Social and Economic Policy Analysis Unit attached to that Ministry pursuant to article 135 of Supreme Decree No. 29894 on the organizational structure of the executive branch of government.

13. Inter-agency coordination meetings were called by the Social and Economic Policy Analysis Unit to review and fine-tune the bill, taking into account the suggestions of the various State agencies.

14. Subsequently, in November 2013, the legal office met to discuss the technical aspects of the draft bill. Once the final, revised version was approved, it was referred to the Plurinational Legislative Assembly for processing and promulgation as a law. Having been approved by the Senate, where it originated, it is currently under review in the Chamber of Deputies.

Purpose of the bill

15. The purpose of the bill is to establish a Truth Commission tasked with the inter-agency coordination of efforts to identify those responsible for human rights violations and shed light on enforced disappearances that occurred between 4 November 1964 and 10 October 1982.

Structure of the Truth Commission in accordance with the bill

16. The Truth Commission will be composed of the following, each with the right to speak and the right to vote:

- (a) A representative of the Association of Relatives of Detainees, Disappeared Persons and Martyrs for National Liberation, in accordance with its rules of procedure;
- (b) Two representatives of human rights organizations concerned specifically with human rights protection in periods of dictatorship;
- (c) A representative of the Ministry of Justice;
- (d) A representative of the Ministry of Defence;
- (e) A representative of the Ministry of the Interior;
- (f) A representative of the Ministry of Foreign Affairs.

Functions of the Truth Commission in accordance with the bill

17. The Truth Commission will be especially concerned with cases of human rights violations between 1964 and 1982 that have not been elucidated, to which end it may with due cause request and obtain information from public and private entities for purposes of investigation and, upon being specifically authorized to that effect, be admitted into

detention facilities or other public and private buildings for the same purposes. It will receive complaints, material and evidence and forward them as appropriate to the Public Prosecution Service; it will gather documentary and oral evidence and report to the Public Prosecution Service any attempt to conceal, remove or destroy information relating to the facts under investigation.

Standards of proof in relation to actions for which reparation is sought, the mechanism for appeal and review of applications

18. The methodology and main standards of proof used to determine entitlement to reparation were approved under Supreme Decree No. 29214 of 2 August 2007 which regulates Act No. 2640 on the procedure for seeking redress, subject to fulfilment of the requirements for acts to give rise to entitlement to reparation.³

19. Article 18 of Act No. 2640 of 11 March 2004 likewise stipulates that applications must be submitted to the National Commission on Reparation for Victims of Political Violence, with supporting documentation attesting to the acts and to the circumstances, times and places of their commission in order to receive special compensation, in accordance with the regulations.

20. Article 4.IV of Supreme Decree No. 28015 of 22 February 2005 regulating Act No. 2640 on Exceptional Reparation for Victims of Political Violence during Periods of Unconstitutional Government expressly states that the burden of proof shall be borne by the potential beneficiary.

21. Following the evaluation process, 1,714 persons were found to be duly entitled to redress, under the terms of Supreme Decree No. 1211 of 1 May 2012.

22. The evaluation process was thus fully in line with the Act and its regulating decrees, on the basis of which evaluations are presumed to be legitimate; standards cannot be used that are different from the legal provisions applicable at the time of processing the applications and reaching decisions. The evaluation process came to an end in 2011; moreover, it was explicitly established in articles 19 and 20 of Act No. 2640 that the process would include only one body charged with evaluation and review, without the possibility of an appeal to any other body.

23. Article 16, subparagraph (a) of Act No. 2640 of 11 March 2004 lays down that the National Treasury shall allot a special appropriation of US\$ 3.6 million as a 20 per cent contribution to the amount of authorized reparations, while subparagraph (b) of that article states that the executive branch shall remain responsible for mobilizing donations from private or foreign sources and international organizations up to 80 per cent of the total amount. In 2006, the Ministry of Justice sought international cooperation from various international sources of financing and requested the Vice-Ministry for Public Investment and External Financing of the Ministry of Planning to participate in the cooperation project, all without success.

24. Subsequently, in 2012, in accordance with the provisions of article 46 (l) and article 48 (j) of Supreme Decree No. 29894 of 7 February 2009 on the organizational structure of the executive branch of government, the Ministry of Justice requested the Ministry of Development Planning to seek a government appropriation for the amount of required reparation. That Ministry engaged in negotiations to obtain 80 per cent of the funds, it being understood that, under Act No. 2640, the executive branch's authority extends only to the procurement of economic resources.

³ See report MJ-DGAJ-UGJ No. 01/2015 of the Directorate-General of Legal Affairs, Ministry of Justice.

Follow-up to paragraph 13 of the concluding observations

Service for the Prevention of Torture

25. By Act No. 1939 of 10 February 1999, Bolivia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which states that each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

26. By Act No. 3298 of 12 December 2005, Bolivia also ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which defines the deprivation of liberty as any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority, which obliges the State to maintain, designate or establish one or several independent national preventive mechanisms for the prevention of torture.

27. Pursuant thereto and in compliance with the international commitments of Bolivia, the Service for the Prevention of Torture was established by Act No. 474 of 30 December 2013 as a decentralized public body under the aegis of the Ministry of Justice with a general mandate which includes the following functions:

- As a key preventive measure, providing training on human rights issues and principles to police officers, members of the judiciary and public prosecutors working with persons deprived of their liberty;
- Making unscheduled visits to: custodial facilities; prisons; special detention facilities; establishments for juveniles facing charges; military prisons; military and police training centres and military barracks; reception centres; State-run shelters for children, adolescents and adults; and other public and private custodial facilities in order to periodically assess the treatment of persons deprived of their liberty in such facilities and reporting thereon to their superior authorities (detention facility monitoring programmes);
- Making recommendations to the competent authorities on ways to improve the treatment and conditions of detention for persons deprived of their liberty and prevent torture and other cruel, inhuman or degrading treatment or punishment, with due regard for applicable United Nations standards;
- Informing all interested parties, in their own language, about the Service and about their rights and supporting constitutional guarantees;
- Acting ex officio as a plaintiff in respect of complaints relating to torture and other cruel, inhuman or degrading treatment or punishment;
- Following up on investigations and procedures relating to torture and other cruel, inhuman or degrading treatment or punishment.

28. The functions and responsibilities of the Service for the Prevention of Torture are governed by Supreme Decree No. 2082 approved and promulgated on 20 August 2014. At the time of issuing the present report, the Service is undergoing institutional consolidation; structuring of the Service is included as a programmatic action in the Ministry of Justice's annual work plan for 2015. Moreover, the additional provision in the final section of the decree stipulates that the Ministry of Justice shall also have responsibility for promoting action to prevent torture and other cruel, inhuman or degrading treatment or punishment. This provision has been implemented and complied with since the promulgation of the Act and its regulating decree so as to guard against gaps in the prevention and punishment of cases of torture.

Military jurisdiction

29. As regards military jurisdiction,⁴ article 245 of the Constitution states that “the organization of the Armed Forces is based on hierarchy and discipline. Their essential mission is to obey; they do not have a deliberative function; they are subject to military laws and regulations”. Article 180. III of the Constitution stipulates that “the military courts shall try military offences regulated by law”.

30. Within these legal parameters, military justice is expressed through its own laws — the Military Criminal Code, the Code of Military Criminal Procedure and the Organization of Military Justice Act — approved under Decree-Law No. 13321. These remain in force and are currently regulated by Act No. 1474 of 1 April 1993, designed to bring them into line with the current Constitution and with recently enacted domestic legislation referring to respect for life and international treaties and agreements. It is therefore clear that international human rights protection is treaty-based, contributes to or supplements the protections already provided under domestic law and is predicated on what are considered to be the attributes of every human being.

31. In accordance with the provisions of the Code of Military Criminal Procedure, military proceedings are instituted by order of the authorities expressly referred to in article 21 of the Organization of Military Justice Act. Upon a report or complaint from any person, whether civilian or military, who has discovered or knows of the commission of an offence, a complaint is to be filed verbally or in writing within a maximum of 24 hours. Crimes not covered by military law that violate human rights are dealt with by the ethics tribunals (“*tribunales de honor*”) of each branch of the Armed Forces and referred to the ordinary courts.

32. However, as a preventive measure for the defence sector, the Ministry of Defence issued Ministerial Resolution No. 261 of 5 April 2011, stipulating *inter alia* that:

Article 1: Proper treatment and a quality of life in keeping with the basic needs of every human being shall be ensured with regard to food, appropriate clothing, equipment, personal items, assistance, access to medical services and medicines, decently maintained infrastructure and basic services, in military institutes and barracks for cadets, students, soldiers, marines, pre-military and civilian personnel.

Article 2: It is prohibited for military personnel to use cruel, humiliating, inhuman or degrading treatment that may harm the physical or psychological integrity of any member of the professional staff, cadets, students, soldiers, marines, pre-military and civilian personnel.

Article 3: It is prohibited to subject soldiers and marines to forced labour or hazardous work.

Article 4: It is prohibited to engage in extreme exercises or practices that may harm the physical or psychological safety or put at risk the lives of any member of the professional staff, cadets, students, soldiers, marines and pre-military personnel.

Article 5: It is prohibited to subject any soldier or marine to any form of servitude or other activity to benefit members of the Armed Forces, private individuals or private businesses.

33. Together with the Ministry of Justice, the Ministry of Defence, through the Directorate-General for Human Rights and Interculturality in the Armed Forces, formed part of the drafting committees of the Social and Economic Policy Analysis Unit tasked with designing the Service for the Prevention of Torture mechanism, established by Act No.

⁴ See Ministry of Defence note MD-SD-DG.DD.HH.E INT.FF.AA. No. 0096/2015

474 of 30 December 2011 and its regulating Supreme Decree, under which the operating rules of the Service were approved.

Follow-up to paragraph 14 of the concluding observations

Legal proceedings

34. **Porvenir, Pando case:**⁵ The action brought by the Public Prosecution Service against Leopoldo Fernández Ferreira and others on charges of murder and terrorism and other offences is at the oral proceedings stage at Penal Court No. 6 of La Paz, where documentary evidence for the defence is currently being considered. Leopoldo Fernández Ferreira and Roberto Rea Ruiz are under house arrest, while Juan Marcelo Mejido Flores, Hernán Justiniano Negete and Evin Ventura Voght are being held in pretrial detention.

35. **Sucre case (24 May 2008):**⁶ The case is currently with the Padilla trial court and is at the oral proceedings stage. Numerous abatement and statute of limitations motions raised by the accused have been rejected. The Public Prosecutor is currently calling witnesses and will then proceed to present expert and other evidence for the prosecution.

36. The Public Prosecution Service is urging compliance with deadlines and ensuring that correct procedures are followed.

Conclusion

37. As required, the Bolivian State has made consistent and positive progress on recommendations 12, 13 and 14 of the concluding observations issued by the Human Rights Committee in respect of the State party report defended by the Bolivian State in October 2013. This progress has been demonstrated through the concrete actions taken during 2014.

⁵ See report of Prosecutor Maria Lilian Villalta Maldonado of the Departmental Prosecutor's Office of La Paz and note ARI/TSJ No. 053 and report ARI/TSJ/017 of the Supreme Court of Justice.

⁶ See report of Dr. Jorge Lisandro Álvarez Arismendi and Dr. Constanino Coca Secas, Senior Prosecutors; and note FGE/RJGP/DGFSW No. 008/2014 of the Prosecutor-General's Office.