

# THE OBSERVATORY

for the Protection of Human Rights Defenders

**L'OBSERVATOIRE**

pour la Protection des Défenseurs  
des Droits de l'Homme

**EL OBSERVATORIO**

para la Protección de los Defensores de Derechos  
Humanos

## *Report*

### International Fact-Finding Mission

**BOLIVIA: Human Rights Defenders Between Intimidation and Hope**

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## INTRODUCTION

The World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, sent twice an international mission to Bolivia in order to evaluate the situation of human rights defenders along the United Nations General Assembly resolution 53/144 of December 9, 1998<sup>1</sup>.

In accordance with the mandate of the Observatory, Mr. Alberto León Gómez Zuluaga (Colombia), lawyer and member of the OMCT Assembly of Delegates, visited the Republic of Bolivia from September 19 to 27, 2004. From September 19 to 21, he stayed in the city of Santa Cruz, on September 22 and 23 in the city of Cochabamba and from September 24 to 27, in La Paz.

The second part of the mission was held from July 30 to August 7, 2005, by Mr. José Rebelo, FIDH Vice-President, and Mr. Luis Guillermo Pérez Casas, FIDH General Secretary, who visited La Paz, Sucre and Santa Cruz.

During the first visit, the following people were interviewed:

### - Santa Cruz de la Sierra:

- 1 Centre for Legal Studies and Social Research (*Centro de Estudios Jurídicos e Investigación Social* - CEJIS)  
Doctors Pilar Valencia, Carlos Romero, Leonardo Tamburini and Javier Aramayo
- 2 Landless Workers' Movement (*Movimiento Sin Tierra* - MST)  
Messrs. Silverio Saisarí and Carlos Eulogio Cortez, members of its national and regional board of directors
- 3 Social Pastoral of the Catholic Church (*Pastoral Social de la Iglesia Católica* - PASOC)  
Presbyter Mauricio Bacardit
- 4 Coordination of Indigenous Peoples in Santa Cruz (*Coordinadora de Pueblos Étnicos de Santa Cruz* - CPESC)  
Mr. Manuel Dosapey
- 5 Centre for the Research and Promotion of Farmers (*Centro de Investigación y Promoción del Campesinato* - CIPCA)  
Dr. Eulogio Núñez, Anthropologist, Mrs. Mercedes Nosta, Messrs. Bienvenido Zaco and Alex Quiroga
- 6 Ombudsman, Office of Santa Cruz  
Dr. Sonia Soto, Ombudsman in Santa Cruz de la Sierra

### - Cochabamba:

- 1 Legal Office for Women (*Oficina Jurídica para la Mujer* - OJM)  
Dr. Julieta Montaña
- 2 Andean Centre for Communication and Development (*Centro de Comunicación y Desarrollo Andino* - CENDA)  
Dr. Pablo Regalzy

### - La Paz:

- 1 The Bolivian Chapter of the Inter-American Platform for Human Rights, Democracy and Development (*Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo* - PIDHDD)  
Dr. Fernando Rodríguez
- 2 Coordination of Women (*Coordinadora de la Mujer*)  
Dr. Diana Urioste
- 3 Ombudsman, National Office  
Dr. Leonor Arauco, Ombudsman, in the absence of the Titular Ombudsman, Dr. Waldo Albarracín

In addition to these, two extra interviews were held with Mr. Javier Gómez Aguilar, Executive Director of the Centre of Studies for Labour and Land Development (*Centro de Estudios para el Desarrollo Laboral y Agrario* - CEDLA), and with Mr. Milton Soto, standing Consultant of Diakonia Sweden.

During the second visit, with the support of the Permanent Assembly for Human Rights in Bolivia (*Asamblea Permanente de Derechos Humanos* - APDHB), the following official representatives were interviewed:

- the President of the Republic, Mr. Eduardo Rodríguez Veltzé,
- the Ombudsman, Mr. Waldo Albarracín Sánchez,
- the Minister for Justice and Human Rights, Mr. Reynaldo Imaña,
- the Investigator, Mr. Alvaro García Linera,
- the General Prosecutor, Mr. Pedro Gareca Perales,
- the President of the Supreme Court, Mr. Héctor Sandoval Parada,
- the Mayor of Santa Cruz, Mr. Percy Fernández,
- the District Prosecutor in Santa Cruz, Mr. Jaime Soliz,
- the Chief of Police of Santa Cruz, Colonel Federico Gonzales Barrios.

The mission would like to thank the Bolivian President and all the other official representatives who agreed to meet with us, as well as all the social and human rights organisations that gave us support and evidence, in particular the Permanent

<sup>1</sup> In its resolution 53/144, the United Nations General Assembly adopted the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*.

Assembly for Human Rights in Bolivia from La Paz, Sucre and Santa Cruz, and the CEJIS.

The mission noticed that, even if there is no legal opposition to the practice of human rights but respect of them, there are many omissions from the different State departments that make the work of human rights defenders more difficult. One of the major concerns for the mission was the impunity of the private actors who threaten, harass or take hostile actions against defenders.

The mission focused its analysis on the situation of defenders - including all men and women who fight for the civil, politic, social, economic and cultural rights of everyone as well as for collective rights, in particular those of the natives - from 2003 to 2005. Many cases of harassment, threats, actions of obstruction, criminality, etc. have been registered in prior reports<sup>2</sup>.

In addition to the interviews and the meetings held by the mission in Bolivia, this report is also based on the information sent by many human rights organisations, received after the visits.

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<sup>2</sup> See 2003, 2004 y 2005 Annual Reports of the Observatory and one made by Amnesty International, *Bolivia: The necessary protection of the Defenders of Human Rights*, December 2002, as well as reports sent by Bolivian human rights organisations.

## I. GENERAL BACKGROUND AND CONTEXT

### I.1. Politics and democracy

The Bolivian Republic is situated in central South America and, as stated by the current Constitution, is organised as a united Republic. After enduring a long succession of military dictatorships, Bolivia has been governed democratically since 1982.

The capital of Bolivia is Sucre, where the high levels of the judicial power have their headquarters. La Paz is the political capital ; the executive branch of the public power and the legislative branch are both based there (a two-chamber Congress).

In the last 23 years, Bolivian democracy has not been exempt from turbulence and instability and this has prevented the formation of truly democratic institutions. In October 2003, the elected President, Mr. Gonzalo Sánchez De Lozada, rejected the position after that military repression led to the killing of 60 people and caused 200 injuries during a prolonged period of social tension and popular revolt. The then constitutional vice-president, Mr. Carlos Diego Mesa Gisbert, assumed the role of President and governed until June 6, 2005, when popular movements campaigning for the nationalisation of the country's gas and petrol reserves forced his resignation.

This crisis of governability adds to the national identity crisis being played out in the east of the country, particularly in Santa Cruz, where the idea of independence is popular and where there exists a high level of racism against the natives in the High Andean plateau.

During the rule of President Mesa, a referendum was carried out on the subject of gas exportation and since then there have been calls for a new Constitutional Assembly, in order to change the current political Constitution. In direct opposition to the populist sectors, which are demanding the nationalisation of natural resources, social justice, land distribution and the upholding of indigenous peoples' rights, the provinces are calling for greater autonomy.

According to the 2001 census, approximately 62% of the population over 15 years old identify themselves as indigenous, mainly from the Quechua and Aymara tribes. Approximately 65% of the population (8.5 million people) live under the poverty line. Even though Bolivia is fundamentally an indigenous country, there have not been any indigenous cabinet members in recent governments, and only 25% of elected deputies are people of indigenous origin. Indigenous demonstrators were the main protagonists in the events that led to the resignations of Presidents Sánchez de Lozada and Carlos Mesa.

This social and political exclusion of the indigenous community is a determining factor in the democratic problems facing Bolivia.

The difficulty in finding a solution to these problems provoked a new political crisis in 2005 that caused the resignation of President Mesa. Under the Constitution, the President of the Senate was due to fulfil the role of President, but the rejection of the proposed move by popular social groups provoked the naming of the President of the Supreme Court of Justice as President of the Republic. This led to the formation of a transition government, presided over by Mr. Eduardo Rodríguez Veltzé, from June 9, 2005 until January 22, 2006.

President Rodríguez called presidential elections for December 4, 2005, but the political crisis forced their postponement. Thanks to a political agreement and the modification of the Constitution, the elections were finally able to be held and were expanded to include votes to elect the president, the vice president and the governors of nine provinces. At the same time, both legislative chambers were also re-elected.

The Bolivian crisis, characterised by problems of democracy, the threat of civil war, poor governability, profound social inequalities and racism, could begin to improve thanks to the election of Mr. Evo Morales, the leader of Movement Towards Socialism (*Movimiento Al Socialismo* - MAS), as President. Mr. Morales became the first candidate in Bolivian history to obtain more than 50% of the vote. In 2006, the Constitutional Assembly should help to overcome this crisis<sup>3</sup>.

On September 22, 2005, the Constitutional Tribunal urged Congress to change article 88 of the Electoral Code, which relates to the distribution and naming of electoral seats<sup>4</sup> on the basis of the population census of 2001. The elected politicians could not reach an agreement on the issue that forced President Eduardo Rodríguez Veltzé to announce Supreme Decree 28429 on November 1, which granted three more local councils for Santa Cruz, one more for Cochamba, while taking away two from La Paz, and one from Oruro and Potosí. The decision was not warmly received by the affected districts that saw the decree as a result of political pressure from the Civil Committee of Santa Cruz, which had threatened succession.

Since the 1952-53 Revolution, there has been continuous conflict between the military and the police that, among other things, led to an armed confrontation between the two groups in the middle of a civil march in Plaza Murillo in La Paz in February of 2003. This clash cost the lives of 13 policemen, four army staff and 33 civilians.

<sup>3</sup> See Supreme Decree N° 28627, calling for the Constitutional Assembly, in the Annex I, p.25.

<sup>4</sup> Ruling 0066/2005 urges the National Congress to approve a new ratio of parliamentary seats.

The armed forces have abstained from changing the Constitutional Order due to the political crisis and serious social disorder. However, they have failed to comply with Constitutional Tribunal rulings made after a judicial investigation into the events of February and October 2003.

On August 1, 2005, the mission interviewed President Rodríguez and mentioned this lack of compliance on the part of the Armed Forces and asked him, in his role as Head of State and Leader of the Armed Forces, to enforce the decisions of the court. However, the President, who had previously declared that the defeat of anarchy depended on the strict enforcement of the law, made scant regard to the observation and insisted that his mandate was orientated towards "suffocating and containing social and regional movements that are, in some cases, the products of irresponsible agreements and demands of which threaten the tense and delicate political climate in the country".

In December 2005, Mr. Evo Morales was elected as President. This was the first time in Bolivian history that an indigenous leader had been elected president and the election also recorded the largest ever voter turnout. When becoming President in January 2006, Mr. Morales was carrying great expectations, not only from his own people but also from the international community.

## **I.2. The economy and civil society**

Of the 8.5 million inhabitants in Bolivia, 62% are indigenous, which are split into 32 ethnicities. The majority of the indigenous population live in the so-called Andean Plateau. The current level of illiteracy in the country is 20%.

Traditionally, the Bolivian economy has been based on mining (generally mineral). In the last few years, there have been some industrial development, mainly in agriculture. Historically, the main provider of stable employment had been the State, but this changed with the start of the privatisation process in 1985. Since then, the rate of unemployment has risen significantly, which has led to a sustained increase in the informal job market. Poor access to education and other social, cultural and economic rights reveal not only profound social exclusion but also extended gender discrimination.

The mission interviewed an investigator, Mr. Alvaro García Linera, who was later elected Vice-president in the December elections. He demonstrated that a combination of failed egalitarian policies, centralisation, neo-liberal policies, social exclusion, injustice and traditional racism had provoked social action. This action called for the nationalisation of the Bolivia's natural resources and public services and also demanded that the Congress establish a new social and political model that would guarantee the country's

unity and multiculturalism along with an adequate redistribution of resources.

### ***The Agriculture Debate:***

In an interview with the Centre for Judicial Studies and Social Investigation (*Centro de Estudios Jurídicos e Investigación Social - CEJIS*), the mission was informed that Bolivia has 109 million hectares of land. If this quantity was divided between the number of inhabitants, each person would receive 13 hectares. However, the effects of the agricultural reforms started in 1953<sup>5</sup> have not only slowed down, they also have in some cases gone backwards.

In 1996, faced with the impossibility of auditing land titles, the National Institute for Land Reform (*Instituto Nacional de Reforma Agraria - INRA*)<sup>6</sup> law was passed with a mandate to clarify and restructure the country's land titles and prioritise indigenous access to land within 10 years.

Between 1953 and 1992, when public land reforms<sup>7</sup> were stopped, 59.2 million hectares were divided into 58.637 estates. In the eastern part of the country, there were 22.260 properties with an area of 35.3 million hectares, of which 62% were large properties.

The eastern part of the country is made up of 22.260 properties, a total of 35.3 million hectares. Of this amount, 23.3 million hectares, or 62%, are divided into 3.798 large plots. 114 million hectares are divided between 6.909 small landholders (plots of which are less than 50 hectares).

Despite the illegality of double endowment, almost 4,000 people benefited from it, an amount equal to 14.3 million hectares. The frequency of illegal land dealings in the country was highest in Santa Cruz, with 1.016 cases, Beni (694 cases) and La Paz (486 cases).

The irregularities and levels of corruption in the land distribution process created a dual land structure: large estates common in the east while small estates were the norm in the west. It is estimated that, out of a total of 16.4 million hectares of cultivable land, only 2 million hectares are used for farming (800.000 hectares in the Andean Plateau and 1.2 million hectares in the lowlands).

After 9 years of land restructuring and an investment of more than \$87m, the results are disappointing: of the 107 million hectares made available for reform, only 18.3 million hectares

<sup>5</sup> During the presidency of Mr. Víctor Paz Estenssoro, Law 3646 for Agricultural Reform was issued as one of the first victories of the National Revolution.

<sup>6</sup> Enacted on October 18, 1996.

<sup>7</sup> On November 24, 1992, the National Council for Land Reform and the National Institute for Colonisation were taken over by the State after it was discovered that a Minister had awarded himself 98.000 hectares in Chiquitania.

(17%) have been reallocated, 31.6 million hectares (29.4%) are in the process of being allocated and 57.2 million hectares (53.3%) have yet to begin the process.

56 demands for lowland community land were presented for an area comprising 22.1 million hectares, though titles were only given for 5.4 million hectares, 19% of the total. Not only has a low percentage of the land been distributed to communities, but there has also been irregular distribution of more than 800.000 hectares to timber companies. In the Andean Plateau, there was a total of 171 requests for 12 million hectares, of which only 434.000 hectares were distributed (3%).

According to CEJIS, the irregularities in the process are the following: political and corporate control of the agencies in charge of the land reform process, corruption, implementation of anti-land reform practices, lack of transparency, restrictions on social control, and the use of violence and paramilitary groups by large estate holders.

The failure of the land reform process has increased the levels of violent confrontation in land disputes in rural areas and consequently has deepened Bolivia's social problems. As a result of this, the Landless Workers' Movement (*Movimiento Sin Tierra* - MST) began a national process of land seizure that provoked violent replies from the authorities in addition to the criminalisation of the movement's leaders in the provinces of Tarija, Ichilo, Guarayos, Obispo Santisteban and Velasco in Santa Cruz, and in other areas of the La Paz plateau<sup>8</sup>.

The mission expresses its deep concern about the fact that all high reaching authorities, political and judicial, that the mission had the opportunity to interview considered the MST to be the organisation most likely to perform illegalities in the land reform process<sup>9</sup>. This was despite recognising

<sup>8</sup> A few weeks before his resignation, Mr. Carlos Mesa issued various decrees that actually worsened the situation, for example Supreme Decree 28140, which established a form of property, the so-called "Timber Property", not recognised by any property laws. This allowed large estate owners and timber merchants to convert their temporary concessions into permanent holdings. Supreme Decree 28148 modified the workings of the INRA law, giving departmental heads (often under the influence of powerful groups) more authority. This freed them from replacing expedients in relation to the lack of land records, which could lead to the legalisation of thousands of fraudulent claims. It also restricted social control of the land reform by changing results and it enlarged the number of private companies taking part in all stages of the land reform. Supreme Decree 28160 arranged the creation of a Repayable Credit Fund so that indigenous people and peasants could have access to loans in order to buy land. This went in the face of the "free" nature the land distribution was supposed to have. The Supreme Decree, which caused most adversity for excluded rural sectors wanting to consolidate land rights could no longer take place in the countryside, it had to be accredited with a *ordenamiento predial* or land order, a document that could only be obtained in a law office.

<sup>9</sup> In particular, the mission was able to see this in interviews with the President of the Republic, the President of the Supreme Court of Justice and with the Chief of Police in Santa

the social injustice of unequal land redistribution. This explains the ease with which their superiors become involved in crime, which will be explained later on.

### **I.3. The judicial system**

In its interviews in August 2005 with the President of the Republic, the Director of Public Prosecutions, the President of the Supreme Court and the Deputy Minister for Justice and Human Rights, the Observatory mission brought up the difficulties that Bolivia faces as regards its consolidation of democracy, the limitations in the independence of its judicial power, the general ignorance of human rights violations and the use of the judicial system against peasant leaders and in particular against the Landless Workers' Movement (the example of the Colombian Mr. Francisco José Cortés Aguilar, peasant leader and human rights activist, held in Bolivia since April 2003 is typical - as shown below).

The mission welcomes the progress made in the trial of former dictator Luis García Mesa<sup>10</sup>, the investigations into the events of February 2003 and in the investigation of former President Gonzalo Sánchez de Lozada and his ministers concerning the events of October 2003, mentioned in this report.

The mission also welcomes the role played by the Constitutional Tribunal as the uppermost channel of judicial protection for human rights and democracy. However, the decrees of this Tribunal ordering the Armed Forces to collaborate with ordinary judicial trials and to place sole competence for the investigation and judging of human rights violations in the hands of the Tribunal, in order to limit the reach of the Armed Forces' jurisdiction, have been totally ignored by the military authorities<sup>11</sup>. When asked about this,

Cruz, Colonel Federico González. The latter, when asked by the mission about the criminalisation of peasant leaders, replied that "human rights are more concerned with protecting criminals than good citizens".

<sup>10</sup> The only trial that resulted in a penal sentence in Bolivia for the responsibility for the events was the trial against ex-dictator Luis García Mesa, who will serve a sentence of 30 years without the possibility of being granted pardon, in the maximum security prison of Chonchocoro, in La Paz. This trial lasted almost a decade and during this time the Ombudsman, Mr. Waldo Albarracín, made good use of the "tireless" work of popular movements, which demonstrated against the National Congress, whose members were protecting the ex-dictator and threatening those promoting the trial. Finally, on April 21, 1993, the Supreme Court of Justice in Sucre declared a guilty verdict against Mr. García Mesa and his collaborators.

<sup>11</sup> The Constitutional Tribunal announced its sentence on May 6, 2004, file n° 2004-08469-17-RAC: "In the developed conceptual and jurisprudential framework, the mission of the armed forces in a democratic State, in harmony with the rights and guarantees proclaimed in the Constitution, can only be understood if its activity is developed in a democratic framework, respecting the Constitution and its laws, obeying the principles of equality, of prohibiting excess, of causing offence, proportionality, legality, minimum intervention, for which its security policies should be structured around the protection of citizens. Anything in contrary to this could cause an imbalance in the system of rights and guarantees sacred in the Fundamental Law, in favour of the excessive use of force in

both the President of the Republic and the President of the Supreme Court refused to comment.

The mission was also able to meet with the General Prosecutor, Dr. Pedro Gareca Perales, who has occupied this post since December 16, 2004 after being designated by Congress. He will serve in the post for 10 years. In January 2005, the Congress also named the nine District Prosecutors who will serve for five years and who may be re-elected<sup>12</sup>.

This mission was informed by the Prosecutor in the trial against former President Gonzalo Sánchez de Lozada<sup>13</sup> that, on May 17, 2005, the State had presented accusations against nine former Ministers and the former President for the crime of genocide, during the events of October 2003 in which 58 people lost their lives and more than 200 were injured<sup>14</sup>.

The mission also visited the Santa Cruz prison where dozens of people are languishing in prison even though they have served their sentences or have obtained the right to provisional freedom. They are still under detention because they cannot pay their bail or *la boleta de libertad*.

Besides, the mission met a large number of peasants who were being held in relation to land disputes. The actual inmates themselves keep order in the prison and they complained that the State has totally abandoned them. In fact, some of the better-connected inmates build their own cells while the rest have to face overcrowding.

In general, the judicial system is inefficient and rife with corruption. Judges reach their position by way of political favours and quotas, which removes all balances of impartiality and autonomy from the system. The judicial process is incredibly slow and mistakes are common. Despite constitutional rules

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the protection of a member of the State (...). In addition to the already stated, military offences can only be considered as such when they involve military goods, and in this case these members of the Armed Forces have been accused by the Commission of common crimes, such as murder, aggravated assault and damage to personal goods and property (the safety of which is recognised as a basic human right in the Constitution and in international law), which means that, by applying the Fundamental Law, they should be judged by an ordinary judicial court".

<sup>12</sup> The naming of the prosecutors by Congress means, on a departmental basis, that they are under the influence of the governing political forces and economic powers. Even more serious is the case of Santa Cruz, where the Civil Committee selects and nominates judicial officers. This mission was told that the majority of civil servants, including elected civil servants, are set by this Committee.

<sup>13</sup> On October 14, 2004, the Congress voted to allow the Supreme Court to judge the former President Sánchez de Lozada and 15 members of his cabinet for the events of October 2003. There will also be an investigation into the incidents of October and February 2003.

<sup>14</sup> Information gathered by the United States, in its report on Human Rights in Bolivia in 2004, establish that the number of dead people could be as high as 60 - 80 and that more than 400 people were injured.

See: <http://lapaz.usembassy.gov/HHRR/IDDHH2004repor.htm>

and regulations, it is impossible to obtain a real level of independence.

The judicial system is not present in the whole of the country. Judges are only found in provincial and municipal capitals (See Judicial Organisation Law No. 1455, articles 36, 37, 38 and 55§28).

In relation to land disputes (which should be resolved with total impartiality), the mission became aware that the only director working for the INRA from 1998 until 2003 was Mr. René Salomón, a former manager of the Eastern Chamber for Farming (*Cámara Agropecuaria del Oriente - CAO*), a powerful lobby organisation for land owners in the east of the country. According to CEJIS, the magistrates of the National Land Tribunal (*Tribunal Agrario Nacional - TAN*), Messrs. Joaquín Hurtado and Otto Reis, had been auditors for the CAO and the Cattle Owners Federation (*Federación de Ganaderos - FEGABENI*).

CEJIS complained that when dealing with the cases of powerful landowners, the National Land Tribunal made decisions that violated indigenous peoples' fundamental rights. According to CEJIS:

"There have been some rigged judicial trials, were the Land Tribunal have presented large estate owners as poor peasants so that they can keep control of large extensions of land.

On other occasions, the actual INRA has acted in this manner. The suppression of evidence showing lack of agricultural production in land trials is common. This type of undisputable evidence (for example satellite images), the use of which is permitted in the resolution of land disputes, is often ignored so that false claims can be made legal.

This type of behaviour was witnessed in the case of the indigenous territory of Monte Verde (chiquetano) and was condemned by indigenous organisations, whose traditional lands were being destroyed by large estate owners. They and their legal team suffered personal attacks at the hands of hired hitmen".

CEJIS complained that when the land redistribution is favourable to indigenous communities or peasant trade unions, large estate owners and illegal land owners turn to the Land Judiciary, which, until now, has always ruled in their favour, even when they legally they have no case. This demonstrates the discrimination faced by the migrant peasant trade unions in the upper plateau areas of Bolivia as well as the racism of provincial judges, particularly in eastern regions.

The violation of indigenous rights in contentious judicial proceedings is especially serious if we bear in mind that the National Land Tribunal is the highest authority in Bolivian land reform. This Tribunal has stopped and impeded indigenous organisations from defending their rights in legal battles, though large landowners are able to contest the decisions of the INRA.

The judicial power should protect human rights when they are violated, but when judges and legal officers use their power to contribute to human rights breaches, not only does it lead to a situation where the State loses legitimacy, but it can also provoke democratic ingovernability as well as social and political violence.

#### **I.4. Civil society, fundamental freedoms and the defence of human rights**

Freedom of expression and an independent press formally exist in Bolivia. However, in practice, the main media groups are controlled by economic and political powers. In recent years, independent media has been disappearing: for example, the *Presencia* newspaper (linked to the Catholic Church) was forced to close due to economic pressures.

The main human rights organisations are the Permanent Assembly for Human Rights in Bolivia (*Asamblea Permanente de Derechos Humanos de Bolivia*) and the Bolivian Chapter of the Inter-American Platform for Human Rights, Democracy and Development (*Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo*). Many other organisations are involved in human rights, particularly in areas such as the defence of indigenous rights, women's rights and land access. Trade unions also exist and the work of the Bolivian Workers' Trade Union (*Central Obrera Boliviana* - COB) and of the Confederation of Peasants (*Confederación Campesina*) particularly stands out. Coca producers are also organised and are an important social force.

Today, the main problem facing human rights defenders is probably when helping indigenous populations and farmers in the defence of their rights, which is doing CEJIS, for instance, as well as, in particular, when defenders and victims' families try to bring Mr. Gonzalo Sánchez de Lozada to justice. Mr. Sánchez de Lozada fled to the United States after being forced to resign. Mr. **Sacha Llorenti**, then President of the Permanent Assembly for Human Rights, was harassed and threatened on various occasions as he was calling for a trial. On other occasions, private armed groups have attacked indigenous populations, peasants and lawyer. This was especially the case when landowners and businesses with dubious claims to public and wasteland face rival claims for the land belonging to indigenous and peasant groups.

On September 15, 2004, a group of businessmen issued a press release in the *La Razón de Santa Cruz* newspaper (See Annex 1), in which they warned the government of their willingness to "defend themselves" against indigenous and peasant actions. It was published with the title "Open letter regarding the suppression of land and private rights". One point stated was that if the Government did not evict farmers and peasants

from their land, the group "would blame the government for a lack of leadership which would force the producers to defend their legitimate rights by their own methods". According to the information received, there has been no official condemnation of this statement. Subsequently, the Santa Cruz Youth Union (*Unión Juvenil Cruceñista*) was formed, and which, as described by the Chief of Police of Santa Cruz to the mission, is like "the armed wing of the Civil Committee"<sup>15</sup>.

Although Bolivia has signed the Convention N° 169 of the International Labour Organisation<sup>16</sup>, it still carries out large infrastructure projects without the consultation of concerned populations, as required by the Convention. On the occasions where a consultation did take place, it strictly remained a formal procedure and lacked the complete and transparent information allowing for the participation of those affected in the decision making process.

The main issue facing NGOs and human rights defenders today is the protection of the land rights of indigenous communities. Although Bolivian Law recognises the concept of Native Community Land (*Tierras Comunitarias Originarias* - TCO), the rights of the inhabitants of the TCOs are not sufficiently guaranteed.

Currently, the work of human rights defenders is directed towards obtaining a greater level of participation among the people in the next Constitutional Assembly. Indeed, some people, including politicians, would like to reduce the level of popular participation among the indigenous population<sup>17</sup>.

In the context of preparing for the next Constitutional Assembly, this mission witnessed some anti-democratic proposals, like the public demand by the High Command of the Armed Forces to covert the police into the "fourth agency of the military forces"<sup>18</sup>.

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<sup>15</sup> See below for more information.

<sup>16</sup> Convention Concerning Indigenous and Tribal Peoples in Independent Countries, adopted in 1989.

<sup>17</sup> For instance, it has been suggested that the election for indigenous representatives should not be by popular vote, but instead by using mechanisms established in the "uses and customs" of the communities. The proposal that allegedly respects the cultural autonomy of the indigenous populations is clearly a method from the traditional authorities to keep hold of power.

<sup>18</sup> See weekly magazine *El Pulso*, N° 267, September 24, 2004.



## II. THE SITUATION OF HUMAN RIGHTS DEFENDERS

From the interviews conducted, the mission has been able to extract the follow observations:

### II.1. A world of formal guarantees and official silence

Human rights organisations, including those that defend the rights of indigenous populations, women's rights and rights to land access, are able to carry out their work in an atmosphere of mutual respect from the authorities. This means that the authorities do not try to publicly obstruct or threaten the work of these organisations. However, the government has not put into practice any declaration on the legitimacy and respect of the work of human rights defenders (United Nations 1998, Organisation of American States 1999). On many occasions, the audience given to human rights organisations is more formal than real. It is worrying that State agencies overlook the threats of certain groups, which will be dealt with in the next part of this report.

According to the information received, there exist paramilitary groups that protect the interests of the "rich and powerful". At times, these groups prevent and threaten the free movement of people, leading to confrontation and death.

Various testimonies have been collected by the mission that detail the cases of trials that are "prefabricated" and "biased" against people who are "inconvenient" to the interests of the large estate owners (see below). Many of these people were arrested while some were tortured while being held in police cells.

Citizens, and in particular human rights defenders, often encounter obstacles in their pursuit of public information. Likewise, it is very common for petitions, processes and complaints brought by citizens and activists to be delayed in public offices when they relate to human rights offences.

New human rights organisations state that bureaucratic delays are common when they try to register and gain judicial recognition for their institutions.

### II.2. Events and omissions that affect human rights and the work of defenders

From 2002 until the end of 2005, there were some serious incidents of intimidation and persecution of human rights defenders. Many of these were brought to the attention of the international community.

In the following paragraphs, some of the most significant events will be described, highlighting the difficult conditions human rights defenders have to face in Bolivia.

### a) The Permanent Assembly for Human Rights in Bolivia (APDHB)

It is important to point out that the Permanent Assembly for Human Rights in Bolivia (*Asamblea Permanente de Derechos Humanos de Bolivia* - APDHB) played an important role in making sure that the events of February 2003 in the Plaza Murillo did not have a greater impact, this thanks to the work of Dr. **Waldo Albarracín**, the then-President of APDHB and the current Ombudsman, and Dr. **Sacha Llorenti**, also then APDHB President. Similarly, human rights organisations, including those of the Church, played a large role in preventing more serious violence during the events of October 2003. This led to the resignation of the then President of the Republic, Mr. Gonzalo Sánchez de Lozada, and to the relatively peaceful constitutional transition.

The mission was informed of threats received by both Dr. Albarracín and Dr. Llorenti after their intervention in the events of February and October 2003. The authors of these threats have not yet been punished at the time of publication of this report.

Thus, in the early morning of October 19, 2003, some individuals entered the offices of the APDHB in La Paz and took away a video recorder, various videocassettes, a DVD recorder and a laptop<sup>19</sup>. Apparently, the individuals also tried to remove information from the hard drive of APDHB computers. These events are very probably linked to the important work in human rights protection that APDHB carried out during the difficult times of September 2003.

Indeed, from September 15, 2003 until early October 2003, protests took place all over the country in order to condemn the gas exportation. These protests were strongly repressed by the police, which caused the death of approximately 60 people and countless injuries and detainees in what is now known as "the gas war". APDHB was particularly active in the search for a negotiated solution to the conflict and also in the condemnation of serious human right violations committed by the police during the repression of the social protests<sup>20</sup>.

The Observatory mission also heard the declaration of Dr. **Adalberto Rojas**, President of the Permanent Assembly for Human Rights in Santa Cruz, who was publicly criticised by the media and provincial authorities for his role in the defence of human rights on many occasions. Thus, during the first part of 2005, he was harassed, threatened and insulted by people linked to the Santa Cruz Civil Committee.

On August 27, 2005, while the trial against the Bolivian armed forces before the Inter-American

<sup>19</sup> See 2003 Observatory Annual Report.

<sup>20</sup> *Idem*.

Commission of Human Rights (IACHR) started, Mr. Sacha Llorenti received a death threat because of his activities in favour of the fight against impunity<sup>21</sup>.

In La Paz, on September 29, 2005, the police forcibly dispersed a protest march organised by the civil society, in particular APDHB and the Association of Family Members Killed for the Defence of Gas (*Asociación de Familiares Caídos por la Defensa del Gas*). The protesters marched in the direction of the U.S. Embassy in La Paz where they planned to request that legal papers be served to Mr. Gonzalo Sánchez de Lozada, former President of the Republic of Bolivia, and his collaborators Mr. Carlos Sánchez Berzaín and Mr. Jorge Berindoague, summoning them to testify in an investigation against them into the killing of over 65 persons who had demonstrated against the privatisation and export of hydrocarbons in October 2003. They also demanded to lift the veil of military secrecy during the trial. The law enforcement agents sprayed the protesters with tear gas.

The mission also became aware of a supposed plot by extremists, issued by Internet, to cancel the elections and the Constitutional Assembly, and to increase the level of instability in the country. This plan intended to kill 80 people, including the President Mr. Evo Morales, his candidate for Vice-president, Mr. García Linera, the Ombudsman Mr. Waldo Albarracín and Mr. Sacha Llorenti. Although the counter-intelligence report on this subject may not be 100% reliable, it is very worrying that there are plans to kidnap and assassinate these people. In any case, the Bolivian authorities must fully investigate this supposed plot.

## **b) The Centre for Legal Studies and Social Research (CEJIS)**

### *Antecedents*

Since the middle of the last decade, there has been a series of attacks on human rights defenders, many of which have never been solved. The lawyers of the Centre for Legal Studies and Social Research (*Centro de Estudios Jurídicos e Investigación Social* - CEJIS) have also been subjected to acts of harassment due to the legal support they provide to those fighting for the recognition of peasants and indigenous peoples' land rights. For instance, in September 2001, one of its lawyers, Mr. **Leonardo Tamburini**, was illegally detained by armed civilians in the headquarters of the San Javier Ranchers Association (*Asociación de Ganaderos de San Javier*), where he was violently beaten by his captors. The kidnapping and beating of Mr. Tamburini were attended by a police officer and by the President of the Ranchers Association.

Thanks to the efforts of his CEJIS colleagues and a phone call made by the Governor of Santa Cruz, Mr. Tamburini was finally released. Yet, the authors of these crimes were not sanctioned, while the judicial proceedings against Mr. Tamburini remain unfinished. One year later, he received threats by phone calls, and once again no one was arrested in connection with these events.

### *2002*

On September 17, 2002, in the District of Concepción, province of Ñuflo de Chávez, Santa Cruz, Mr. Tamburini was given three hours to leave the area by a person who identified himself as the President of the Concepción Civil Committee. The threat was received through a phone call to the headquarters of the Chiquitana Indigenous Organisation (*Organización Indígena Chiquitana* - OICH), where Mr. Tamburini was providing legal advice on the Land Reform Programme in the Chiquitano Community Territory of "Monte Verde".

On another occasion, on February 27, 2002, in the INRA offices in Tarija, the lawyer Mr. **César Blanco**, a civil servant for the CEJIS acting as a legal advisor for the Landless Workers' Movement, was arrested while he was studying the case records of the Land Reform in the province of Gran Chaco in the Tarija District. The arrest was Mr. Leoncio Laguna, police officer. After three hours of interrogation, Mr. César Blanco was released thanks to the efforts of the APDHB. During his arrest, he suffered serious blows to the head.

Another CEJIS lawyer, Mr. **Cliver Rocha**, who is also a legal advisor for the Indigenous Centre for the Bolivian Amazon Region (*Central Indígena de la Región Amazónica de Bolivia* - CIRABO), was brutally beaten on March 13, 2003 by the estate owner Mr. Alez Ribert Rejas<sup>22</sup>. The attack took place at the entrance of the Land Reform Court of Riberalta, in Beni, and was related to a land dispute between the Tacanas and some large estate owners. Mr. Cliver Rocha was repeatedly beaten on the back of the head and received death threats. With his sister's help, Mr. Ribert Rejas succeeded in escaping. On the night of April 23, 2003, Mr. Rocha was again physically and verbally assaulted.

On September 25, 2003, Mr. César Blanco was attacked by Mr. José El Hage, a member of a family of assassins in the region, because he had participated in judicial proceedings brought by the Community of Native Populations (*Comunidad de los Pueblos Autóctonos de la Tierra*) and the Community of Monte Verde against Mr. El Hage's brother, Mr. Alberto El Hage.

At roughly 3 p.m. on November 12, 2003, around 150 people violently entered the CEJIS regional headquarters in Trinidad. They were searching for

<sup>21</sup> See 2005 Observatory Annual Report.

<sup>22</sup> See 2003 Observatory Annual Report.

Mr. **Javier Aramayo**, CEJIS Regional Director, in order to physically harm him.

At 10.30 a.m. on January 5, 2005, a group of more than 30 armed landowners, seemingly led by Messrs. Arturo Vidal Tobías, Rosario Oyola and Eva Bersatti, all leaders of the Association of Agricultural and Forestry Producers (*Asociación de Productores Agrícolas y Forestales - ASAGRI*), broke into the CEJIS offices in Riberalta, Beni province<sup>23</sup>. These heavily armed men threatened CEJIS members with death, plundered the offices, and took material and computers. Then, they proceeded to burn all of this material and documents in the street, while yelling insults against the defenders of farmers and indigenous communities that claim their rights to land, and in particular calling for “*the end to the interference of the CEJIS and its erroneous legal advice to the indigenous population...which has led to the loss of lands for many years*” and threatening to “*take up arms during the next few days to take back the lands that are now under the control of natives and peasants*”.

According to the information received, the office was left totally out of contact as the attackers pulled out telephone lines and destroyed mobile phones so that workers could not alert the police or call for help.

Before leaving the headquarters, they gave “*48 hours for the CEJIS to leave Riberalta*” and threatened the head of CEJIS, Mr. Cliver Rocha. The assailants said that they would later target other NGOs in the region with the aim of “*throwing them out of [their] homeland*”, naming explicitly the Institute for Man, Agriculture and Ecology *Instituto para el Hombre, Agricultura y Ecología - IPHAE*) and the Centre for Research and Promotion of Farmers (*Centro de Investigación y Promoción del Campesinado - CIPCA*).

On January 7, 2005, a written note signed by Mr. Arturo Vidal Tobías, ASAGRI President, was made public, in which he threatened the social organisations supporting the farmers and indigenous communities in the Land Reform process in the Vaca Díez province, urging them “*to leave the region before January 30, 2005*” and confirming that “*if not, [ASAGRI members] would be obliged to take action in order to stand up for their rights*”. The Dutch Service for Development and Cooperation (SNV), the IPHAE and the CIPCA were specifically threatened.

In the same note, Mr. Vidal Tobías declared that their colleagues, “*the forestry producers in Pando, are suffering abuse and robberies at the hands of pseudo-natives led by the CEJIS*” and demanded that the indigenous communities “*leave the private properties in the forest within 10 days*”. If this warning was not respected, the members of the

association would “*remove them by their own means*”.

For more than a century, the region of Northern Amazon in Bolivia has maintained an economic structure based almost exclusively on the exploitation of rubber and chestnuts. The exploitation of these resources has meant that millions of hectares of land are owned by very few families. The process of Land Reform decided by the INRA in these areas means that these rich families are losing the land that they had gained illegally. On these lands, peasants and natives had previously worked and lived in conditions of semi-slavery.

According to the information received, on April 15, 2005, Dr. Miguel Ángel Michel Zelada, the second examining judge for civil and family affairs, issued a preventive detention order against Mr. Ernesto Yarari Tirina, following a criminal procedure initiated by CEJIS for “*crime incitement, illegal entry, violation of the fundamental rights to work, threats, complicity in theft and destruction of documents*”.

On June 20, 2005, the judicial technical police (*Policía Técnica Judicial - PTJ*) in Riberalta arrested Mr. Ernesto Yarari Tirina, who they found trying to flee. He and Mr. Arturo Vidal, Mr. Alberto Guiese and other ASAGRI members were charged with theft and illegal entry into the CEJIS premises in Riberalta.

According to CEJIS lawyer Mr. César Blanco, “*there exist reliable proof of the participation of Messrs. Arturo Vidal and Alberto Guiese in the attack on the CEJIS offices, though this crime does not necessarily carry a jail sentence*”.

According to CEJIS, Bolivia had signed an agreement with the Inter-American Commission on Human Rights (IACHR) in its 123<sup>rd</sup> session, which took place in October 2005. Representatives of the indigenous community of Amazonian Tacana Cavineño de Miraflores and CEJIS were present. This agreement aims at making effective the preventative measures ordered by the IACHR for the protection of indigenous communities.

The IACHR granted Bolivia two sessions, the first of which was to evaluate and monitor the fulfilment of the measures of protection granted by the IACHR on March 11, 2005 in favour of the Miraflores indigenous community and CEJIS members.

In the other session, the IACHR received reports on the situation of the lowland indigenous communities, with an emphasis on the forced exodus from the United Peoples (*Pueblos Unidos*), formerly known as Los Yuquises, the intimidation suffered by the Guaraní people at the hands of the security forces during a demonstration for the distribution of the Direct Hydrocarbon Tax in the

<sup>23</sup> See 2005 Observatory Annual Report.

Tarareada community, and the contamination of the Pilcomayo river.

Due to the lack of a competent response from the Bolivian authorities as regards the implementation of the measures issued by the IACHR, Bolivia, through their ambassador to the Organisation of American States (OAS) and admitting violations of their international obligations, had to commit itself to:

- Establish inter-institutional co-ordination between the National Management For Human Rights of the Ministry of the President, the Home Office and the Ministry for Foreign Affairs in order to define the mechanisms for implementing and fulfilling the measures issued by the OAS.
- Designate an interlocutor with decision-making powers who can, in co-ordination with beneficiaries and their representatives, help monitor the implementation of the adopted measures.
- Designate a prosecutor, specially selected by the Public Prosecutor, to investigate acts of aggression and intimidation.
- Designate people and resources, under the control of the Home Office and the Police Departments of Pando, Santa Cruz and Beni, in order to patrol and provide security for the CEJIS offices in these areas and the Miraflores community during the chestnut season.
- The INRA must carry out the evictions of illegal inhabitants in the indigenous territories.

Furthermore, the IACHR, in a statement dated October 28, 2005, added:

"In Bolivia, the Commission has been following very closely the institutional crisis in the Republic. Up to now, Bolivia should highlight all the positive progress made in order to overcome this crisis, which will hopefully become consolidated after the electoral process has been completed. At the same time, the IACHR has received information during these sessions highlighting political practices and social inequalities that continue to affect the stability of the democratic institutions. Of particular concern is the situation of the Guaraní "captive communities" in the Chaco area, who live in a situation comparable to slavery"<sup>24</sup>.

<sup>24</sup> Non official translation. Approximately 15.000 peasant families who collect chestnuts live in slavery like conditions in the North of the Amazonian Bolivia. They are mostly members of the Araona, Baure, Chimán, Ese Eja, Itonama, Leco, Moseñ, Movima, Moxeño, Nahua, Pacahuara, Tacana and Yuminahua indigenous communities, and they are treated like slaves, enduring terrible conditions with up to 15 hours working days. According to Mr. Francisco Limaco, an indigenous leader in Riberalta (one of the chestnut producing areas in the Vaca Díez del Beni Region), "in some cases they are beaten or whipped whenever they are not able to perform their duties". Mr. Limaco told the mission that for an alleged "work violation" his father had been tied to a tree and publicly whipped 20 times.

### c) The Centre for Research and Promotion of Farmers (CIPCA)

The Centre for Research and Promotion of Farmers (*Centro de Investigación y Promoción del Campesinado* - CIPCA) is a non-governmental organisation that supports indigenous rights and which has been the victim of intimidation and aggressions in recent years.

The CIPCA headquarters in San Ignacio de Moxos (in the Beni region) were ransacked and destroyed on December 19, 2003, and were then closed down by the municipal authorities. On the same day, the mayor of San Ignacio de Moxos was assassinated. The attack against the CIPCA headquarters happened immediately after the mayor's murderer stated that he had been paid by the CIPCA (through Mr. Miguel Peña). Although the murderer later denied any link to CIPCA, the local Council of San Ignacio de Moxos issued two statements, on January 12 and February 16, 2004, cancelling the permits for the CIPCA regional offices in Beni in relation to the alleged link between them and the mayor's murder and on the pretext that their activities aimed at bringing down the municipal government. These statements were later annulled by the Beni District Court on March 16, 2004, a decision that was upheld by the Constitutional Tribunal of Bolivia on June 23, 2004<sup>25</sup>.

CIPCA members who helped to release some captive indigenous communities<sup>26</sup> were attacked by landowners and ranchers the following day. Many of CIPCA's workers have been the victims of false claims that highlight the urgent need for the Public Prosecutor to act so that these acts of aggression and intimidation can be dealt with.

### d) The Landless Workers' Movement (MST)

#### THE PANANTY MASSACRE AND CONTINUING HUMAN RIGHTS VIOLATIONS AGAINST THE LANDLESS WORKERS' MOVEMENT (MST) IN THE BOLIVIAN CHACO

##### Yacuiba Municipality, Tarija Department

At approximately 9 a.m. on October 25, 2001, an armed group, hired by landowners and dressed in military uniforms, evicted women and children from the Landless Workers' Movement (*Movimiento Sin Tierra* - MST) community in Pananty by shooting at them. From this date, uniformed members of army and the Bolivian police have taken control of the area occupied by the MST community, with the excuse of preventing new confrontations. During this time, the community was constantly physically

<sup>25</sup> See 2004 Observatory Annual Report.

<sup>26</sup> In South Bolivia, close to the border with Brazil and Paraguay, there are still captive communities where this kind of exploitation exists. This captive situation dates from the 19<sup>th</sup> century and continues along family lines.

and psychologically intimidated by a man called Mr. Teófilo Urzagaste and his accomplices, while the security forces did not intervene.

On November 5, 2001, Mr. **Ángel Durán**, the then-President of the MST-Yacuiba, informed the national Government of this situation and coordinated the opening of a National Land Dialogue leading to the establishment of an Act of Understanding for Social Peace with the government. On November 6, 2001 an INRA Commission tried to measure 80 hectares of farming land with the idea of converting it into housing plots, but the community rejected this proposition.

On the same day, the alleged owners of the land turned up in the Council offices of Yacuiba, in order to try and break the agreements. With the complicity of the police, they illegally arrested the MST leader in Gran Chaco, Mr. **Lidio Julián**.

On November 7, 2001, thanks to the efforts of the La Paz MST office, Mr. Lidio Julián was released.

At 5.30 am on November 9, 2001, a group of approximately 30 armed men massacred six members<sup>27</sup> of the Pananty community and injured 17 others while the police reportedly did not intervene. Despite being in the area, the security forces did not try to capture those responsible for these acts. The deputy mayor refused to help or lend support. Although, hours later, with the help of the national Government, the wounded were brought to the hospital, some died due to the lack of medical attention.

The Public Prosecutor, Mr. Gastón Mostajo, did not allow Mr. César Blanco to act as the lawyer for the killed victims in the judicial proceedings, which impeded his freedom of work and at the same time violated the right to representation of the MST members.

In the following investigation, under great intimidation and the threat of long jail sentences, members of the two communities were forced to recognise the crimes of "murder" in exchange for short jail sentences and in order to stop the intimidation of their families. The judicial authorities denied to the peasants the right to speak to their lawyer, Mr. César Blanco, which is a violation of their right to an adequate defence.

Currently, the MST leaders have been labelled as delinquents and their right to due process has not been respected. This is the case of Mr. Lidio Julián, one of the movement's leaders. The various judicial trials are still continuing with constant violations of the accused' rights and constitutional guarantees.

The real culprits have not been arrested and a just and independent legal trial has proved impossible for the MST peasants who have been unjustly accused of committing these crimes.

More than four years after the tragedy, the families still do not have adequate homes, access to public services, and sufficient means to live on. In one extreme situation, one of the widows was forced to give away one of her children because she no longer had the resources to take care of them<sup>28</sup>.

In 2003 and 2004, death threats were received by MST leaders, including Messrs. **Silvestre Saisari** and **Florencio Urko**, and despite the fact that the authorities were informed of these threats, they did not provide any protection for those threatened.

After its visit, the mission was informed that phone calls and emails of MST members were being illegally monitored and that they continued to receive threats.

Before the mission started, the Governor of Santa Cruz, Mr. Carlos Hugo Molina Saucedo, issued orders to a combined military-police force to expell 400 families with no land rights from the Yuquises area (also known as the community of the United Peoples - *Comunidad Pueblos Unidos*). The eviction took place on May 25, 2005, and after this the area remained closed so that the INRA could define land rights.

The Government promised to those expelled governmental lands and guarantees for the harvest of their crops. But with the authorities' promises unfulfilled, the families were forced to live under a bridge in Chané Independencia. The peasants complained to the mission that 150 armed policemen entered the area to stop them from harvesting their crops. After this, the families decided to move to Santa Cruz where they were attacked by the Santa Cruz Youth Union (*Unión Juvenil Cruceñista*), a paramilitary group that has links to the Santa Cruz Civil Committee.

In Santa Cruz, the mission was able to interview the regional leader of the MST-Santa Cruz, Mr. Silvestre Saisari Cruz, who testified that, during the day in the main Santa Cruz Square, he was savagely attacked by members of the Santa Cruz Youth Union. Although this incident was filmed by several media, the police officers did nothing to stop the assault. Mr. Saisari expressed to the mission his anger and incomprehension of being attacked, threatened and pursued in courts for promoting a just and right cause such as land redistribution.

At the beginning of the mission, the latter became aware, through a declaration by the landowner Mr. Rafael Paz Hurtado, that, since September 29, 2004, groups of armed men hired by landowners

<sup>27</sup> Messrs. Sabelio Escobar Garnica, Javier Pablo Velásquez, Benigno Arancibia, Pablo López, Gerardo Alemán and Vidal Vargas.

<sup>28</sup> This information was provided by CEJIS and was corroborated through various interviews with MST members.

were preparing to attack the population of the Community of the United Peoples. The attack took place on May 7, 2005, when groups of armed men working for property owners in the State of Santa Cruz attacked men, women and children of the Community of the United Peoples of the MST. The peasants tried to defend themselves and this led to many people being seriously injured and the disappearance of one peasant, Mr. Henry Limpias. However, these acts of self-defence were presented as an attack by MST members themselves. This mission has had access to the official accusation presented by the Prosecutor for the Obispo Santiesteven Province. The latter lodged a complaint with the judicial technical police of the town of Montero against Messrs:

**“Silverio Sarsari, Silverio Vera, Ponciano Sullca, Juan Cala, Aurelio Arnez, José Mondaque and others for the crimes of “armed rebellion against the security and sovereignty of the State”, “belonging to a criminal organisation”, “criminal association”, “kidnapping and privation of freedom”, “attempts against freedom of work” and other crimes. The victim, being the Bolivian State and the society, formally denounces these people for occupying State land with the use of arms....”.**

The mission has also had access to the criminal case against the MST presented to the Prosecutor of Santa Cruz on May 11, 2005 by a group of people including Mr. Rafael Paz Hurtado, Mr. Hermógenes Mamani Nogales and 11 others (who, according to MST members, would be landowners who have used violence against them) who reported:

*“Honourable District Prosecutor, we are a group of more than 100 agricultural producers and for more than 10 months we have seen our livelihoods ruined after being evicted from our own land by a group called the Landless Workers’ Movement, led by Silverio Vera and incited by the Mayor of San Pedro Juan Cala, Eufronio Herrera, the Councillor of Montero, Edwin Tupa and supported by the NGO Bibosi”.*

In the report, they formally accused Messrs. **Silverio Vera, Ponciano Sullca, Silverio Saisare** and eight other MST leaders of the region of, among others, “attempted murder” and “terrorist activities”. They also accused the Mayor of San Pedro, Mr. Juan Cala Ortega, of being the instigator. They finally accused Mr. **Carlos Vigo** and Mr. **Julio Martel**, members of Bibosi, a human rights NGO, of being the accomplices of MST.

The mission questions the rapid manner in which the judicial system has responded to these claims, despite the lack of any real proof. Regardless of the fact that MST members formally reported that since they have occupied the “Los Yaquisés” area on August 8, 2004, they have found rifles, machine guns and a large marijuana plantation on the estate, and despite the fact that they lodged a complaint and gave the arms to competent

authorities, the judicial forces have not ordered an investigation and all of the attacks and intimidations against the MST remain unpunished.

On June 22, 2005, Mr. Ponciano Sullca Churqui was arrested at his home and charged with having instigated the land seizure through his participation in a programme of the *Integración de San Pedro* radio station.

The mission saw the medical certificate, dated July 1, 2005, which acknowledges Mr. Ponciano Sullca’s poor medical condition and his recent surgery for surgery, and recommends that the catheter used by Mr. Ponciano should be permanently controlled by a urologist. Despite this certificate, the mission became aware that Mr. Ponciano was being refused any kind of medical treatment because the Prison Chief claimed that he did not have the sufficient number of guards to assure Mr. Ponciano’s transfer to a hospital.

Despite his health condition, despite the fact that he is the father of six children, or the fact that he was arrested at home, the court demanded that he be detained on remand in the Montero prison, a measure that is generally only taken when the accused is likely to flee or is homeless, which for Mrs. Ponciano was certainly not the case.

On June 1, 2005, the Unique Union Federation of Peasants’ of Santa Cruz (*Federación Sindical Única de Trabajadores Campesinos de Santa Cruz*), the Regional Federation of Women Peasants of Santa Cruz “Bartolina Sisa” (*Federación Departamental de Mujeres Campesinas de Santa Cruz “Bartolina Sisa”*), the Union Federation of Colonisers of Santa Cruz (*Federación Sindical de Colonizadores de Santa Cruz*) and members of the Coordination of Indigenous Peoples (*Coordinadora de Pueblos Étnicos*) of Santa Cruz, along with other similar workers’ organisations, decided to organise a peaceful march to Santa Cruz de la Sierra in order to denounce the assaults against peasants and indigenous peoples in the region, to urge Parliament to nationalise hydrocarbons, as well as to call for the immediate approval of the Special Constitutional Election Law. Upon their arrival to Santa Cruz, they were attacked by members of the “Santa Cruz Youth Union”, led by Mr. Jorge Holberg, who insulted and hit them, seriously injuring over 20 men and women<sup>29</sup>. Various participants in the march told the mission that:

*“When we arrived in Santa Cruz we were taken by surprise by the members of the Santa Cruz Youth Union, led by Mr. Jorge Holberg. It was like dictatorial times, they insulted us with racist and xenophobic remarks and then physically beat us with various instruments (baseball bats, sticks, knuckledusters, swords, tear gas, etc.) causing serious injuries to more than 20 men and women, six of whom - most of them very old - suffered*

<sup>29</sup> See 2005 Observatory Annual Report.

*arms fractures, haematomas, scratches and other serious injuries and had to be taken to various city hospitals for emergency treatment...”.*

The mission saw many of these seriously injured people who have been totally abandoned by the authorities and who found themselves, instead of being protected by the authorities, persecuted by them.

The mission had the opportunity to talk about this subject with the District Prosecutor in Santa Cruz, Mr. Jaime Soliz, and the Chief of Police, Colonel Federico González. The District Prosecutor told the mission that some of those responsible for the attacks had been detained, but that he had been forced to release them due to public pressure and the fact that some young people in the city considered the arrested members of the Santa Cruz Youth Union as martyrs. Their release was celebrated by the media and the authorities like “an act of justice”, and they were treated like “heroes”. Colonel Federico González told us that at the moment of the attacks by the Santa Cruz Youth Union his men were attending other emergencies and were unable to prevent them. He explained the power of the Santa Cruz Civil Committee and defined the Youth Union as their armed wing.

Despite asking the authorities for the results of their investigations into the murder and injury of MST members, the mission was not given any adequate replies, except that orders were given in order to arrest MST leaders, including Messrs. Silvestri Saisari and Silverio Vera.

According to reports, since 2004 the MST has unsuccessfully requested legal recognition.

#### **e) Other conflicts related to land access**

Nowadays, it is common for armed groups to be hired by landowners and businessmen in order to “resolve” their land problems. In addition, the INRA process to clarify land rights and land ownership seems to be extended forever, which is one reason why the disputes become violent.

In July 2004, peasants from the MST discovered, in lands patrolled by armed men north of Santa Cruz, a cache of modern arms as well as marijuana fields. They managed to arrest some of the armed men and took them to the Public Prosecutor, though so far there has been no sign of an investigation.

The San Cayetano Communities is an area occupied by landless families in Santa Cruz. These families, who have been calling for better living conditions, were attacked in May 2004. During these attacks, there were attempted rapes and children were beaten with sticks. These crimes were reported but there has been no progress in the discovery of the perpetrators of the attacks.

Various sources that witnessed the events on the Aduhai ranch, 49 km. from Trebinto, on August 13, 2004, reported the excessive force used by the security forces to evict the peasants. The peasants also had their property, including means of transport and communication (motorbikes, mobile phones) confiscated without any inventory being made.

On September 28, 2004, the mission was informed that approximately 300-350 coca producers and their wives and children were attacked by members of the Joint Task Force (*Fuerza de Tarea Conjunta* - FTC) in the area known as Bustillos, Chapare, which is located in the Isiboro Sécure National Park. The coca producers were attempting to resist the forceful eradication of their crops. The security forces claimed the life of peasant leader Mr. **Juan Colque**. On October 14, 2004, another peasant leader, Mr. **Genaro Canaviri**, lost his life in similar circumstances at the hands of the security forces.

The mission has ascertained that the criminal investigations are not progressing, but has received information that suggests that the Government has agreed to compensate the families of the two dead coca producers and has reached an agreement with the coca producers so that 3,200 hectares for coca production will be exempt from the eradication process until a study on legal coca consumption has been finished. The peasants told the mission that they “would rather die” than permit the eradication of their coca crops, which they consider as part of the cultural inheritance as well as their way of life.

At the El Paila Hacienda, in the Santa Cruz district, on December 20, 2004, Mr. **Medrin Colque Mollo**, a peasant leader, was murdered by the police after more than 100 farmers and their wives and children resisted violent eviction from the land that they had occupied for more than two years. The results of the criminal investigation into this murder have still not been released.

Nor have the results of the criminal investigation into the murder of coca leader Mr. **Willy Hinojosa**, which occurred in January 2003, been made public. The investigation by the Home Office was still pending at the end of the year. Likewise, there has been no further progress in the investigation into the 2002 murder of Mr. *Marcos Ortiz Llanos* in Sinahota, Chapare. Mr. Ortiz Llanos was allegedly shot by soldiers of the now defunct Chapare Expeditionary Force (*Fuerza Expedicionaria del Chapare* - FEC), during a demonstration of coca producers.

The murder of another popular leader which remains unpunished is that of Mr. **Casimiro Huanca Colque**, the leader of the Chimoré Coca Producers’ Federation (*Federación de Cocaleros de Chimoré*), in 2001, during a confrontation between the FEC and the demonstrators. A

military Court and the Home Office have both concluded that there was insufficient evidence to pursue in justice a FEC soldier accused of shooting Mr. Colque.

The government's delay in completing effective investigations, in identifying and sentencing those responsible for civilian or military deaths creates a sense of impunity for the population. However, on December 17, 2004, the Congress nominated a new General Prosecutor and named new people for posts that had remained vacant in the Supreme Court and the Judicial Tribunal. The Congress Commission for Human Rights, the Ombudsman, the Justice Vice-President and the Human Rights Management Committee, as well as NGOs, continue to pressure the government to speed up actions in these cases.

In 2004, there were less security deaths caused by civilians than the year before. On June 6, 2004, in the village of San Pablo, 200 soldiers were protecting the police in an operation to move a roadblock. The soldiers were under strict instructions to only bring non-lethal equipment. The soldiers walked straight into a well-planned ambush laid by armed gunmen, and, unable to defend themselves properly, suffered great casualties. One official, Mr. Saúl Coronado, was killed and 27 soldiers were injured. Two farmers, Messrs. Hernán Masay and Eddy Argmaon, also died, but the ballistics and forensics analysis indicated that the small calibre bullets used by the attackers would have only injured, not killed, the two farmers. The civilian and military authorities were still investigating the incident at the end of 2004.

On June 30, 2004 an angry miner, Mr. Eustaquio Picachuri, entered the National Congress building with dynamite strapped to his body. He set off the dynamite killing two policemen, Messrs. Marvel Flores and René Amurrio, and injuring 11 bystanders.

During 2004, investigations continued into numerous incidents relating to snipers and mines in Chaparé in 2003, which killed or injured members of the security forces who were eradicating illegal coca plantations.

There has been no progress, nor is any expected, in the investigations into the deaths in 2002 of four members of the Los Yukis trade union. The public investigation was still continuing at the end of 2005 but at that time no judicial trial had started.

#### **- The eviction of Nueva Esperanza:**

The mission was informed of the violent eviction of the Nueva Esperanza community from the El Choré Forest Reserve in the municipality of Santa Rosa on February 10, 2005, by 25 policemen and 30 armed civilians. During the eviction, the police and armed civilians burnt the communities homes and killed their animals.

The community was able to identify Mr. William Cabrera, a lawyer hired by the estate owners, who was armed and fired into the air shouting that he was authorised "to kill *collas*", a pejorative name used in Santa Cruz for the natives from the Andean Plateau. However, the mission is unaware of any judicial action against this lawyer, nor against the group that carried out this violent eviction.

This eviction blatantly violated the agreement signed on August 18, 2004 in San Luis by the National Director of the INRA and the Vice-President of the Land Reform. Paragraph 3; subsection 2 of the agreement states that "until the land reform process in El Choré is finished, no eviction will take place".

#### **- Judicial proceedings against the MST leaders Messrs. Gabriel Pinto, Victoria Alvarez, and Dionisio Mamani:**

Since August 12, 2004, peasant leader Mr. **Gabriel Pinto** and MST members Messrs. **Victoria Alvarez** and **Dionisio Mamani** have been detained, being accused by the Public Ministry<sup>30</sup> of the murder of the former mayor of Ayo Ayo<sup>31</sup>. According to the information provided to the mission in August 2005, the judicial proceedings and probable false accusation originates from the occupation of the Collana Ranch (property of the Iturralde family, who are close relations of the former-President Sánchez de Lozada) on October 17, 2003. The detention of these MST members is probably a judicial set-up, including the use of false testimonies, in order to destabilise the MST in the Andean Plateau.

#### **-The repression of the Guaraní Peoples' Assembly**

The Guaraní Peoples' Assembly, in a demand for their right to a share of the money generated by the Direct Hydrocarbon Tax and to denounce the lack of attention given to them by Mr. Eduardo Rodríguez Veltzé's government, blocked the road that links Santa Cruz de la Sierra with Argentina. According to reports, more than 350 Guaraní men, women and children of all ages blocked the Santa

<sup>30</sup> Prosecutors Milton Mendoza, William Alabe and Félix Peralta.

<sup>31</sup> On June 15, 2004, in the Andean village of Ayo Ayo, an open town meeting justified the execution of Mayor Benjamín Altamirano Calle, who was murdered after being accused of stealing public money and resources from the municipality, one of the poorest in the region. "Justice has been done", they claimed at the meeting explaining that the ex-mayor used the police and the courts to persecute his detractors and opponents.

The town threatened to block the roads of the Plateau and to cut the electricity supply in the area if the State did not unfreeze the municipality's bank accounts or attempted to take the people involved in the lynching into custody. The Ayo Ayo community demanded that the ex-mayor's family return the money he had stolen, and also the release of councillor Mr. Saturnino Apaza, who had been accused of taking part in the lynching.



Cruz - Camiri road in Santa Cruz. On September 18, 2005, after 10 days of blockade, they were violently attacked by more than 400 policemen and soldiers. Various Guaraní leaders were arrested and the Government reneged on a promise to send a negotiating commission.

In October 2005, CEJIS denounced the harsh treatment of the Guaraní people before the Inter-American Commission for Human Rights.

The mission received a communication from the President of the Santa Cruz Civil Committee, Dr. Germán Antelo Vaca, signed on August 8, 2005, in response to a press conference that the mission held in Santa Cruz on August 5, 2005. It stated:

*"Your statements, as they were published in the media, that "Santa Cruz society is living in a feudal era", "resources are unevenly distributed", "discrimination is evident because MST members are treated like criminals" or "that there exist institutions and circles of power that are above the law, which guarantees them immunity" are reckless, meaningless and stain the rights of millions of Bolivians who are trying to resolve our differences through law and justice.*

*Your words have been interpreted by the various institutions that form the Pro-Santa Cruz Committee as slanted and biased interference which has a political goal linked to the actions of the NGO CEJIS, which works for the Movement Towards Socialism (Movimiento Al Socialismo - MAS)....*

*Due to this aggression, we feel obliged to denounce this attempt to distort the truth of the democratic nature and vocation of our institution before the international community. We feel that under Bolivian law and the Constitution all citizens are equal and we believe that people who do not belong to the MST or to groups manipulated by NGOs or left leaning groups also have rights and we base our actions on respect to others, making no exceptions".*

The mission has confirmed, via dozens of testimonies from many different social groups (especially from officials who were interviewed), that this Committee acts above the law, maintains a corporation, racist and class-conscious mentality, and exerts total control over the actions of public authorities and the media. The attacks on the APDHB, CEJIS, other NGOs, popular leaders and MST members are simply examples of their power. This power has also been displayed in the most basic manner with the creation of the paramilitary group, the "Santa Cruz Youth Union", which even the Santa Cruz Police Commander has labelled as "the armed wing of the Civil Committee".

## **f) Defenders of the Law on sexual and reproductive rights<sup>32</sup>**

This draft Law recognises the liberty of all men and women, regardless of class, age, sex, gender, ethnic origin or sexual orientation, to enjoy sexual and reproductive rights, and guarantees the use of preventative services and treatment of sexually transmitted diseases, like HIV/AIDS, hepatitis B and C; prevention and treatment of cervical cancer, cancer of the uterus, breast cancer and prostate cancer; treatment of unwanted pregnancies; a quality level of treatment for difficult abortions and their consequences; post-abortion treatment and contraceptive services; infertility treatment and multi-disciplinary services to deal with violence, the menopause and OAPs. However, under pressure from the Catholic Church, the then President Mesa decided to reject the law and send it back to Congress, which has reopened the debate, but this has meant that no sexual rights law has been adopted.

Some sexual and reproductive rights defenders have been subjected to defamatory campaigns, threatening calls and slanderous comments, often from fundamentally religious organisations. These campaigns have been developed via the media as well as through the education system as a means of discrediting the defenders of the aforementioned law. During the examination of the law, there has been a clear omission by the authorities to publicly acknowledge the legitimate right of the defenders to promote the law. Besides, they did not provide them with proper security.

It is pertinent to take note that some sources, knowing the importance of the Law on sexual and reproductive rights, warned that there had not been enough public debate on the content and reach of the law and added that in no way was there justification for the campaign to discredit the defenders of the law.

On November 8, 2005, the headquarters of the Legal office for Women (*Oficina Jurídica de la Mujer - OJM*)<sup>33</sup>, in Cochabamba, were broken into. No valuable objects was taken<sup>34</sup>.

Mrs. **Julieta Montaña**, OJM Director, lodged a complaint. She is also the author of the proposed legislative text:

*"In our work of defending human rights we find ourselves faced permanently with people who violate women's rights. These actions of intimidation will not stop us in our struggle to defend women's rights".*

<sup>32</sup> This law was passed in Congress on May 5, 2005, but the Catholic Church opposed it and asked the President not to sanction it.

<sup>33</sup> OJM is a developmental NGO founded in 1984, and specialising in the legal aspects of defending women's rights. This was the second time they received threats because of their activities.

<sup>34</sup> See 2005 Annual Observatory Report.

### **g) Campaign of intimidation and defamation by State employees**

Some of the people interviewed by the mission mentioned the continuous investigation by the State into the human rights work of the most important NGOs in the country. For instance, the Permanent Assembly and the Bolivian Chapter of the Inter-American Democratic Platform, Human Rights and Democracy report infiltration by the State in their organisations.

Some sources also reported the existence of a campaign against NGOs, which has been active since the presidency of Mr. Sánchez de Lozada, and which has been characterised by political criticism. The Minister of Defence, Mr. Carlos Sánchez Berzaín, and the Minister for Home Affairs, Mr. Yerko Kukoc, publicly denounced human rights NGOs as protectors of international terrorism. At the same time, various Santa Cruz organisations claim that they have been accused of “promoting social conflict”.

### **h) The case of the Colombian peasant leader Mr. Francisco (“Pacho”) Cortés<sup>35</sup>**

In August 2005, the mission had the opportunity to visit Mr. **Francisco Cortés Aguilar** in the building where he is under house arrest. This house receives only a few minutes of sunlight per day and Mr. Cortés is permanently watched over by two guards. A surveillance car is parked nearby so that the State security agents can keep a record of who visits Mr. Cortés.

Mr. Francisco Cortés feels that his health has deteriorated due to his difficult conditions of detention, and his requests to be allowed to work and study have all been denied. The mission was told that Mr. Cortés, being a practising Catholic, had asked for permission to attend church; this request was also denied, the presiding judge claiming that “*God is everywhere*”.

The mission was already familiar with Mr. Cortés’ case, and the Observatory for the Protection of Human Rights Defenders had intervened at one stage to call for his freedom. The mission would like to thank presiding Judge Nancy Bustillos de Aluzarran for allowing us to discuss the case at length and for giving the mission access to all of the case information. The judge told the mission that she had been challenged on numerous occasions by Mr. Cortés and that she “*was tired of the case and would prefer not to preside over it.*”

The mission had access to the Bolivian television and press coverage of Mr. Cortés’ case, who all consider him as a “narco-terrorist”. The mission asked the Vice-Minister for Justice and Human Rights, the General Prosecutor and the President of the Supreme Court to investigate into the origin

of the large amounts of money being spent anonymously by the media in Bolivia with the aim of “proving” that the Colombian human rights defender is actually a “*well-known terrorist*”. The mission has been able to discredit these fabricated charges, having had access to the judicial case notes. Posters with Mr. Cortés’ photograph handed out by social organisations asking for his freedom have been transformed, through photomontages, in order to show part of his face covered by a balaclava from the Colombian National Liberation Army (*Ejército de Liberación Nacional de Colombia*).

### **Who is Francisco Cortés?**

Mr. Francisco José Cortés Aguilar, a Colombian citizen, started a social and community project helping the construction of roads, rural schools, sports centres, medical centres etc, at the beginning of the 1980s. Mr. Cortés, as a member of the Association of Rural Workers and Inhabitants (*Asociación de Usuarios del Campo - ANUC-UR*), fought for the rights of indigenous and peasant communities in the Arauca region of Colombia. Due to his human rights activities, Mr. Cortés has constantly been the victim of acts of intimidation and assaults. His work has meant that he and his wife were considered as social leaders and part of the protectors of human rights and environmentalist community. But this has led to numerous confrontations, death threats and persecution by the Colombian guerrilla and paramilitary groups. In 1983, the Colombian guerrilla gave Mr. Cortés a “death sentence”, digging a grave with his name on it. In 1987, they placed grenades in a car in which he was travelling. From 1990 to 1995, he was subjected to various death threats and “ultimatums” and was forced to move house 14 times. In 1995, he was kidnapped, and he has been the subject of many other actions against him during his life.

These events made the Colombian Government incorporate Mr. Cortés into their Programme for the Protection of Human Rights Defenders, and at the end of 2002 the Colombian Home Minister, as well as several human rights organisations, advised him to seek refuge in another country.

On April 5, 2003, Mr Cortés moved to Bolivia in order to look for a house where he and his family could live. However, five days later, on April 10, 2003, he was arrested in La Paz with other people and charged by the Prosecutor of: criminal organisation, terrorism, armed uprising against the security and sovereignty of the State, using false documentation and the trade and possession of explosives. The Prosecutor of Controlled Substances also accused Messrs. Cortés, Claudio Ramírez and Carmelo Peñaranda of drug trafficking.

The mission was given access to videos, made by the Bolivian Security Forces, that was used during the judicial trial. They show Mr. Cortés, who seems

<sup>35</sup> See 2005 Observatory Annual Report.

to have been filmed all the time, attending peasant meetings and demonstrations with peasant leaders in Bolivia. In other words, legitimate activities in which there is no evidence to suggest an attempted attack against the Bolivian State.

After being accused of belonging to the Colombian guerrilla and of drug trafficking, and spending twenty months of remand in custody in the high security prison of Chonchocoro and the San Pedro prison in La Paz, where he had been placed in solitary confinement, a public hearing was carried out on December 6, 2004 in La Paz. The Fifth Criminal Court granted him release on bail. The decision was based on article 239, subsection 3, of the New Bolivian Criminal Procedure Code, which stipulates that if, after 18 months of detention, a legal process has not finished nor a sentence been declared, the accused must be granted release on bail.

However, after the bail was paid thanks to international solidarity, the Prosecutor appealed against this decision, therefore consigning Mr. Cortés to house arrest. On January 10, 2005, Mr. Cortés was transferred to a private prison in the Alto San Pedro neighbourhood of La Paz, where he remains detained in conditions of solitary confinement, awaiting his trial, for which there was no date at the time of writing this report.

The mission became aware of public statement, by the ex-minister for the Government, Mr. Yerko Kukoc (who served under Mr. Gonzalo Sánchez de Lozada), in which he stated that Mr. Cortés was the victim of a set-up. This set-up would transcend Bolivian borders and would be related to the United States' interest in justifying the extension of Plan Colombia<sup>36</sup> into the Andean Regional Initiative<sup>37</sup>, the increase of American military presence in the region and the militarization of social conflicts.

This hypothesis has been studied and analysed by Mr. Cortés' lawyers, and the mission has also had the opportunity to interview Mr. Kukoc. The regular presence of United States Army Generals is widely known in Bolivia<sup>38</sup>, and they provide the judicial administration with resources so that they can continue their struggle against narcotics with the aim of *"reducing international crimes that threaten the United States by helping the security forces and Bolivian judicial authorities identify, dissuade and process these types of crimes by means of strengthening multilateral co-operation against*

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<sup>36</sup> See [http://usinfo.state.gov/esp/home/regions/south\\_america/colombia.html](http://usinfo.state.gov/esp/home/regions/south_america/colombia.html)

<sup>37</sup> See <http://usinfo.state.gov/espanol/ari/>

<sup>38</sup> See the section relating to press releases of the last 3 years where it reviews the giving of Christmas presents to poor children by the Marines, the presence of high ranking officers of the US Armed Forces and important State Department officials and also the important help given to the judicial administration. <http://lapaz.usembassy.gov/Pressrel2004/notas2004.htm>

*crime*<sup>39</sup>". It is also necessary to point out that the US State Department, in its latest report on Bolivia, summarises the case of Mr. Cortés as follows:

*"The security forces continue to unearth credible evidence that radical groups operate by using NGOs to cover their subversive activities. For example, in April 2003, the police in El Alto arrested Colombian citizen Francisco "Pacho" Cortés, who is a suspected member of the Colombian ELN, who was trying to pass himself off as a human rights worker. Mr. Cortés and two colleagues were in possession of drugs, dissident material, arms and bomb-making equipment"*<sup>40</sup>.

On June 22, 2005, the United Nations Working Group on Arbitrary Detention published its Opinion N° 12/2005 (Bolivia), about the detention of Messrs. Francisco José Cortés Aguilar, Carmelo Peñaranda Rosas and Claudio Ramírez Cuevas, concluding that:

*"...15. Serious doubts exist as to the manner in which the arrest was conducted, and these doubts have not been dispelled by the information received. The Government has not denied that when the homes of the accused were raided and the accused were arrested in the early morning hours, they were portrayed in a large-scale media operation as guilty of the crimes with which they were charged. Nor has the Government denied that the detainees are farm workers' leaders, or that Francisco Cortés Aguilar has no record as a subversive or terrorist in Colombia, that he has denied any link with subversive organizations, and that, on the contrary, he had to seek exile in Bolivia with his family as a result of being threatened by paramilitary organisations.*

*16. The Government has not denied that the media's portrayal of the arrest of the accused individuals was potentially damaging to their defence and in contravention of the principle of the presumption of innocence. Similarly, there has been no denial of the allegation that evidence found in the home of the accused had been planted there hours earlier.*

*17. Nor has there been any denial of a series of acts of intimidation and harassment of the lawyers who were working for the defence initially. These lawyers received death threats, and, at the start of the case, were denied copies of the case file, which prevented them from properly presenting evidence in rebuttal. Furthermore, it has been noted that the public nature and seriousness of the charges have led to threats against other lawyers and defence attorneys associated with Francisco Cortés.*

*18. In this regard, the Working Group has been informed that several Colombian citizens and one Peruvian citizen, all of whom had been granted refugee status by the Office of the United Nations*

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<sup>39</sup> See the section on Anti-narcotics of the US Embassy in Bolivia <http://lapaz.usembassy.gov/nas.htm>. Unofficial translation.

<sup>40</sup> Unofficial translation. See : <http://lapaz.usembassy.gov/HHRR/IDDHH2004repor.htm>.

*High Commissioner for Refugees (UNHCR) in Bolivia, were forced to leave Bolivia because the police threatened to arrest them if they did not denounce Francisco Cortés. Consequently, an urgent appeal has been made on their behalf, without prejudging the merits of the case.*

*19. Likewise, on the basis of the information received, the Working Group notes that the serious charges made in this case were formulated in a general and imprecise manner, without defining the specific acts that constituted the criminal offences concerned.*

*20. It is also noted that the detainees have been deprived of their liberty since 10 April 2003, that this situation has not changed since then - although there has been a change in the place of detention in one case - and that they continue to be held in pre-trial detention.*

*21. In these circumstances, and given the gravity of the charges, it is essential to respect international standards concerning the right to a fair trial.*

*22. The Working Group notes, however, that in the foregoing case, the accused have not been able to enjoy the fundamental guarantees stemming from the right to a fair trial; the failure to observe these guarantees is of such gravity that it imparts an arbitrary character to the deprivation of their liberty.*

*23. In the light of the foregoing, the Working Group renders the following opinion:*

*The deprivation of liberty of Francisco José Cortés Aguilar, Carmelo Peñaranda Rosas and Claudio Ramírez Cuevas is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and articles 9, 14 and 15 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases presented to the Working Group."*

On September 11, 2005, the Ombudsman, Dr. Waldo Albarracín, presented an appeal on the grounds of unconstitutionality to the Judicial District Superior Court of La Paz in favour of Mr. Francisco Cortés, in light of the negative response of the National Refugee Commission of the Bolivian Ministry of Foreign Affairs (*Comisión Nacional del Refugiado* - CONARE) to grant him political asylum. Dr. Albarracín quoted a petition from the Office of the United Nations High Commissioner for Refugees, dated September 9, 2005.

On November 16, 2005, the CONARE finally granted Mr. Cortés a political refugee status, thereby implicitly condemning his detention on remand. On finalising this report, the Observatory was informed that Mr. Cortés was released on bail on February 8, 2006, after agreeing not to leave the cities of La Paz and El Alto. Similarly, he had to go twice a week to the Court and an hearing in his trial was scheduled for April 17, 2006.

### **II.3. An official institution with good intentions and credibility**

It is important to note the intention of the Ombudsman to support the legitimate work of human rights defenders. However, it seems as though a coherent and systematic policy has not been planned to deal with these matters. This means that this institution is weak and requires political and material support from the State and society in general. The mission believes that the Ombudsman is probably the public institution that currently enjoys the highest level of credibility in the country.

In many occasions, the citizens have to resort to the Ombudsman in order to obtain information about the offices and entities of the State, and to overcome the obstacles that civil servants in other agencies place in front of them.

### III. POINTS OF CONCERN

The mission notes the following points as reasons for worry:

- 1 Despite the fact that the Republic of Bolivia is a member of the United Nations, and of the Organisation of American States, in general it cannot claim to have honoured its human rights obligations and in no way can it claim to have recognised the legitimacy of the work of human rights defenders or offered them protection.
- 2 Only a few declarations made by senior civil servants have recognised the legitimate nature of the work of human rights defenders. The current Ombudsman, Dr. Waldo Albarracín, has issued some statements in specific cases but these have had little effect and have not enjoyed the full support of the authorities.
- 3 Armed civilian groups - up until now apparently isolated cases - are on the payroll of estate owners, ranchers and others, and intimidate and harass peasant, indigenous leaders, communities that try to exert their rights, and human rights defenders, especially lawyers.
- 4 On September 15, 2004, a statement by a group of businessmen was published in the written press (See annex 1), in which they announced their intention to defend their rights due to the "failure of the State" to protect them. The mission would like to express its concern with this statement that they understand as an intent to form armed paramilitary groups in order to protect the economic interests of some powerful groups. This constitutes a severe threat for the work of the defenders of peasants and indigenous rights.
- 5 During the entire duration of the mission's work in Bolivia (which lasted until August 2005), the mission was not aware of any reaction neither from the Government nor from the media regarding the information provided in point 4. It is worrying that the authorities have not reacted to the threat of legitimate State action being replaced by private interests.
- 6 The formation of the "Santa Cruz Youth Union", an offshoot of the Santa Cruz Civil Committee, is the direct result of this threat. The way in which its members have acted with absolute impunity in Santa Cruz demonstrates the way in which the State, especially in this area of Bolivia, is under the influence of large private interests who try to inflate their stature by making pompous statements demanding regional autonomy.
- 7 Most acts of aggression and intimidation against lawyers, NGOs, peasant and indigenous leaders (which have been publicly denounced) remain unpunished.
- 8 The legitimate human rights work of the Landless Workers' Movement (MST) is being hampered by the illegal interception of phone calls and emails, anonymous death threats against leaders, members and advisors, arbitrary arrests and unfounded accusations, all of which in order to disrupt their organisational structure.
- 9 The difficulties and obstacles faced by human rights defenders in gaining access to public information affects the transparency of State management and render the defence of human rights much more difficult.
- 10 Some of the proposals being considered by the Constitutional Assembly are very worrying. The mission is particularly concerned by the proposal to exclude indigenous representatives from the election process and the proposal to convert the police into the "fourth branch" of the Military Forces.
- 11 In agreement with the public criticisms, the mission would like to state that the Councillor for the Department of Santa Cruz allowed the eviction of 400 peasant families with the use of excessive force, provoking the intervention of the INRA, a public entity that declared itself incompetent to act in this particular case.
- 12 The silence of the authorities on the subject of the threats, hostilities and intimidations faced by the defenders of the Law for Sexual and Reproductive Rights is disconcerting. The distortion of the reach and content of the Law during the Congressional debate is also a cause for concern.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

With regard to what it has seen and documented during its visit, the mission has come to the following **conclusions**:

- i. Despite the Republic of Bolivia proclaiming itself a democracy, defenders of both civil and political rights, and economic, social and cultural Rights, are not exempt from threats, intimidation and obstacles, the majority of which are made by civilians, a circumstance which is usually greeted by silence from the authorities, which refuse to provide them the necessary protection. Similarly, the Office of the General Prosecutor and the judicial authorities do not fulfil their obligation to investigate and punish the authors of these crimes, who remain free and unsanctioned.
- ii. The existence of armed civilian groups acting as mercenaries and hitmen under the control of estate owners, businessmen and economically powerful people, is a very serious issue to which the Bolivian government did not dedicate enough time or resources. Almost as serious is the authorities' silence with regard to the statement published in the press on September 15, 2004 (See annex I), a silence that is also indicative of the failure to prevent the formation of paramilitary groups, including the "Santa Cruz Youth Union". This subject requires the governmental and judicial authorities' urgent attention.
- iii. Within the defenders' community, there exists a certain awareness of the high levels of corruption in the judicial system. This corruption is expressed via demands for bribes and court decisions being based on political and economic interests.
- iv. The Republic of Bolivia is a member of the International Labour Organisation (ILO), and therefore has ratified its Convention no. 169. However, the Bolivian government has not satisfied its obligation under this clause to consult the population when designing very large infrastructure projects or building projects that affect the integrity of tribal and indigenous community land or development. The Bolivian government, from what this mission could see, has only taken part in some purely formal consultations, which does not fulfil the demands of the ILO Convention.
- v. The Republic of Bolivia has not honoured its commitments towards the 1998 Declaration of the United Nations and the 1999 Declaration of the Organisation of American States, relating to the legitimacy of the work of the human rights defenders, and their right to protection.
- vi. The difficulties that restrict many civil servants' access to public information and the restrictions and delays in the legal registering process of peasants and indigenous organisations and human rights NGOs are in themselves violations of the guarantees that are supposed to be granted to human rights defenders.
- vii. If the authorities do not assume their responsibilities in the short term, the political and social situation in the country will become more serious and the work of human rights defenders will become more seriously impeded, intimidated and difficult. Some activists see the possibility of their lives and freedom being threatened if the State does not take immediate steps to guarantee the protection and liberty of their work.
- viii. It is evident that many private sector groups are organising the formation of armed groups. These are the same people that have been denying to peasants and indigenous communities their fundamental rights by illegally taking their best land and excluding them from participating in the decision making process.

## **Recommendations:**

*The Observatory for the Protection of Human Rights Defenders urges the Government of the Republic of Bolivia and the judicial authorities to adopt and put into practice the following recommendations:*

- The acknowledgement, through the issue of a general declaration and public statements, of the legitimacy of the work of human rights defenders, the will of the State to protect their work, and the punishment of those who try to illegally impede their activities.
- To promote and finance a far-reaching campaign to spread the knowledge of human rights, the legitimacy of defenders' work and the obligation of all authorities to protect and promote their actions.
- To ensure the implementation of the Declaration on Defenders of Human Rights, adopted by the General Assembly of the United Nations on December 9, 1998, and of the Resolution on Human Rights Defenders in the American States (General Assembly of the Organisation of American States, June 1999).
- To promote the inclusion of provisions into current laws and regulations, that enable the prosecution of acts of intimidation, harassment, aggression and other crimes committed by civilians or State agents against human rights defenders. In the case of crimes committed against human rights defenders by State agents, the sentences should be particularly exemplary.
- To guarantee that projects that affect land, territories, customs, cultural identity or the development of indigenous communities and inhabitants of the Native Community Land (TCO) enable the participation of all the communities or populations affected, have the guarantee of complete transparency, and proceed in a manner that shows that a final decision, positive or negative, has been reached in a correct manner.
- To promote the Law on Sexual and Reproductive Rights, in the form which had been approved by the Congress, and guarantee that fundamentalist groups cannot attack or slander sectors of the population that defend the law. The mission urges the Ombudsman to act in the same manner.
- Faced with the situation of impunity that covers those who commit crimes against human rights defenders and against the population in general, the mission asks the Government:
  - ⊙ To immediately promote investigations and the use of effective punishment in cases of judicial and administrative corruption;
  - ⊙ To guarantee protection to witnesses and informers and ensure that coercion of human rights defenders is avoided;
  - ⊙ To suspend the active service of security force members / State agents of any order who are found to be involved in human rights violations, threats, acts of intimidation or any other forms of aggression against human rights defenders;
  - ⊙ To create and guarantee the functioning of effective mechanisms that allow the speeding up of thorough, impartial and independent investigations into human rights violations and the intimidation of human rights activists so that those responsible are judged and the victims can be compensated correctly. The results of these trials and investigations should be published.
- To take the necessary steps so that civil servants involved in actions against human rights activists or human rights violations cannot occupy posts of responsibility. At the same time, the President of the Republic, as the Chief of the Armed Forces, has, according to the Constitution, the obligation to ensure that the army and the police conform with the decisions of the ordinary judicial system, in particular the sentences issued by the Constitutional Court, so that the Armed Forces cannot pretend to continue using military courts to judge human rights violations.
- To fulfil their obligations regarding the establishment of mechanisms that guarantee that the perpetrators of human rights violations, including those against human rights defenders, do not benefit from legal immunity or any other legal status that impedes or blocks their trial or punishment.
- In order to fulfil their international obligations, to create mechanisms that ensure that the authorities (on national, regional, provincial and municipal levels) meet with human rights organisations - without any discrimination - and arrange suitable actions for prevention and protection. The Government should initiate legislative changes that would allow human rights organisations to bring authors of human rights violations before Courts.
- To promote and guarantee media access to human rights defenders in order to inform society on human rights issues and actions.

➤ In this period of the elaboration of a new Constitution, the Observatory recommends that the Government:

- ⊙ Promotes wide-ranging participation in the human rights movement in Bolivia.
- ⊙ Prepares, in conjunction with the Ombudsman, human rights defenders and indigenous communities, constitutional guarantees for human rights

*These recommendations are directed at the executive and judicial branches of the Government as well as the Ombudsman. We also believe that the later should:*

- Actively incorporate human rights defence organs in national and departmental plans.
- Include the principles of the 1998 United Nations Declaration and the Organisation of American States Declaration of 1999 in its human rights defence resolutions.
- Act within its area of competence, in order to help overcome problems of corruption and inefficient behaviour in the judicial system, and the impunity that prevails in Bolivia.

*To the human rights defenders community in Bolivia:*

The Observatory believes that the human rights defenders community in Bolivia should take note of the following suggestions:

- To make systematic use of the international spaces dedicated to the protection of human rights, the universal system as well as the Inter-American system, which implies:
  - ⊙ To document and present cases to the Inter-American Commission for Human Rights;
  - ⊙ To document and ask the Inter-American Commission for Human Rights for measures of protection for individuals, communities or groups who are in situations of risk or under threat;
  - ⊙ To permanently update the United Nations Special Representative of the Secretary General on Human Rights Defenders, Mrs. Hina Jilani, about all acts of aggression, intimidation, attacks and obstacles to the work of the human rights defenders and ask for her help when necessary.

*With reference to the National Assembly, social movements and political parties:*

- ⊙ To promote the integration of international law, regarding human rights, into the new Constitution, which will guarantee its sovereignty over Bolivian law.
- ⊙ To establish that the first obligation of the authorities is to actively promote and protect all human rights. This must include the support and protection of all people who promote and defend human rights.

*This report will be sent to the pertinent international organs, including the United Nations, the Inter-American System, asking them, in particular the Interamerican Commission for Human Rights, to keep a special guard on the situation of Defenders who find themselves under threat. At the same time a copy will be sent to the UN Special Representative of the Secretary General on Human Rights Defenders and the Special Rapporteur on the Independence of the Judiciary, informing them of the situation of impunity regarding in particular threats and acts of violence against human rights defenders and the high levels of corruption which exists in the judicial system.*



Press release issued in the newspaper *La Razón de Santa Cruz*, on September 14, 2004

## CARTA ABIERTA SOBRE AVASALLAMIENTO DE TIERRAS Y DERECHOS PRIVADOS

Santa Cruz, 14 de septiembre de 2004

Licenciado  
Carlos Diego Mesa Gisbert  
Excmo. Presidente Constitucional de la República  
Palacio de Gobierno  
La Paz

Excmo. Señor Presidente:

**Ref.: Carta Abierta sobre avasallamiento de tierras y derechos privados**

El proceso de saneamiento de las tierras en Bolivia ha fracasado, faltan apenas dos años para su finalización y, pese a haberse invertido más de 70 millones de Dólares, el avance es de apenas el 15%.

Con el propósito de evitar conflictos y concederle a su gobierno la tranquilidad y tiempo suficiente para legitimarse y gobernar, nos hemos mantenido en silencio y a la espera de que Ud. y las autoridades de su gobierno hagan cumplir la Ley.

Lamentablemente señor Presidente, nuestra espera sólo ha servido para que el proceso sistemático de avasallamiento de nuestras tierras y derechos sobre ella, se incremente con la pasividad cómplice del Estado.

Bloqueos de caminos, marchas, amenazas y chantajes son patrocinados por grupos políticos y ONG que han hecho de estos procedimientos una exitosa estrategia de presión ante el Gobierno Nacional y la Prefectura Departamental, quienes prefieren suscribir convenios, en muchos casos al margen de la Ley, antes que restablecer el marco legal.

La seguridad jurídica, condición imprescindible para el desarrollo y la convivencia civilizada, está siendo destruida en el Oriente Boliviano, poniendo en riesgo los bienes y las vidas de los verdaderos productores.

En los últimos meses las invasiones y avasallamientos han alcanzado niveles inaceptables y nunca vistos. Se han invadido fundos agropecuarios en producción, áreas protegidas, concesiones forestales de empresas y Agrupaciones Sociales de lugar y Tierras Comunitarias de origen. En concreto Señor Presidente, todos somos víctimas de la inseguridad jurídica.

Los daños a las inversiones, a la base productiva y ecológica de los recursos naturales, son irreversibles.

Señor Presidente, a los intereses políticos y económicos que están atrás de las invasiones, no les interesa la restauración del estado de derecho, y continuarán sacando ventaja de la permisividad del Estado.

Coincidimos con usted en el valor y la importancia del diálogo como instrumento de solución de conflictos, pero éste, no debe suponer dar la espalda a la institucionalidad jurídica del país. Las constantes violaciones a la Ley y a nuestros derechos se han incrementado durante esta práctica, convertida en el único mecanismo y ejercicio de autoridad, en desmedro exclusivo de nuestros legítimos derechos.

Ante esta realidad señor Presidente, y mientras su gobierno siga buscando la legitimación y pretenda sólo gobernar por la vía del diálogo, advertimos que la ausencia de autoridad, está conduciendo a una situación de violencia incontenible, cuyos nefastos resultados afectará gravemente al aparato productivo nacional y a las fuentes de empleo.

Por esta razón, responsabilizamos a su gobierno de las consecuencias de la falta de autoridad, que obligará a los productores a defender sus legítimos derechos con sus propios medios.

Con este motivo, lo saludamos con la consideración que su investidura nos merece.

  
ANTONIO FRANCO  
Confederación de  
Ganaderos de Bolivia

  
JUAN ABUAWAD  
Cámara Boliviana Forestal

  
JOSE CEPEDES  
Cámara Agropecuaria del Oriente

  
JULIO KEMPPF  
Federación de Empresarios  
Privados de Santa Cruz

  
BONIFACIO BARRIENTOS  
Capitán del Alto y Bajo Isoso

15/09/2004

## ANNEX II

### SUPREME DECREE N° 28627 Presidency of the Republic Bolivia

#### **EVO MORALES AYMA, PRESIDENTE CONSTITUCIONAL DE LA REPÚBLICA, CONSIDERANDO:**

Que los problemas económicos, políticos y sociales no resueltos durante la vida republicana originaron una crisis general del Estado expresada en los permanentes conflictos sociales, cuyos detonantes fueron los hechos sangrientos de febrero y octubre 2003 y, junio 2004; razón por la cual, se requieren cambios profundos en la sociedad boliviana.

Que el movimiento indígena popular ha planteado, de manera sistemática, la Asamblea Constituyente como ámbito de deliberación y cambio democrático, que por primera vez posibilita una transformación estructural del Estado.

Que el Estado, recogiendo el clamor popular, incorporó en su reforma del 2004 la Asamblea Constituyente, como órgano supremo con la facultad de reformar totalmente la Constitución Política del Estado.

Que la Ley N° 3091 de 6 de julio de 2005, de convocatoria a la Asamblea Constituyente, como parte del acuerdo político y social, permitió una salida institucional a la crisis provocada por la renuncia del entonces Presidente Carlos Diego Mesa Gisbert, fijando la elección de constituyentes para el primer domingo del mes de julio de 2006 y la conformación del Consejo Preconstituyente y Preautonómico.

Que la Ley N° 3364 de 06 de marzo de 2006 – Ley Especial de Convocatoria a la Asamblea Constituyente determinó convocar a la elección de los constituyentes para el día 2 de julio de 2006 y su instalación de sesiones para el 6 de agosto de 2006, con el objeto de efectuar una reforma total de la Constitución, estableciendo el número de constituyentes y las condiciones de su elegibilidad.

Que es voluntad indeclinable del Gobierno Nacional cumplir el compromiso asumido con el pueblo boliviano para la realización de la Asamblea Constituyente.

Que el proceso constituyente del país requiere una entidad encargada de coordinar y organizar la participación del soberano, que es el pueblo, de acuerdo con lo establecido en el Artículo 2 de la Constitución Política del estado y coordinar las labores del Consejo Preconstituyente y Preautonómico.

Que la Ley N° 3351 de 21 de febrero de 2006, de Organización del Poder Ejecutivo, en el Parágrafo V del artículo 2, faculta al Poder Ejecutivo la designación de Representantes Presidenciales para que se encarguen de tareas específicas.

#### **EN CONSEJO DE MINISTROS, DECRETA:**

##### **ARTÍCULO 1.- (OBJETO).**

El presente Decreto Supremo tiene por objeto establecer la Representación Presidencial para la Asamblea Constituyente y el Referéndum Autonómico.

##### **ARTÍCULO 2.- (CREACIÓN).**

Se crea el cargo de Representante Presidencial para la Asamblea Constituyente y el Referéndum Autonómico, encargado de su organización, coordinación, difusión y promoción.

##### **ARTÍCULO 3.- (DEPENDENCIA Y COORDINACIÓN).**

La representación Presidencial de la Asamblea Constituyente y el Referéndum Autonómico, es una institución pública desconcentrada y tendrá responsabilidad directa ante el Presidente Constitucional de la República y, dependerá operativamente del Vicepresidente Constitucional de la República, bajo el principio constitucional de Coordinación de los Poderes Públicos, establecido en el Artículo 2 de la Constitución Política del Estado.

##### **ARTÍCULO 4.- (FUNCIONES).**

El Representante Presidencial para la Asamblea Constituyente y el Referéndum Autonómico tendrá las siguientes funciones:

- a) Coordinar las labores del Consejo Nacional Preconstituyente y Preautonómico, creado por ley N° 3091 de 6 de julio de 2005, de Convocatoria a la Asamblea Constituyente, y, asumirá su conducción y representación oficial.
- b) Sistematizar las propuestas elaboradas por distintos programas, proyectos y organizaciones para la Asamblea Constituyente.
- c) Canalizar el debate público y las aspiraciones de la sociedad civil, en relación con la Asamblea Constituyente y el Referéndum Autonómico.
- d) Coordinar las relaciones de los órganos públicos referidos a los mencionados temas.
- e) Realizar investigaciones en torno a los asuntos fundamentales a ser tratados en la Asamblea Constituyente.
- f) Promover la conciencia social para la participación del pueblo en el proceso de la Asamblea Constituyente y el referéndum Autonómico a nivel nacional, departamental y sectorial.
- g) Difundir la información relativa a la Asamblea Constituyente y el Referéndum Autonómico.

- h) Conformar comités constituyentes departamentales, provinciales y cantorales, sobre la base de las organizaciones sociales, para la promoción y participación del pueblo en el proceso constituyente y autonómico.
  - i) Apoyar y conducir, dentro de las áreas de su competencia, el proceso del Referéndum Autonómico y Asamblea Constituyente en forma armónica y continua a nivel nacional.
  - j) Supervisar el trabajo de asesoramiento y apoyo al Representante Presidencial, para la Asamblea Constituyente y el Referéndum Autonómico.
  - k) Gestionar y proveer los recursos económicos necesarios para el proceso.
  - l) Presentar regularmente informes del avance de su trabajo al Presidente y Vicepresidente Constitucionales de la República.
  - m) Difundir periódicamente los resultados de su trabajo.
  - n) Se constituye en la Máxima Autoridad Ejecutiva (MAE) de su entidad.
- El Representante Presidencial para la Asamblea Constituyente y el Referéndum Autonómico podrá contar con los recursos y mecanismos necesarios para el desarrollo de sus funciones administrativas, jurídicas y de enlace con la Corte Nacional Electoral.

#### **ARTÍCULO 5.- (SEDE).**

El Representante Presidencial para la Asamblea Constituyente y el Referéndum Autonómico tendrá su sede en la ciudad de Santa Cruz de la Sierra, sin perjuicio de las desconcentraciones administrativas y operativas que se establezcan.

#### **ARTÍCULO 6.- (ESTRUCTURA).**

La Representación Presidencial de la Asamblea Constituyente y el Referéndum Autonómico estará conformada de la siguiente manera:

- Representante Presidencial para la Asamblea Constituyente y el referéndum Autonómico.

Apoyo funcional:

- Coordinador Nacional del Programas y Proyectos
- Coordinación con la Sociedad Civil y Organizaciones Sociales
- Coordinación de Comunicación y Difusión.

#### **ARTÍCULO 7.- (COORDINACIÓN NACIONAL DE PROGRAMAS Y PROYECTOS).**

La Coordinación de Programas y Proyectos dependerá de un Coordinador designado, previa consulta con el Presidente y el Vicepresidente de la República, por el Representante Presidencial para la Asamblea Constituyente y el Referéndum Autonómico, y tendrá las siguientes funciones:

- a) Proponer planes, programas y proyectos, orientados al desarrollo de la Asamblea Constituyente, y el Referéndum sobre Autonomías Departamentales.
- b) Viabilizar los programas, planes y proyectos de las organizaciones nacionales y sociales representativas de la sociedad civil, relacionados con la Asamblea Constituyente y el Referéndum sobre Autonomías Departamentales.
- c) Informar regularmente al Representante Presidencial para la Asamblea Constituyente y el Referéndum Autonómico sobre los avances de su trabajo.
- d) Sistematizar experiencias constitucionales internacionales, procesos sociales y de negociación política en Bolivia, antes y durante el proceso.
- e) Facilitar técnica y operativamente procesos de consulta ciudadana y de negociación política.

#### **ARTÍCULO 8.- (COORDINACIÓN CON LA SOCIEDAD CIVIL Y AGRUPACIONES SOCIALES).**

La Coordinación con la Sociedad Civil y Agrupaciones Sociales dependerá de un Coordinador designado, previa consulta con el Presidente y el Vicepresidente de la República, por el Representante Presidencial para la Asamblea Constituyente y el Referéndum Autonómico, y tendrá las siguientes funciones:

- a) Coordinar con todos los sectores sociales, las actividades necesarias para el desarrollo de los procesos preconstituyente y preautonómico.
- b) Informar regularmente al Representante Presidencial de la Asamblea Constituyente y el Referéndum Autonómico sobre los avances en su trabajo.
- c) Facilitar la concertación política nacional estableciendo los principales ejes temáticos de la agenda constituyente.
- d) Elaborar y sistematizar documentos sobre la base de las propuestas presentadas por los diferentes sectores sociales.
- e) Relacionarse con instituciones, proyectos y organizaciones que hayan elaborado trabajos relativos a los procesos preconstituyente y preautonómico e incorporarlos orgánicamente.

#### **ARTÍCULO 9.- (COORDINACIÓN DE COMUNICACIÓN Y DIFUSIÓN).**

La Coordinación de Comunicación y Difusión estará a cargo de un Coordinador designado, previa consulta con el Presidente y el Vicepresidente de la República, por el Representante Presidencial para la Asamblea Constituyente y el Referéndum Autonómico, y tendrá las siguientes funciones:

- a) Informar regularmente al Representante Presidencial sobre los avances en su trabajo.
- b) Lograr la concertación nacional sobre la base de la comunicación.
- c) Informar de manera general y detallada a la sociedad civil sobre los aspectos vinculados al proceso de Asamblea Constituyente.
- d) Promover la conciencia social incorporando ideas centrales vinculadas a la temática.
- e) Incentivar la participación de la sociedad civil, en todos sus sectores sociales.

#### **ARTÍCULO 10.- (RESPONSABLES DEPARTEMENTALES).**

En cada Departamento, el Representante Presidencial para la Asamblea Constituyente y el Referéndum Autonómico nombrará un Responsable Departamental y previa consulta con el Presidente de la República por el Representante Presidencial para la Asamblea Constituyente y el Referéndum Autonómico y, tendrá las siguientes funciones:

- a) Coordinar con el Consejo Departamental Preautonómico y Preconstituyente a fin de lograr los objetivos trazados en el presente Decreto Supremo.
- b) Informar a los ciudadanos del Departamento las actividades realizadas a nivel nacional, departamental y local.
- c) Remitir a los asesores del representante Presidencial todas las propuestas recibidas en la oficina departamental.
- d) Informar periódicamente a la oficina nacional sobre todas las actividades realizadas.

#### **ARTÍCULO 11.- (CONSEJOS DEPARTAMENTALES PRECONSTITUYENTES Y PREAUTONÓMICOS).**

I. Los Consejos Departamentales Preconstituyentes y Preautonómicos serán instancias de asesoramiento externo, convocados por el Responsable Departamental.

II. Los Consejos Departamentales Preconstituyentes y Preautonómicos estarán conformados por entidades representativas interesadas en participar activamente en el proceso preconstituyente y preautonómico.

III. Los Consejos Departamentales Preconstituyentes y Preautonómicos coordinarán sus actividades con el Responsable Departamental correspondiente y tienen las siguientes funciones:

- a) Informar regularmente al representante Presidencial sobre los avances en el trabajo preconstituyente y preautonómico.
- b) Difundir en su Departamento las propuestas emitidas por el Representante Presidencial.
- c) Enviar al Representante Presidencial las propuestas departamentales a través del Responsable Departamental.
- d) Participar en las reuniones de coordinación convocadas por el Representante Presidencial.

#### **ARTÍCULO 12.- (CONSEJO NACIONAL PRECONSTITUYENTE Y PREAUTONÓMICO).**

I. El Consejo Nacional Preconstituyente y Preautonómico es una instancia de asesoramiento externo, integrado por personalidades de los movimientos sociales, indígenas y sociedad civil, que garantizará la pluralidad, representatividad en la generación de consensos y el reconocimiento de disensos.

II. El Consejo Nacional Preconstituyente y Preautonómico será conformado mediante Resolución Suprema.

#### **ARTÍCULO 13.- (UNIDAD DE APOYO TÉCNICO Y GERENCIA EJECUTIVA).**

A partir de la vigencia del presente decreto se suprime la Unidad de Apoyo Técnico - UAT y la Gerencia Ejecutiva.

#### **ARTÍCULO 14.- (RECURSOS).**

Todos los recursos asignados a la Gerencia Ejecutiva del Consejo Nacional Pre – Constituyente y Pre – Autonómico se transfieren a favor de la Representación Presidencial para la Asamblea Constituyente y el Referéndum Autonómico.

#### **ARTÍCULO 15.- (VIGENCIA DE NORMAS).**

I. Se derogan los artículos 7 y 8 del Decreto Supremo N° 28438 de 15 de noviembre de 2005.

II. Se abroga el Decreto Supremo N° 28549 de 22 de diciembre de 2005.

III. Se abrogan y derogan todas las disposiciones contrarias al presente Decreto Supremo.

Los Señores Ministros de Estado en los Despachos correspondientes quedan encargados de la ejecución y cumplimiento del presente Decreto Supremo.

*Es dado en el palacio de Gobierno de la ciudad de La Paz,  
a los seis días del mes de marzo del año dos mil seis.*

# THE OBSERVATORY

for the Protection of Human Rights Defenders

## L'OBSERVATOIRE

pour la Protection des Défenseurs  
des Droits de l'Homme

## EL OBSERVATORIO

para la Protección de los Defensores de Derechos  
Humanos

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### Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression against defenders.

With this aim, the priorities of the Observatory are:

- a) a mechanism of systematic alert of the international community on cases of harassment and repression against defenders of human rights and fundamental freedoms, particularly when they require an urgent intervention;
- b) the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) international missions of investigation and solidarity
- d) a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- e) the preparation, publication and world-wide diffusion of reports on violations of the rights and freedoms of individuals or organisations, that work for human rights around the world;
- f) sustained action with the United Nations (UN) and more particularly the Special Representative of the Secretary General on Human Rights Defenders and as necessary with geographic and thematic Special Rapporteurs and Working Groups;
- g) sustained lobbying with various regional and international intergovernmental institutions, especially the African Union (AU), the Organisation of American States (OAS), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States and the International Labour Organisation (ILO).

The Observatory's activities are based on the consultation and the co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by the OMCT and FIDH: "Each person victim or risking to be the victim of reprisals, harassment or violations, due to his compromise exercised individually or in association with others, in conformity with international instruments of protection of human rights, in favour of the promotion and realisation of rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments".

*Un programme de la FIDH et de l'OMCT - A FIDH and OMCT venture - Un programa de la FIDH y de la OMCT*

**fidh**

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