



THE HUMAN RIGHTS SITUATION IN THE AFTERMATH OF THE 20 OCTOBER 2019 GENERAL ELECTIONS IN BOLIVIA

A roadmap to prevent human rights violations, ensure accountability and pave the way to peaceful, participatory and inclusive elections



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Content:

I. Introduction	3
II. Context	4
III. The human rights situation in the aftermath of the 20 October 2019 elections	5
A) Violations of the rights to life and security of person	5
B) Violations of the right to liberty of person, prohibition of torture and other forms of ill-treatment	6
C) Violations of due process rights	7
D) Violations of the right to freedom of expression	7
E) Discrimination	8
F) Attacks against the Defensoría del Pueblo	8
IV. Conclusions and recommendations	9

I. Introduction



(C) OHCHR Bolivia.

1. Since November 2019, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has deployed a technical mission to Bolivia to gather first-hand information on the human rights situation in the aftermath of the 20 October general elections. The mission has been operating under the global mandate of OHCHR, with the support of the Bolivian authorities and of the United Nations Resident Coordinator. The activities of the mission are part of the “United Nations Programme for the Consolidation of Peace in Bolivia”.¹

2. The upcoming electoral cycle could mark a shift towards addressing institutional shortcomings and human rights violations observed during the ongoing political crisis. The present report outlines the findings of the monitoring work of the OHCHR mission in Bolivia and puts forward recommendations to assist current and future authorities in ensuring accountability and promoting structural changes that would prevent the recurrence of human rights violations.

3. OHCHR findings are based on more than 50 meetings with authorities and institutions at the national and local level and interviews with over 100 victims and witnesses, representatives of civil society organizations and other actors. OHCHR analysed a considerable volume of information, including information provided by authorities, first-hand accounts of incidents and reports from a variety of publicly available sources. OHCHR exercised due diligence to assess the credibility and reliability of all sources and crosschecked the information gathered to verify its validity.

¹ UN Bolivia press release, available at: <http://www.nu.org.bo/noticias/naciones-unidas-el-gobierno-de-bolivia-firman-proyecto-para-apoyar-el-dialogo-los-derechos-humanos-para-la-construccion-de-paz-en-bolivia/>



II. Context

4. At the end of 2016, despite the outcome of the 21 February 2016 referendum,² then President Evo Morales announced his decision to run for the presidency for an additional term. A year later, the Constitutional Court issued a ruling allowing him to run for a fourth mandate. This decision exacerbated existing polarization and the demand for the respect of the outcome of the referendum (known as 21F) from different sectors joining a nation-wide campaign entitled “Bolivia said no”.

5. The general elections were held on 20 October 2019. Partial results preliminarily pointed to a second round between Evo Morales, from the *Movimiento al Socialismo* (MAS³) political party, and Carlos Mesa, from *Comunidad Ciudadana*.⁴ That same

day, the Supreme Electoral Tribunal suspended the transmission of the preliminary results. When the transmission resumed the following day, they indicated a change in the trend of the results and the likelihood of Evo Morales’ victory in the first round, which generated concern among electoral observers.⁵ Immediately after, town councils (*cabildos*), vigils, protests, blockades, strikes and civic strikes (*paros cívicos*) took place throughout the country, denouncing electoral fraud. On 25 October, the Supreme Electoral Tribunal declared the victory of Evo Morales in the first round, intensifying the protests.

6. On 10 November, the Organization of American States released its preliminary report of the audit of the elections, recommending their annulment and the holding of new elections. On the same day, the Head of the armed forces publicly suggested that President Morales resign to restore peace and stability. President Morales and Vice-President Álvaro García Linera presented their resignations, as did other State officials, some of whom sought refuge at the Embassy of Mexico in Bolivia.⁶ Since then, protests at the national level have intensified, especially by sectors affiliated to MAS, and some acts of violence, vandalism, blockades and a siege to the city of La Paz have been registered. On 12 November, after two days of a power vacuum, the then vice-president of the Senate, Jeanine Añez, assumed the presidency to ensure the transition towards new elections. The Constitutional Tribunal endorsed the presidential transition.⁷

7. Massive demonstrations against the new Government erupted throughout the country and continued until a political agreement was concluded, on 23 November 2019, when the newly established Government and MAS representatives agreed to the annulment of the 20 October 2019 general elections, paving the way for new elections in 2020. General elections were initially scheduled for 3 May, but due to the COVID-19 pandemic, they have been postponed three times and are now scheduled to take place on 18 October 2020.

² On 21 February 2016, a referendum was held proposing changes to article 168 of the Constitution to allow the President and Vice-President to serve more than two consecutive terms; 51,31 per cent of those who participated in the referendum rejected the proposed amendment.

³ MAS is the Spanish acronym.

⁴ Partial results before the interruption of the dissemination of the preliminary vote counting (with 83 per cent of the votes counted) indicated that Evo Morales was leading with 45,28 per cent of the votes while Carlos Mesa ranked second, with 38,16 per cent. According to national legislation, a second round is compulsory if the difference between the first and the second candidate is lower than 10 per cent or if the first candidate does not reach 40 per cent of the votes.

⁵ On that same day, 21 October, the Electoral Observation Mission of the Organization of American States (OAS) in Bolivia expressed concern and surprise about the change in the trend of the results after the polls closed. See: https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-085/19

⁶ As of 22 July 2020, seven former authorities remained under the protection of the Embassy of Mexico as they had been denied safe-conducts to leave Bolivia.

⁷ Available at: <https://tcpbolivia.bo/tcp/?q=content/comunicado-1>

III. The human rights situation in the aftermath of the 20 October 2019 elections

8. Between 20 October and 25 November, the United Nations System registered hundreds of protests, rallies, strikes and blockades throughout Bolivia. During this period, in particular as of 10 November, some violent incidents were registered, such as fires, lootings of private and public property and other acts of vandalism. In that context, OHCHR documented extensive violations of human rights, including of the right to life and security, to liberty, of prohibition of torture and other forms of ill-treatment, and of the right to freedom of expression.

A) Violations of the rights to life and security of person

9. The national human rights institution (*Defensoría del Pueblo*) reported that 35 persons were killed in the context of the post-electoral crisis between 20 October and 25 November 2019, while the Institute of Forensic Investigations (*Instituto de Investigaciones Forenses*) recorded 30 persons killed during that period.⁸ The *Defensoría del Pueblo* also reported that 833 people were injured, either by security forces or in clashes between groups of protesters; the majority of injuries were reported in Cochabamba (393), Santa Cruz (138) and La Paz (122). The *Defensoría del Pueblo* reported that two police officers died and 12 were injured during the same period.⁹

10. In the context of largely peaceful protests¹⁰ from 20 October to 25 November 2019, OHCHR was able to document the death of 30 individuals and

received allegations of six other cases, which it was not able to corroborate. The Office could verify that at least 20 of the deaths occurred during operations carried out by the police and the armed forces in the context of protests; in four other cases, the victims were killed during clashes between protesters; and, in six cases, OHCHR was not able to verify the circumstances of the deaths.

11. During the first weeks of the crisis, under the previous Government, OHCHR noted that the police failed to fulfil their responsibility to protect. In this context, three deaths were caused by clashes or attacks between demonstrators.¹¹

12. In relation to the deaths which occurred during joint operations between the police and the armed forces, on 15 November 2019, nine people were killed during demonstrations in Sacaba (Cochabamba) while over 100 were injured;¹² on 19 November, 10 people were killed during protests in Senkata (El Alto – La Paz) and at least 30 more were injured.

13. The accounts of victims of injuries and witnesses in Sacaba and Senkata, as well as documentation and audio-visual material analyzed by OHCHR, indicate that security forces resorted to unnecessary or disproportionate use of force against protesters, in violation of applicable international norms and standards. Multiple sources verified by OHCHR suggest that State security forces used lethal ammunition to disperse protesters. Material elements, such as ammunition cartridges and bullet holes in public and private property, found by



⁸ The Institute of Forensic Investigations registers and reports the number of deaths based on autopsies performed.

⁹ See <https://www.defensoria.gob.bo/contenido/afectacion-a-la-integridad>

¹⁰ According to the Human Rights Committee, "...there is a presumption in favour of considering assemblies to be peaceful. Moreover, isolated acts of violence by some participants should not be attributed to others", who do not lose the right to freedom of peaceful assembly as a result of acts of violence by other participants. See CCPR/C/GC/R.37, para.17 and A/HRC/20/27.

¹¹ For instance, on 30 October two individuals who were protesting against the results of the elections were killed by firearms.

¹² See the United Nations High Commissioner for Human Rights press release available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25305&LangID=E>. On 10 June, OHCHR was informed that another person died of injuries suffered during the events in Sacaba.

OHCHR on site, corroborate the accounts collected about the use of firearms by security forces. The Institute of Forensic Investigations confirmed that lethal ammunition was the cause of all the deaths and several of the injuries in the protests in Sacaba and Senkata. There were no reports of members of security forces being killed or injured by firearms during these protests.

14. The Government denied that security forces used firearms in Sacaba and Senkata,¹³ and stated that it was rather some of the protesters who had been using firearms, causing all deaths. The Government also stated that the use of force by police and military was proportional to the level of violence of the protests, indicating that the protesters were carrying homemade weapons and explosive material. In the case of Senkata, the Government indicated that the protesters had intended to cause an explosion at the fuel plant in the area.



15. Different versions of the events provided to OHCHR by authorities and victims and witnesses reveal inconsistencies that should be thoroughly investigated. To date, no one has been held accountable for the deaths that took place during the protests in Sacaba and Senkata. A prompt, independent, impartial, transparent and effective investigation would be key to ascertaining the circumstances of the killings and injuries and identifying the material and intellectual authors of these acts, and to hold them accountable, in compliance with the applicable standards. In

addition to ensuring the truth and accountability, this would contribute to ease outstanding tensions and restore public trust in State institutions.

16. Under international human rights law and principles on the use of force, States must ensure that law enforcement officials are held accountable for any decision to use force.¹⁴ The events in Sacaba and Senkata took place in the days that followed the issuance of Presidential Decree 4.078 of 14 November 2019. The Decree was criticized by international actors for including vague provisions that limited, under certain circumstances, the responsibility of the armed forces for acts committed while using force during their interventions to support the police.¹⁵ On 28 November 2019, after the adoption of some positive easing measures and a significant decrease in protests, the Decree was withdrawn eliminating formal obstacles to investigate the conduct of the armed forces.

17. On 5 December 2019, the Government issued Decree 4100, foreseeing monetary compensation for the deaths that occurred during the crisis. The Decree was denounced for preventing beneficiaries from resorting to international mechanisms, a clause that was later repealed.¹⁶ On 9 March 2020, the Government issued Decree 4176, which modified Decree 4100 and substituted the monetary compensation with broader humanitarian aid for people injured and the families of those killed during the crisis, including for education and health care. Despite the improvements made, the Decrees fall short of fully guaranteeing the victims' rights to integral reparation.¹⁷ In addition, according to some of the victims, the humanitarian aid provided in the Decree has not yet been delivered.

B) Violations of the right to liberty of person, prohibition of torture and other forms of ill-treatment

18. According to the Defensoría del Pueblo, from 20 October to 25 November 2019, more than 1,500 people were deprived of their liberty, with the majority being released without charges after a few hours. Official accounts by law enforcement institutions on the number and the circumstances

¹³ According to the Government, some of the calibres of the ammunition found in the bodies of the deceased and injured demonstrators did not correspond to standard weapons of the police or of the armed forces. According to forensic reports, authorities were unable to recover the vast majority of bullets that killed and injured demonstrators in Sacaba and Senkata. Authorities have not conducted any assessment of the weapons carried by security forces during those operations.

¹⁴ See United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, para. 31.

¹⁵ The Decree provided for the intervention of the Armed Forces in support of the Police. It included vague terms, foreseeing the possibility for the Armed Forces of using "any available mean proportional to the risk of the operations" and exempting them from responsibility in case of "legitimate defence or state of necessity".

¹⁶ E.g. "Inter-American Commission on Human Rights available at: https://www.oas.org/en/iachr/media_center/PReleases/2019/321.asp

¹⁷ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

of deprivations of liberty during that period is scarce. On various occasions, a large number of deprivations of liberty were carried out during joint operations led by the police and the armed forces in areas where protests against the new Government took place.¹⁸ The arbitrary detentions of those who were peacefully demonstrating, in addition to the disproportionate response by law enforcement to some of the protests, appear to have been used as a mean to intimidate and discourage the exercise of the right to peaceful assembly.

19. OHCHR documented the case of 28 people arrested in El Alto (La Paz), on 11 November 2019, who were victims of arbitrary detention and subjected to torture or other forms of ill-treatment by the police, including death threats, electrocution, asphyxiation with plastic bags, beating with rifle butts, stress positions, food and water deprivation, sexual taunts and mock executions. At the finalization of this report, the 28 people were being prosecuted for aggravated damage to property and were granted house arrest in March 2020. Prompt and diligent investigations into all reports of torture or other forms of ill-treatment allegedly perpetrated by security forces must be ensured.

C) Violations of due process rights

20. Information gathered by OHCHR suggests a pattern of judicial persecution of former authorities or individuals associated with the MAS party, which builds on longstanding practices and deficiencies of the justice system, especially the lack of independence from political interference, as identified by United Nations human rights mechanisms for many years.¹⁹

21. From 12 November 2019 to 6 February 2020, the Office of the Attorney-General initiated criminal proceedings against around 150 former Government officials at all levels, for crimes such as sedition, terrorism or breach of duties. These proceedings were often prompted by legal complaints by officials of the new Government.

22. In the majority of these cases, individuals were placed in pre-trial detention, a precautionary measure that should only be applied exceptionally. OHCHR also observed violations of guarantees of due process and the presumption of innocence. It observed irregularities in the notification of



legal warrants; the arrest of witnesses soon after they had provided their declaration; harassment, detention and prosecution of defence attorneys; weak evidence to support the accusation; and public exposure of some of those arrested. OHCHR is also concerned that the definition of crimes such as terrorism, sedition and breach of duties is broad and vague and, as such, could be arbitrarily applied to restrict the rights of a person.

D) Violations of the right to freedom of expression

23. Overall, the longstanding concerns about freedom of expression in Bolivia - raised over the years by various international and regional human rights mechanisms - persist. It is urgent to address these given their particular relevance during electoral processes. Concerns include the limited protection provided to journalists from verbal and physical violence, inadequate investigations into such attacks, public discourse by officials stigmatizing and discrediting journalists and media and associating them with the opposition and, the arbitrary and discriminatory allocation of government advertising as an instrument to reward or punish media editorial line.²⁰

24. Between 17 October and 25 November 2019, the National Press Association recorded 94 attacks against journalists and media personnel, including physical and verbal attacks and acts of harassment, during protests. During the same period, at least 18 private and public media outlet premises were

¹⁸ For instance, on 14 November 2019, the police announced that joint operations in Cochabamba had resulted in the detention of over 450 individuals in 48 hours.

¹⁹ See CCPR/C/BOL/CO/3 of 6 December 2012 (para 22) and "El Sistema Judicial Boliviano. Estado de situación, buenas prácticas y recomendaciones para el trabajo en el sector, desde el enfoque de derechos humanos" OHCHR Bolivia, 2017, p. 34.

²⁰ See CCPR/C/BOL/CO/3 of 6 December 2013 (para 24) and see <http://www.oas.org/en/iachr/expression/docs/reports/annual/IA2018RELE-en.pdf>

intentionally damaged, set on fire, and equipment destroyed by people involved in protests.

25. OHCHR documented several cases of threats and physical assault by protesters against journalists, social and media communicators and freelancers covering the protests. OHCHR also received information about alleged attacks by security forces against journalists covering the protests in Sacaba and Senkata.



(C) OHCHR Bolivia.

26. Of concern are also public declarations by authorities, which claimed that some journalists had committed the crime of sedition. Such comments may encourage violence against journalists and other media workers, generate self-censorship and inhibit independent reporting.

E) Discrimination

27. During the weeks that followed the 20 October 2019 elections, OHCHR observed a trend of violent and inflammatory language by public officials and private individuals as well as racially motivated acts of discrimination and violence targeting indigenous peoples, including women. This included lack of respect for indigenous symbols such as the Whipala, which was removed from public premises and burnt following the resignation of Evo Morales. These acts appeared to be linked with persisting extremist political positions and deeply entrenched cultural intolerance.

28. OHCHR collected information on physical attacks (beatings), threats, insults and other degrading

treatment of indigenous women by mobilized groups, accompanied by expressions of intolerance related to their ethnicity and/or political affiliation. OHCHR has also received information on cases of violence against indigenous women holding public positions. OHCHR documented the emblematic case of the Mayor of Vinto (Cochabamba). On 6 November, a group called “Resistencia Juvenil Cochala”²¹ forced her to walk barefoot for two hours in the middle of a crowd, as a clear incitement to violence against her. They then doused her with gasoline, paint, food and urine, among other substances, and cut her hair. On different occasions, human rights mechanisms have reported on the use of violence and the performing of policing activities by this group²². Nonetheless, these incidents have not been the object of any investigation by competent authorities.



(C) OHCHR Bolivia.

F) Attacks against the Defensoría del Pueblo

29. OHCHR documented threats and attacks against the Defensoría del Pueblo, an institution set to play an important role in impartially monitoring the human rights situation, in particular during times of crisis. OHCHR observed attempts by protesters to block and limit public access to local offices of the institution in Cochabamba and La Paz, hindering its work to receive claims and to protect the rights of victims of human rights violations. On different occasions, protesters physically and verbally attacked the staff of the institution - including the Ombudsperson ad interim and the delegate of Cochabamba,²³ - accused of not being independent.

²¹ The “Resistencia Juvenil Cochala” is a group of young people that originated in Cochabamba following the 20 October 2019 elections. It is reportedly well organized and carries out actions with the alleged acquiescence of the current authorities. OHCHR received allegations that the group has carried out acts of violence and targeted violent and inflammatory speech against indigenous peoples and rural sectors and/or people affiliated or associated with MAS.

²² See for instance: https://www.oas.org/en/iachr/media_center/PReleases/2019/321.asp

²³ On 25 December 2019, the Inter-American Commission on Human Rights granted precautionary measures to protect the rights to life and personal integrity of members of the Defensoría del Pueblo. Available at: <http://www.portal.oas.org/es/cidh/decisiones/pdf/2019/67-19MC127-19-BO.pdf>

IV. Conclusions and Recommendations

30. Bolivia has the opportunity to move away from division and institutional shortcomings towards stability rooted in accountability, rule of law and trust in institutions. Preventing violence and human rights violations and ensuring civil and political rights in the next electoral cycle will contribute to overcome the current social and political crisis and the consolidation of peacebuilding in the country. This acquires greater relevance in light of the situation provoked by the pandemic of Covid-19, which requires a comprehensive response based on a human rights approach.

31. OHCHR documented that, in different circumstances, the State's response to the crisis violated international human rights standards. Yet to date, no one has been held accountable for the majority of the deaths²⁴ and injuries perpetrated during the protests, including in Sacaba and Senkata, nor for other human rights violations that occurred in the aftermath of the elections. The lack of accountability and the failure of the State to start addressing long-standing issues that the recent crisis brought to the fore are contributing to intensify existing polarization and violence.

32. The recommendations set out in this report aim towards the establishment of the necessary conditions for peaceful, participatory and inclusive elections and are proposed as a roadmap to assist the State in promoting structural changes and reforms to address the root causes of human rights violations.

²⁴ On 2 November 2019, six individuals reportedly affiliated to MAS were arrested and are currently being prosecuted for the death of two protesters killed in Montero (Santa Cruz) on 30 October 2019.

33. OHCHR recommends State authorities to:

1. Accountability

1.1. Ensure prompt, independent, impartial, thorough, transparent and effective investigations into all allegations of human rights violations and abuses that occurred during the post-electoral crisis; ensuring comprehensive reparation for all victims and their families.

1.2. Ensure that the Office of the Attorney-General is fully impartial and strengthen its capacities to conduct investigations into human rights violations, which may include the creation of a Specialized Human Rights Prosecution Unit; the establishment of mechanisms aimed at increasing access to information and the participation of victims and families during investigations; and strengthening the capacities of application of the Istanbul Protocol and the Minnesota Protocol.

1.3. Strengthen the technical capacities and technological tools of the Institute of Forensic Investigations, providing it with increased human and financial resources, and ensuring its institutional autonomy from the Office of the Attorney-General.

2. Public order and use of force

2.1. Ensure that the maintenance of public order is primarily reserved to civil police forces, while the participation of the armed forces should be excluded or used exceptionally, regulated, under civilian control and with oversight by competent civil organs.

2.2. Ensure that groups of individuals do not perform State security functions.

2.3. Ensure strict adherence to international standards and norms on the use of force, including through the use of non-violent methods and the harmonization of national legislation and regulations with applicable international norms and standards.

2.4. Strengthen the capacity of the police to adequately respond to situations of tension and violence in compliance with applicable international norms and standards, including through the review of training and protocols on the management of assemblies and crowd control.

2.5. Establish adequate mechanisms of control and accountability of the performance of security forces, including prompt investigations especially in cases where lethal force is used.

3. Justice system

3.1. Undertake progressive structural reform of the justice system, notably to ensure its independence and respect for due process. This process may include an in-depth assessment of the criminal justice system; reviewing the selection of judges, prosecutors and the Attorney-General; adopting a law on the judicial career; improving the mechanisms to evaluate the performance of judges and prosecutors as well as disciplinary processes.

3.2. Ensure that pre-trial detention is used exceptionally, for the shortest possible duration, and as a last resort.

3.3. Guarantee the effective application of due process guarantees.

3.4. Revise criminal legislation to remove vague definitions of crimes that can facilitate arbitrary or discretionary application of the law, such as terrorism, sedition and breach of duties.

4. People deprived of liberty

4.1. Strengthen and ensure the appropriate functioning of the official registry of detentions, for it to include all cases of deprivation of liberty, indicating the identity of the detainee, the time, place, circumstances of the arrest, the authority that carried out the arrest, the chain of custody, the cause of the detention, and the location(s) where the person has been held.

4.2. Strengthen the Service for Prevention of Torture and ensure its full autonomy from the Executive through legal reform, in line with the recommendations of the United Nations Sub-Committee for the Prevention of Torture.²⁵

5. National human rights institution

5.1. Ensure that the Defensoría del Pueblo is protected from all forms of pressure, attacks or reprisal in connection with its work; ensure investigations into all attacks and intimidation against the institution and its staff.

²⁵ See para. 12 and 16 of CAT/OP/BOL/3, 24 July 2018.

5.2. Ensure that the process of selection of the head of the Defensoria del Pueblo is impartial, transparent and strictly based on objective criteria, to guarantee the independence, impartiality and credibility of the institution as well as public trust in its work.

6. Non-discrimination

6.1. Strengthen the autonomy, resources and capacity of the National Committee against Racism and All Forms of Discrimination to effectively perform its mandate to promote, design and implement norms and policies against racism and discrimination, and to fight against hate speech and other acts of intolerance and discrimination, including by Government and State officials, authorities, political parties and other actors.

7. Democratic and civic space

7.1. Promote a safe and enabling environment for human rights defenders, social leaders, journalists and other civil society actors, including by systematically and publicly condemning all acts of intimidation against them, and by establishing a protection mechanism, with adequate resources, to ensure the safety and security of those at risk.

7.2. Respect and ensure the exercise of the right of peaceful assembly by allowing assemblies to take place with no unwarranted interference.

7.3. Guarantee and respect the freedom, pluralism and diversity of the media and refrain from any form of direct or indirect censorship, including by adopting a legal framework for a transparent, objective, and non-discriminatory criteria for the allocation of government advertising.

8. Cooperation with international and regional mechanisms

8.1. Continue working towards the implementation of the United Nations Programme for the Consolidation of Peace in Bolivia.

8.2. Cooperate with the international and Inter-American human rights protection system.

8.3. Consider the re-establishment of an OHCHR country office in Bolivia.