

# THE CARTER CENTER



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## **BOLIVIA**

### **Fourth Periodic Report**

**NGO Submission to the U.N. Human Rights Committee**

**Consideration of State Report**

**134th Session (February 28, 2022 – March 25, 2022)**

**The Carter Center  
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## **Reporting Organization**

The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 113 elections in 38 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for democratic elections, based on state obligations under public international law.

## **The Carter Center in Bolivia**

The Carter Center has considerable experience in Bolivia, maintaining a field office from 2006-2012 and observing voter registration and elections in 2009. The Carter Center was the first organization to deploy an election needs assessment mission to Bolivia in December 2019, after the October 2019 electoral crisis.

Following the assessment mission, The Carter Center was invited by Bolivia's Supreme Electoral Tribunal (TSE) to observe the new general elections, originally set for May 3, 2020, then postponed to October 18, 2020. The Carter Center's intention of deploying a full-scale international election observation mission (IEOM) for the 2020 elections was frustrated by the eruption of the COVID-19 pandemic. Instead, the Center implemented a small 4-person Electoral Expert Mission (EEM) to assess the electoral process. The EEM started to be implemented remotely in mid-July 2020, and eventually two members of the mission were deployed in La Paz between October and November. The mission continued working through December 2020. [The Carter Center's election report can be accessed here.](#)

## **Methodology**

The Carter Center works in accordance with the Declaration of Principles for International Observation. It assessed the Bolivian process in the light of the national legal framework and the principles and commitments on democratic elections enshrined in the regional and international instruments, which are also ratified by Bolivia.

The EEM's work focused on analysis of the legal framework for elections and of the election administration's degree of independence, impartiality, transparency and technical efficiency, respect for political participation rights, and freedom of the press— particularly in the context of

the pandemic. Due to its limited size and scope, and without long-term or short-term observers, the EEM was not able to observe the campaign, nor to conduct firsthand observation of the voting and counting processes. With its small team, however, the EEM did make a limited assessment of the results aggregation process.

The Carter Center partnered with local organization *Chequea Bolivia* to counter election-related disinformation during the election process. The Center provided technical and financial assistance to facilitate identification and mitigation of disinformation that could: suppress voter participation in the electoral process; trigger hostility or violence that could affect election security; unduly undermine trust in the process or outcome.

This submission is based on an analysis of the degree to which commitments in Article 25 and other election-related articles of the ICCPR have been adhered to in Bolivia's 2020 election process, from the beginning of the EEM (20/07/2020) until the end of the process.

## **The Carter Center Alternative Report**

### **Overview**

#### **2020 Elections' Context**

In the midst of a post-electoral crisis characterised by extreme polarisation between the country's political and social forces and numerous episodes of violence, complex negotiations enabled approval of the 24 November 2019 Exceptional and Transitory Law for holding general elections (*Ley de Régimen Excepcional y Transitorio para la realización de elecciones generales de 24 de noviembre de 2019*), which decreed the cancellation of the October 2019 elections and established deadlines for a new Supreme Electoral Tribunal (TSE) to organise a new electoral process. Among other provisions, the law suspended the requirement to hold primary elections to determine presidential candidates and introduced a prohibition on running for those who had already served two terms in their elected positions.

Notwithstanding this exceptional law, the 2020 electoral process is framed by the same legislation as the 2019 elections, and in this respect most observations on the legal framework's weakness regarding ICCPR Article 25 and associated commitments identified by the international election missions<sup>1</sup> and in 2019 remain valid. Nonetheless, the most significant criticisms of the 2019 process, which ultimately resulted in its cancellation, were mostly based on the praxis of the former TSE, particularly during the consolidation of results, than they were on the election's legal framework.

The Carter Center's submission aims to highlight some of the areas of applicable electoral legislation in Bolivia which may not meet the standards set by the ICCPR's Article 25, insofar as these have been discernible during the EEM's activity, as well as to underline the notable efforts to enhance the transparency of all stages of the process and the neutrality and impartiality of election administration displayed by the TSE that organised the 2020 general elections.

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<sup>1</sup> Principally, the observation and audit missions of the Organization of American States, and the Electoral Expert Mission deployed by the European Union.

However, the EEM also found some shortcomings in the legislative framework for elections in relation to the right to political participation enshrined in Article 25 of the ICCPR. The mission's final report, published in March 2021, expanded on the analysis of the 2020 elections and included recommendations, some of which are reproduced in this report because of their connection to Article 25 of the ICCPR.

The Carter Center's election expert mission also warned of the persistence in Bolivia of a tradition of severe political instrumentalization of the courts and the prosecutor's office in the months leading up to the election. In light of the post-election events, the Carter Center can but note that this practice persists, even if roles have changed.

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### *Article 22 and 25*

- **Disproportionate legal sanctions leading to cancellation of political parties**

The Election Law instructs the TSE to *sanction political parties who divulge internal opinion polls with immediate cancellation of their status as a legally registered party*, as well as applying a fine.<sup>2</sup> The party or coalition thus ceases to exist, and all of its candidates are excluded from the electoral race. It was the view of the EEM that such a radical sanction is disproportionate and contrary to a number of international standards for democratic elections, namely article 25 of the ICCPR.

In this context, the TSE issued a Resolution<sup>3</sup>, in response to the defence document submitted by the Movement towards Socialism (*Movimiento al Socialismo* – MAS) alliance concerning 12 of the 26 complaints which called for the cancellation of the party's legal status following its presidential candidate's revelation of an internal opinion poll during a television interview.<sup>4</sup> In its resolution, the TSE recognised that the draconian sanction provoked grave doubts as to its constitutionality. The TSE thus determined to refer these doubts to the Constitutional Court (*Tribunal Constitucional Plurinacional*)<sup>5</sup> before determining either the 26 complaints made against MAS, or the complaints received on the same grounds (revealing internal polls) against other political organisations (*Creemos, Juntos* and *CC*).

It is clear that the sanction, applied to MAS or any other relevant party, would have been detrimental to the election process and further deteriorated the already tense and polarised country. At the same time, the law which provides for this sanction was promoted and approved by the

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<sup>2</sup> Article 136.III, Election Law.

<sup>3</sup> TSE-RSP-JUR N° 025/2020 of 3 August.

<sup>4</sup> The interview was broadcast by the Abya Yala television station on 15th July.

<sup>5</sup> By means of an *Acción de inconstitucionalidad* (Art. 73.II of the Constitutional Procedural Code), which may be triggered in the framework of any judicial or administrative process which depends on the constitutionality of the applicable norm (in this case, law).

MAS government and legislators in 2010. In addition, it was applied during the 2015 regional elections in Beni, against a party which at the time was running against MAS.<sup>6</sup>

The TSE questions the constitutionality of Article 136.III of the Election Law principally because, in its view, it jeopardises the rights to active and passive suffrage, and the right to political participation.<sup>7</sup> In line with article 25 of the ICCPR, the TSE reasons that although these rights may, like all others, be subject to certain limits through sanctions established by law, these must be reasonable and proportionate to the gravity of the sanctioned behaviours, which is not the case in Article 136.III of the Election Law.<sup>8</sup>

In the same vein, Article 58.1 (j) of the Law on Political Organisations (LOP, Law 1096 of 1 September 2018) establishes that '*the TSE will cancel the legal status of political parties and associations upon verified violations of the restrictions established by this Law concerning private and public financing and financial reporting mechanisms.*' It should be noted that the application of this extreme sanction is not applied only after several repeated violations, as are other sanctions in the same article of the law. There is no mention, either, of the gravity of the violation required to merit having the party's legal status cancelled. Finally, unlike the other violations sanctioned by cancellation of legal status established in the same article of the law, in this case the TSE has no discretion to establish a scale of the seriousness of possible violations, even though it does have that power in connection to other violations established in the same article. Because of its excessively broad definition of the violations and the gravity of the corresponding sanction, Article 58.1(j) represents a threat to political parties and freedom of association. As such, it is no small detail that on 3rd September, the *Creemos* alliance presented a complaint against the MAS alliance on these grounds, calling for the cancellation of its legal status and, consequently, the cancellation of all of MAS' candidacies.

## Recommendations

*Limitations on the right to stand.* The Carter Center considers that priority should be given to replacing the sanction of cancellation of a political party's legal status, currently provided-for by articles 136.III of the Electoral Law and 58.1(k) of the law on political parties, with other sanctions, more proportionate to the sanctioned offenses, and which do not jeopardize political pluralism.

- **Sound framework for election observation given transparent TSE, though legislation unreasonably limits EOM quick counts**

Overall, the Bolivian legal framework adequately provides for the rights and responsibilities of national and international election observation activities and recognizes their role in contributing

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<sup>6</sup> The TSE cancelled the legal status of the regional party *Unidad Demócrata del Beni* after a spokesperson referred to internal polls in an interview, disqualifying the well-positioned candidate for governor as well as the party's other 227 candidates.

<sup>7</sup> This last point is related to the fact that by cancelling a party, its members' political activity is also ended.

<sup>8</sup> In the same questionably severe spirit, the Election Law (Article 136.III) sanctions any national or international election observation mission that releases the results of electoral opinion polls with 'immediate cancellation of their accreditation.'

to the transparency of the electoral process.<sup>9</sup> The law requires election observation missions (EOMs) to be impartial, objective, independent and to not obstruct the process. International missions in particular are called on to refrain from interference.<sup>10</sup> For its part, the Pluri-national Electoral Body (*Órgano Electoral Plurinacional* - OEP) must ensure that election observation missions may carry out their work, and is required by law to provide EOMS with the general, electoral, and statistical information they request for this purpose.<sup>11</sup>

All missions, national and international, must be accredited by the OEP, and must also enter into an agreement with the OEP which defines the scope and plan for the proposed observation, and which provides details on mission's member organizations and individuals, as well as information on its budget and funding sources.<sup>12</sup> The OEP is responsible for providing more detailed regulation.<sup>13</sup> In view of the required agreement, and the OEP-issued regulation, the OEP has a critical role in interpreting the law and shaping conditions for election observation.

The TSE nominated in December 2019, issued a regulation on election observation guaranteeing the work of and providing support for national and international observation missions. Moreover, the TSE clearly adopted a positive and flexible approach aimed at facilitating transparency at all stages of the electoral process. As such, the 2020 TSE's interpretation of accreditation requirements, and the degree of detail it required of EOMs' planned observation, were in line with international standards for the transparency of democratic elections. Further, it should be noted that under Bolivian Law, vote counting is public, and the TSE must provide copies of results forms not only to political party representatives, but also to elections observers.<sup>14</sup>

Nonetheless, Bolivian law creates undue obstacles for election observation missions who may wish to carry out quick counts, also known as parallel vote tabulation, which, when carried out by impartial and professional bodies, may serve to strengthen confidence in election results. The obstacles are administrative and logistical, but also due to a lack of clarity in the law, which leaves civil society organizations vulnerable to restrictive interpretations. The main difficulty arises from conflating the strict regulation of opinion polls and exit polls with the regulation for quick counts, despite the fact that opinion polls and quick counts are conceptually and practically very different, and are carried out at different stages of the process. The current legislation effectively issues criteria for opinion polls, but also applies them, to a greater or lesser degree according to interpretation, to quick counts.

Firstly, in order to carry out any of the three activities (opinion polls, exit polls and quick counts), organizations must register with the TSE, in a process which is separate from accreditation for election observation, and which takes place at the latest 30 days after elections are called, while the deadline for EOM accreditation is generally much later – for the 2020 elections, requests should have been submitted up to 15 working days before election day. This timeframe for registering to

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<sup>9</sup> The United Nations Human Rights Committee (UNHRC) in General Comment 25, paragraph 20, has affirmed that 'there should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.'

<sup>10</sup> Article 253 and 255, *Election Law (Law n°026 2010)*

<sup>11</sup> Articles 24 and 37.7, *Law 018 on the Órgano Electoral Plurinacional*, 2010.

<sup>12</sup> Article 256, *Election Law*

<sup>13</sup> Article 261 – 262, *Election Law*

<sup>14</sup> Article 37.8, *Law 018 on the Órgano Electoral Plurinacional*, 2010.

carry out polls and quick counts, normally corresponding to a deadline 90 days before the elections, is reasonable with regard to the implementation of electoral opinion polls, which by their nature are carried out in the pre-electoral period, and which by law may be published from the time candidate registration is closed, up until the Sunday before election day.<sup>15</sup> For quick counts however, which take place after voting and counting, there is no reasonable need for registration to close so soon and may constitute an impediment to organizations which finalize their observation capacity during the pre-electoral period.

Secondly, the legal framework for opinion polls is stringent: organisations wishing to carry out opinion polls which will be published must submit significant detail about their plans and methodology at the same time as they register, as well as, with more specific detail, five days before they carry out the poll. It is implied by the fact that the same regulation applies to all three activities that this applies not only to opinion polls (which are referred to specifically in these sections of the law) but also to quick counts (which are not mentioned at this stage but are addressed at the outset of this section of legislation). Nonetheless, application of these requirements is unclear, and they would more reasonably be applied to opinion and exit polls than to quick counts, the former two relying on eliciting self-reported opinions or actions, while quick counts record elections results. Apart from the introduction to these regulations, quick counts are only referred to explicitly in reference to the times and stage when these may be released (after 8pm on election night – by which time all voting is closed – and when at least 95% of the sample has been counted) and in relation to the requirement that they should be marked as ‘unofficial results’ and must specify whether they include votes cast from abroad. These are reasonable limitations.

In 2019, a quick count was suspended by the former TSE on the eve of election day, on the grounds that the organisation responsible – *Tu Voto Cuenta* - had only submitted its detailed plan four days before implementation, and not five. *Tu Voto Cuenta* responded in a statement that this requirement did not apply to quick counts, but only to opinion polls.<sup>16</sup> The Rapporteur on Freedom of Expression for the *Comisión Interamericana de Derechos Humanos* lamented the suspension, arguing that while technical or administrative requirements were important to ensure adequate quality of polls, these should not constitute an impediment to publication.<sup>17</sup>

Election observation missions may be stripped of their accreditation for violating the law, regulation or memorandum of understanding reached with the TSE. Where the law is unclear and interpretations in regulation or praxis are excessively restrictive, this provision may constitute an unreasonably severe sanction negatively impacting the transparency of the process.

- **Level playing-field for electoral contestants: sanctions for use of state resources offer relatively little disincentive compared to heavy sanctions for other campaign violations**

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<sup>15</sup> Article 130, Election Law. The Law specifies opinion polls may be published until the Sunday before election day, which corresponds to one week before.

<sup>16</sup> <https://tuvotocuenta.org.bo/Cultura-Estadistica/Aclaracion-Publica>.

<sup>17</sup> <https://www.paginasiete.bo/nacional/2019/9/14/relator-de-la-cidh-convencion-americana-prohibe-la-censura-de-difusion-de-encuestas-230965.html#>

The use of state resources in election campaigning is prohibited by the Election Law, but sanctions may not constitute as great a disincentive as the sanctions which apply to other violations, which are more severe.

The Election Law prohibits the use of public goods, resources and services for election campaigning, but the corresponding sanction is limited to removal or destruction of the offending materials, as well as referral of evidence to the Public Prosecutor's Office if a criminal offence has taken place.<sup>18</sup> The sanction of destruction of campaign materials clearly does not apply to a myriad of ways in which State resources could be used for campaign purposes, and as such there is no administrative sanction at all for the use of State resources and services, though in principle referral for criminal prosecution remains possible.

The Election Law also prohibits the use of public locations in advertising, and prohibits public servants from using State resources during campaign events or in paid political advertising in the media.<sup>19</sup> Sanctions for violation of these prohibitions are limited, according to the Election Law, to the TSE referring its evidence to the State Comptroller General (*Contraloría General del Estado*) for evaluation, as well as to the public servants' hierarchy, with a view to dismissal. Again, these sanctions may be of little dissuasive effect for a party in power campaigning for re-election. The OEP's 2020 Regulation on Propaganda and Election Campaigning adds to the law's provisions concerning public servants, emphasizing that no public servant, regardless of rank or manner of appointment, may carry out campaign activities during work hours, nor exploit their position to promote candidates,<sup>20</sup> and the OEP's 2020 Regulation on Offences and Sanctions qualifies such violations as serious, and incurring a fine of between 40% and 61% of a minimum salary.<sup>21</sup>

## Recommendations

*Campaign finance.* Electoral legislation does not establish campaign spending limits, except for spending on political advertising in the media, which can lead to great inequalities in resources for competing parties. In this respect, and with a view to a more level playing field for political competitors, the Carter Center recommends that Bolivia considers establishing campaign spending limits for all campaign spending, not just political advertising in the media, as is currently the case.

*Use of State resources.* Although the use of state resources for campaign purposes is prohibited by law, the associated sanctions have little dissuasive weight. As such, it would be useful to establish sanctions that constitute a greater deterrent for this practice, which has been observed and denounced in several Bolivian electoral processes.

*Regulation of institutional advertising.* Bolivian news companies depend to a great extent on institutional advertising for their economic survival. As no law establishes these funds' allocation and distribution among the media, successive governments have used budgets for institutional

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<sup>18</sup> Article 125, Election Law

<sup>19</sup> Article 126, Election Law

<sup>20</sup> Article 52, *Reglamento de Propaganda y Campaña Electoral*, OEP 2020. The reference to the manner of appointment, or '*forma de designación*,' implies that elected officials are as concerned by this point as employees.

<sup>21</sup> Article 18, *Reglamento de Faltas Electorales y Sanciones*, OEP 2020



advertising to exert pressure on media companies. The Carter Center recommends that the distribution of institutional advertising be regulated according to objective and public criteria.

- **Participation by Non-Governmental Organizations (NGOs)-I**

The Bolivian constitution (art 241) states that the people, through organized civil society, can participate in the design of public policies and exercise social control over public management. In order to implement this principle Law 341 of 2013 (Participation and Social Control Law) sets the general framework for Participation and Social Control and defines its ends, principles, rights and obligations.

The Law sets out the type of actors allowed to exercise oversight and control, along with the responsibilities of state agencies and the exceptions to this. The law defines (Art 7) three types of social control actors: a) organic, related to social sectors and legal neighbor or trade union boards, b) communitarian, related to original peoples and nations, intercultural and Afrobolivian communities and those recognized by the constitution as having their own type of organization, and c) circumstantial, related to those grouped for a specific objective and that cease to exist when the objective has been met.

Non-Governmental Organizations (NGOs) are not included in Article 7 or mentioned throughout Law 341. This can have implications on their legal situation, which can in practice limit the right to access to public information set out on ICCPR article 19 and the right to participate in public affairs in article 25. Civil Society Organizations have indicated this as a concern. Moreover, law 341 required existing CSOs to update their status, and thus apply for registration and meet the requirements, despite being already legally registered prior to 2013. Interviewed organizations raised the issue that re-registration was difficult and lengthy in practice, with many complicated requirements. According to a 2019 study and survey by ‘Fundación Construir’ to 30 Civil Society Organizations, 27% of organizations highlighted that registration took between 6 months and 1 year, while 13% cited the procedure lasted over one year.<sup>22</sup>

Furthermore, article 11 Paragraph 4 of Law 341 limits social control and participation “in the Electoral Body, not able to intervene in the electoral process”. While article 20 indicates how the Plurinational Electoral Body guarantees access to information and accountability, the prohibition on article 11 can result in interpretations effectively limiting the monitoring of electoral processes by civil society, thus restricting the right to access to information and the participation in public affairs, as stated in ICCPR articles 19 and 25.

- **Participation by Non-Governmental Organizations (NGOs)-II**

Law 351 of 2013 (law for granting legal status) sets out the requirements for registration of social organizations, NGOs, foundations and other non-profits. This Law was regulated by Supreme Decree 1597, which listed numerous requirements and lengthy processes for registration, thus constituting an obstacle for the work of civil society.

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<sup>22</sup> Fundación Construir (2019) Entorno legal para las Organizaciones de la Sociedad Civil en Bolivia. La Paz-Bolivia.

A welcome development is the enactment of Supreme Decree 4353 in October 2020, which revoked Decree 1597 and facilitated the registration and operation of civil society organizations and NGOs. Amongst other key changes, Supreme Decree 4353 set deadlines so the Ministry of the Presidency promptly and diligently reviews, informs and grants legal registration.

However, and in spite of this positive decree, Law 351 (Article 14) indicates that the government will revoke the legal status of organizations when they undertake activities different than those referred to in their statutes. This can constitute a disproportionate sanction and limit the activities and operation of the abovementioned organizations. This concern has also been noted by the United Nations Human Rights Committee on its third periodic report of the Plurinational State of Bolivia.<sup>23</sup> This can also potentially represent an obstacle for the right of peaceful assembly, as stipulated under ICCPR article 22.

## **Recommendations**

The Carter Center considers that priority should be given to amend Law 341 to include Non-Governmental Organizations (NGOs) in article 7 and amend article 11 to clearly allow CSOs and NGOs monitoring of electoral processes. Priority should also be given to amend Law 351 (Article 14) to allow full enjoyment of the right of peaceful assembly.

### *Articles 2 and 3*

- **Political violence against women candidates**

In 2012 Bolivia passed Law 243 on harassment and political violence against women. This law is especially important as the strengthening of women's representation in government positions has been accompanied by an unfortunate increase in violence against them. According to the Association of Women Councilors of Bolivia, of 589 cases of harassment and political violence against councilwomen presented between 2010 and 2019, not a single one resulted in effective sanctions. The Carter Center strongly recommends additional training and resources (financial, human and administrative) for the key institutions in the system to prevent and punish political violence against women.

- **Participation and non-discrimination**

The 2009 Constitution establishes (Article 14) the principle of non-discrimination and that the State will guarantee the rights provided by the Constitution, the laws and international treaties to any person or group. A positive inclusion is that all forms of discrimination are detailed (discrimination based on sex, skin color, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious belief, ideology, political or philosophical membership, civil status, social or economic condition, occupation, level of education, disability, pregnancy or any other which affects the rights of the people).

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<sup>23</sup> United Nations – Human Rights Committee (2013) Concluding observations on the third periodic report of the Plurinational State of Bolivia - CCPR/C/BOL/CO/3. Available at: <https://undocs.org/en/CCPR/C/BOL/CO/3>

Law 45 of 2010 (Law against Racism and any form of discrimination) details the mechanisms and procedures to prevent and sanction acts of racism and any other forms of discrimination. A positive development is its universal application, with no exceptions to all Bolivian citizens, government officials, civil social organizations and diplomatic missions in the country. Another positive aspect is that definitions in the Law (Article 5) include a number of conducts (xenophobia, homophobia, transphobia, misogyny) which help identify specific types of discrimination and violence.

Law 45 sets out the role of the Vice Minister for decolonization for monitoring the application of the law and the creation of a National Committee against Racism and all forms of Discrimination. However, both of these instances are limited in their powers and lack sufficient human, material and financial resources for ensuring compliance. This is in line with interviews to several civil society organizations claiming law 45 lacks mechanisms and support and is rather a declaration of principles than an applicable law. Moreover, as of 10 November, 2020, not all of the nine departments in Bolivia had working Departmental Committees against Racism and all forms of Discrimination.

The positive principles enshrined in the constitution and the law require institutional, educational and administrative resources for effective implementation. Without an effective enforcement and support, the state risks limiting the rights contained in ICCPR articles 25 and 26, related to the right to participate in public affairs and access to public service and equality before the law without discrimination, respectively. Raising awareness of the law, training for government officials and private entities and additional authority and resources for the Vice Ministry and the National Committee against Racism and all forms of Discrimination are highly recommended.

Upon its publication, Law 45 was criticized by many as it was believed that article 16 threatened freedom of expression and article 19 of ICCPR, by stating that “media which authorizes and publishes racist and discriminatory ideas can merit economic sanctions and the suspension of its operation license”. However, guidelines contained in Supreme Decree (SD) 762 of 2011 specified the conducts and sanctions, providing clarity and not affecting freedoms. SD 762 states that losing the operation license is considered a third level sanction, merited only after two previous offences and resulting in temporary (not permanent) license suspension

## **Recommendations**

*Participation of vulnerable and underrepresented groups.* Since the promulgation of the 2009 Constitution, Bolivia has made important progress in removing barriers to the participation and representation of underrepresented and vulnerable groups in Bolivia, including women, indigenous peoples, people with disabilities, LGBTQI communities and youth. However, a key challenge is the national and local implementation of these laws. The principles and guarantees contained in these progressive laws also require a strong judicial system and adequate support so they can be materialized. In order to improve the political participation of underrepresented and vulnerable groups, The Carter Center recommends that the Bolivian Plurinational State allocate sufficient institutional, human, material and financial resources to ensure implementation of and compliance with the following laws: Law 3760 which elevated the United Nations Declaration on the Rights of Indigenous Peoples to national binding law (2007), Law 45 against racism and any form of

discrimination (2010), Law 243 on political harassment and violence against women (2012), Law 342 on Youth (2013), and Law 348 to guarantee women a life free of violence (2013).

*Women's rights.* The Carter Center recommends additional training and financial, human and administrative resources for the different institutions that make up the system to prevent and punish political violence against women, including the Special Force for Fighting against Violence (FELCV); the Plurinational Justice System (SIJPLU), the Plurinational Victim Support Service (SEPDAVI); the Public Prosecutor (Ministerio Público); Municipal Autonomous Governments; and the Plurinational Electoral Body (OEP). The Carter Center recommends granting more legal faculties to the TSE to strengthen the protection and to guarantee the rights of women candidates and in office.

*Rights of indigenous peoples.* In 2007, Bolivia enacted Law 3760, which enshrines the United Nations Declaration on the Rights of Indigenous Peoples into binding national law. Bolivia has taken other positive steps in this regard, including establishing seven special constituencies for indigenous communities in the Lower House and establishing the right and procedure to constitute autonomous native rural entities. However, indigenous self-government is sometimes rejected by parts of the population (mainly women and youth), since indigenous customs sometimes means that only elder men can act as representatives. The Carter Center recommends that Bolivia explore mechanisms to harmonize the provisions of indigenous community customs to constitutional rights.

*Indigenous people's participation.* The Carter Center noted the efforts of the TSE to facilitate the participation of indigenous peoples in the current election. The TSE reached out directly to indigenous communities located in the 7 departments with special indigenous circumscriptions. The TSE visited diverse and remote communities and provided information and training to explain biosecurity measures and voting procedures. The TSE facilitators involved in this exercise were recommended by their own communities and spoke the local languages, thus improving the reach and effectiveness of the training. For future elections, the Carter Center recommends extending this program to more communities in all nine departments in the country.

*Protection mechanisms against discrimination.* The Carter Center recommends strengthening institutional, educational and administrative resources for the effective implementation of the positive principles enshrined in law 45 against racism and forms of discrimination. This includes strengthening the Vice Minister for decolonization, and the National and Departmental Committees against Racism and all forms of Discrimination, in charge of monitoring the application of the law. The Carter Center also calls on all political organizations to consider the rights, interests and needs of all groups in society in their programs, and the LGBTQI community in particular.

## *Article 19*

- **Freedom of the Press**

In March 2020, the government issued two decrees with measures to deal with the pandemic [4199 and 4200, of March 21 and 25, respectively], which included a paragraph calling for criminalisation "disinformation" and "uncertainty":

*"Persons who incite non-compliance of this Supreme Decree or who misinform or create uncertainty in the population shall be subject to criminal prosecution for the commission of crimes against public health.*

A subsequent decree [4231 of May 7] modified both previous decrees, replacing the references to "disinformation" with a broader scope: "information of any kind, whether in written, printed, or artistic form and/or by any other procedure". This information would be subject to prosecutions for crimes "typified in the Criminal Code”:

*"Persons who incite non-compliance with this Supreme Decree or disseminate information of any kind, whether in written, printed or artistic form and/or by any other procedure that endangers or affects public health, generating uncertainty in the population, shall be subject to complaints for crimes under the Criminal Code".*

Press associations denounced a serious attack on freedom of information and speech, particularly disconcerting for journalistic reporting, despite the fact that Minister of the Presidency, Yerko Nuñez, guaranteed in a press conference that journalists would continue being subject to the Printing Act, the norm that regulates the activity of the Bolivian media since 1925.

The Mission in Bolivia of the Office of the United Nations High Commissioner for Human Rights publicly described the measure as "excessive" and asked the Bolivian Government to modify it "so as not to criminalize freedom of expression".

Finally, President Áñez' administration issued a fourth decree [4236, May 14] which repealed the controversial articles of the previous three and put an end to the conflict.

Since the October 2019 elections, the National Association of Bolivian Press has reported more than 50 cases of assault, threats, and intimidation against media professionals, as well as attacks on their media headquarters. No specific government or judicial protection exists, despite an increase in violent incidents.

Lastly, although the right to information appears in the CPE and the Assembly recently promulgated a transparency law, very few state agencies publish reports on their management or respond to requests to provide data to the press. To better ensure that journalists may inform the public and provide scrutiny of government programs, The Carter Center recommends that Bolivia consider specifically legislating the state's obligation to publish information on its agencies' work, both on a regular basis and in response to enquiries.

## Recommendations

*Protection of journalists.* Given the high number of threats and assaults against journalists, and the poor efficiency of existing mechanisms to protect journalists, the Carter Center recommends that adoption of legal provisions and accompanying implementation mechanisms to more effectively guarantee that the media and journalists can carry out their work as watchdogs of democracy.

*Right to information.* Although the right to information appears in the Political Constitution of the State (*Constitución Política del Estado – CPE*) and the Assembly recently promulgated a transparency law, very few state agencies publish reports on their management or respond to requests to provide data to the press. In order to better ensure that the media and its journalists may inform the public and provide scrutiny of government programs, the Carter Center recommends that Bolivia regulate the state’s obligation to publish information on its agencies’ work, both on a regular basis and in response to enquiries.

- **Political advertising on social media**

Electoral political advertising is extensively regulated in Bolivia, primarily by the Election Law and the law on political parties, alongside regulations issued by the TSE. Although most regulation concerns conventional media, the law and regulations on political advertising hold social networks to the same standards in a number of areas, particularly those concerning allowed timeframes, clear labeling of ads, a ban on governmental ads within the campaign period, and prohibited content and a ban on political advertising by anyone but the parties and candidates in the race. Conventional media must register with the TSE to carry paid political advertising, and this registration must include proposed tariffs, which must be the same for all parties and no higher than recent commercial rates.

The TSE monitored conventional media to check regulatory compliance and required them to report an account of the income received for political advertising, detailing the amounts charged to each political organization, and specifying the time or space allocated and the rates charged. Regarding social networks, the TSE was limited to monitoring candidates’ official pages.

The Carter Center’s analysis of paid political advertising on Facebook found a number of areas in which social network activity did not comply with Bolivian regulations, despite Facebook’s commitment to respecting national regulations in the countries in which it operates, in accordance with the 2011 U.N. Guiding Principles on Business and Human Rights. The Carter Center also identified practices that make it difficult for the TSE or other bodies to monitor relevant information related to paid political advertising.

The TSE is responsible for all oversight of election campaigning, including political advertising, and its Intercultural Service for the Strengthening of Democracy (SIFDE) is responsible for monitoring political propaganda in the media. The SIFDE evaluated a dozen cases of political advertising that violated Bolivian legislation, as a result of which at least three sanctions were imposed on the interim government of Jeanine Áñez for the use of state resources for her party’s election campaign and its distribution on online media. Beyond these instances, though, SIFDE’s

monitoring was limited by a lack of resources and insufficient facilitation of information from social network platforms.

### **Recommendations**

*Political advertising on social media.* The Center recommends that some provisions of Bolivian law that already apply to traditional media be made more explicitly applicable to social networks. This should include the requirement, for the purposes of a level playing-field for campaigning, that rates charged for electoral advertising be the same for all parties. In addition, the TSE could improve its monitoring of social networks in order to verify compliance with existing regulation, including permitted timeframes for electoral advertising, clear labelling of paid advertising, including the identity of the contractor, and the existing prohibition on third-party political advertising. In addition to its own monitoring for compliance, the TSE could consider establishing an online reporting mechanism to encourage social media users to report advertisements that may contravene regulations. The TSE could also require all candidates to submit the URL of their official social network pages, in order to facilitate the TSE's existing monitoring of these pages.