

# ATTACKS ON JUSTICE – BOLIVIA

## *Highlights*

Following the far reaching institutional reforms undertaken in the 1990s (see [Attacks on Justice 2000](#)), additional judicial reforms have been introduced over the past two years and have made significant progress, both in the normative field with the entrance into force of the new *Criminal Procedure Code* and in the institutional ambit with the implementation of regulations on the judicial career. In April 2004, the Constitution was amended to authorize a constituent assembly, scheduled for 2005, to rewrite the Constitution. The judiciary continues to be influenced by politics and is severely understaffed, as Congress only appointed 6 Supreme Court Judges, the Prosecutor General and 2 Counsellors of the Judicial Council on 17 December 2004. The relations between the Country's highest judicial authorities, namely the Constitutional Tribunal, the Supreme Court and the judicial Council are rather tense. The controversial Prosecutor General Oscar Crespo finally adopted the prosecutor career regulations in August 2004. A public defence system and Integrated Justice Centres should boost people's access to justice. In a landmark judgement on 17 May 2004, the Constitutional Tribunal awarded jurisdiction to civilian courts in cases of military forces accused of human rights abuses. There are ongoing efforts to bring to trial former President Lozada for the abuses committed during his governance. Investigations into disappearances which took place while the country was governed by the military have been commenced.

## BACKGROUND

After having won only 22.5% of the popular vote on 30 June 2002, Gonzalo Sánchez de Lozada was chosen as president by Congress, elected on the same day, as no candidate had won a majority. On 12 and 13 February the President ordered the army to suppress mass protests against his draft bill on income tax. At least 33 people died and many more were wounded during these days known as Black February (*Febrero Negro*). After six weeks of violent demonstrations against his plans to export natural gas via Chile, Lozada resigned on 17 October and fled to Miami. 59 people died and more than 400 were wounded during the protests. After becoming president in accordance with the Constitution, Vice-President Carlos Mesa formed a non-partisan cabinet and suspended plans to export gas.

The political crisis during 2003 was accompanied by a human rights crisis, with the security forces being accused of using excessive force, arbitrary arrests and torture (for more information on the general human rights situation, see [U.S. Department of State Country Reports on Human Rights Practices, Bolivia](#)). The former president of the largest human rights organization, the Permanent Assembly for Human Rights (*Asamblea permanente de Derechos Humanos*), Waldo Albarraçín, was elected as the new Ombudsman by Congress in December 2004.

## RECENT DEVELOPMENTS

### *Judicial Reform*

#### **Judicial Career**

With the entering into force of the new *Regulations of the Judicial Career System* (*Reglamento del Sistema de la Carrera Judicial*) approved on 26 August 2003 (*Acuerdo 239/2003 del Pleno del Consejo de la Judicatura*), for the first time the recruitment, evaluation and promotion of judges are subjected to criteria such as merits, capacity and performance of duty. It is hoped that the regulations will help reduce both political influence and corruption when it comes to the designation and promotion of judges.

#### **Implementation of the New Criminal Procedure Code (CPP)**

Adopted in 1999 (see [Attacks on Justice 2000](#)), the [new CPP](#) came into full effect on 31 May 2001 and has been implemented during the last two years. The code replaces the written, inquisitorial system with a public, adversarial and oral system.

The new CPP aims at reducing cases of denials of justice as a consequence of lengthy proceedings and prolonged pre-trial detention by requesting that pre-trial detention shall not exceed 18 months, or 24 months if the sentence is appealed (see article 239(3) CPP). The Justice Studies Centre of the Americas (*Centro de Administración de Justicia en las Américas*, [Report on Judicial Systems in the Americas 2002-2003, Bolivia](#)) reports that the average length of proceedings was reduced by 75-90% during the first year of the new CPP's application. However, there is still a backlog of cases from the old system, which has substantially slowed progress, to the extent that as of June 2002 only 22.9% of the prisoners were serving a conviction while 77.1 % were awaiting their trial and sentence.

Under the CPP's third transitional provision, cases under the old system get extinct if not concluded by 31 May 2006. On 12 May 2004 Congress adopted *Law No. 2683* modifying this provision and extending the deadline indefinitely. On 14 September 2004 the Constitutional struck down this law as unconstitutional ([Sentencia Constitucional 0101/2004](#), 14 September 2004, Exp. No. 2004-09100-19-RDI).

Within the context of rising crime and violence, many Bolivians felt that the new CPP, in particular its regime on provisional measures (*medidas cautelares*), unduly favoured the accused. On 4 August 2003, Congress promulgated the *Law on the National System of Citizen Security* ([Ley 2494 de Sistema Nacional de Seguridad Ciudadana](#)) modifying this regime.

#### **Reform of the Constitution**

During its last session, on 1 August 2002, Congress adopted *Law No. 2410 on the Necessity to Reform the Constitution* ([Ley 2410 de Necesidad de Reformas a la Constitución Política del Estado](#)). The Constitution (Articles 230, 231 and 232) authorizes Congress to partially reform the Constitution by adopting, with a two-

thirds majority, a law declaring the necessity to do so and outlining the proposed reforms. Nevertheless, the law needs confirmation by the successive Congress.

The law proposed to introduce a new article in the Constitution, providing for the election and the removal of the Prosecutor General through Presidential decree. Furthermore, it proposed amendments to articles 117 and 119 of the Constitution which would authorize Congress to elect the Presidents of the Supreme Court and the Constitutional Tribunal. The President of the Supreme Court publicly criticized this proposal as a threat to judicial independence. However, the reform is stayed since the newly elected Congress has not discussed and approved the law as required by the Constitution.

President Mesa promised to hold a constituent assembly to rewrite the Constitution. Ignoring *Law No. 2410*, the new Congress adopted on 20 February 2004 *Law No.2631 on the Reform of the Constitution* ([Ley 2631 de Reforma de la Constitucion](#)) which was incorporated into the Constitution by [Law No. 2650](#), adopted by Congress on 13 April 2004. *Law No. 2631* introduces the concept of a Constituent Assembly into the Constitution.

On 1 June 2004, the Constitutional Tribunal did not admit a recourse attempting to nullify *Law No. 2631* for violating the Constitution and the *Law Declaring the Necessity to Reform* ([Auto Constitucional 310/2004-CA](#), 1 June 2004, Exp. No. 2004-09014-19-RDI). The Tribunal denied having jurisdiction for assessing whether a constitutional reform was valid or not in relation to the procedure of constitutional reform once the reform itself was in force. The Judges justified this doctrine by affirming that, once the reform was passed, that was the Constitution the Tribunal was guardian of and, therefore, the Judges had no power to decide on the constitutionality of constitutional norms.

### **Politicization of the Judiciary**

The judicial reforms introduced during the 1990s (see [Attacks on Justice 2000](#)) intended to strengthen judicial independence by removing the influence of political parties. Although it is too early to fully assess whether the reforms had a positive impact on judicial independence, the developments in the last two years indicate that the judicial system continues to be politicized. Nevertheless, according to the President of the Supreme Court, the Judiciary is not only undergoing a structural-administrative crisis, but also a moral one.

### **Frictions between the Supreme Court and the Constitutional Tribunal**

Operating since 1999, the Constitutional Tribunal's case law led to many frictions with the Supreme Court as half of the cases before the Tribunal are against judges.

For example, the Supreme Court condemned as an interference with its own competences, the Constitutional Tribunal's sentence No. 1468/2004 on 14 September 2004 annulling two Supreme Court orders for violation of fundamental rights and ordering the Supreme Court to issue new orders in conformity with the Tribunal's sentence ([Sentencia Constitucional 1468/2004-R](#), 14 September 2004, Exp. No. 2004-09301-19-RAC).

## **Judicial Council: internal independence undermined**

### *Dependence from the Supreme Court*

Since Congress only appointed two new counsellors on 17 December 2004 (see below), the Council functioned with only two members and the president, emitting various resolutions in violation of the voting system established by the law on the judicial council. Congress reacted by approving on 12 March 2002 [Law No. 2338](#) which modified not only the voting regime, but above all the Council President's attributes, paving the way for giving him the same powers as an ordinary Counsellor. Under the new law, the President's powers are no longer limited to representational and controlling functions and the possibility to cast the deciding vote in case of a tie, but include the right to vote ordinarily. Previously, the President's only chance to vote was when a casting vote was required. [Law No. 2338](#) not only temporarily derogates from the law on the Judicial Council but also further undermines the Council's independence with regard to the Supreme Court.

### *Criticism and allegations of corruption*

Frequent allegations of corruption and mismanagement of funds by the Council led to frictions with the government. Concerned that the judicial reform process might be stalled if foreign aid is withheld due to these allegations, the government requested the two Counsellors to resign. The Counsellors denied the charges and blamed Congress' failure to appoint the other Counsellors for the slow progress in the reform process.

### *The appointment of judicial staff*

Congress' failure to appoint judicial staff is a continuing and longstanding problem, negatively affecting the administration of justice in the whole country. In order to fill the vacancies, President Mesa issued on 30 July 2004 [Presidential Decree No. 27650](#) appointing 6 Supreme Court judges, two Counsellors and new District Prosecutors.

However, in a very controversial ruling on 10 November 2004, the Constitutional Tribunal decided that the presidential decree was unconstitutional, being in violation of the principle of the separation of powers and of the principle of legality ([Sentencia Constitucional 0129/2004](#), 10 November 2004, Exp. No. 2004-09813-20-RDI). According to the Constitutional Judges, when the decree was issued, the conditions under which the Constitution allows the President to appoint Supreme Court Judges, Counsellors and District Prosecutors had not been present (see article 96(16) of the Constitution). The Tribunal suspended the sentence's effect for 60 days, on the basis that if it had immediate effect, it would do more harm to the rule of law and judicial security than the maintenance of the existing status quo.

The Congress' election of a Prosecutor General, two Counsellors, six Supreme Court judges and a judge of the National Electoral Court on 17 December has been criticized as being driven by political interests. The election of District Prosecutors is still outstanding.

## **Independence of the Prosecutor General's Office**

Prosecutor General Oscar Crespo and his office have been repeatedly criticized for partiality and in-efficiency (see [U.S. Department of State Country Reports on Human Rights Practices, Bolivia](#)). Since Congress has failed to elect the District Prosecutors during the last years, the present ones lack security of tenure and are vulnerable to political influence.

After the political crisis of 2003, criticism against Crespo intensified, particularly in early 2004 when President Mesa, the Ombudsman and civil society organizations accused him of attempting to cover up the facts behind the events of February and October 2003 in order to protect former President Lozada. For example, Crespo decided, without any apparent reason, to archive the files on the trial against Lozada for the Black February events on 22 August 2003 (see below).

At the end of Crespo's ten year term in August 2004, the office was taken over by César Suárez, appointed by *Presidential decree No.27650* as District Prosecutor of Chuquisaca who serves as an interim General Prosecutor, according to Article 31 of the *Public Ministry Law (Ley No 2175 del Ministerio Público, 2001)*, until a Prosecutor General is appointed.

### *Prosecutor career regulations*

In August 2004, Crespo approved six bodies of regulations designed to implement rules and guidance on the prosecutors' duties and powers, as provided for by the *2001 Law on the Public Ministry*. Aiming at professionalizing the prosecutor's career, the regulations include the Office's internal rules ([Reglamento Interno del Ministerio Público](#)), rules on admission to the prosecutorial career ([Reglamento de Ingreso y Planificación de la Carrera Fiscal del Ministerio Público](#)), an evaluation and disciplinary regime ([Reglamento de Evaluación y Promoción de la Carrera Fiscal del Ministerio Público](#) and [Reglamento de Organización y Funcionamiento de la Inspectoría General y Régimen Disciplinario de los Miembros del Ministerio Público](#)), and rules concerning the capacity building institute ([Reglamento Interno del Instituto de Capacitación del Ministerio Público](#)) and the forensic investigation institute ([Reglamento de Organización y Funcionamiento del Instituto de Investigaciones Forenses del Ministerio Público](#)). These regulations should have been approved within 90 days of the law's promulgation.

## **Transfer of the Ministry of Justice**

The *Executive's Organisation Reform Law* passed on 19 March 2003 ([Ley No. 2446 de la Organización del Poder Ejecutivo](#)) suppressed the ministry of justice and transformed it into a vice ministry, dependent upon the ministry of the Presidency. Despite initial concerns, the implementation of the reforms has continued.

## ACCESS TO JUSTICE

### **The Public Defence system**

Adopted on 4 August 2003, *Law No. 2496* creates the national system of public defence ([\*Ley No. 2496 de Creación del Servicio Nacional de la Defensa\*](#)) providing for a public defence attorney, whenever necessary. However, the system faces heavy constraints both in terms of resources and personnel. Reportedly there were only 64 public defenders and 26 legal assistants available in the whole country in 2003 ([U.S. Department of State Country Reports on Human Rights Practices, Bolivia](#)). Itinerant public defenders travelling to the country's remote areas had a positive impact, but like all public defenders, they remain overburdened.

Article 62 of the law provides that 5% of the resources collected by the judiciary should go to the national system of public defence. The Supreme Court's president criticized this provision as an interference with the judiciary's financial independence, since the public defence mechanism is dependent on the executive for its funding, not the judiciary.

### **Integrated Justice Centres**

Reportedly, by September 2004, over half of the country's municipalities had neither a court of law nor any institution specializing in conflict resolution. In collaboration with civil society organizations, the government started to set up Integrated Justice Centres (*Centros Integrados de Justicia*) in disadvantaged neighbourhoods and remote rural areas. They should boost access to and participation in the justice system and provide legal services and assistance in alternative conflict resolution mechanisms. The first such centre was opened on 15 September 2004.

## ACCOUNTABILITY FOR HUMAN RIGHTS ABUSES

### **Civilian Jurisdiction for military members accused of human rights abuses**

Military courts usually acquit military personnel accused of human rights abuses if they were obeying orders, resulting into *de facto* impunity. For example, in August 2003 a military court acquitted an officer accused of the homicide of a seventeen-year old during protests in April 2002. The officer was promoted after his acquittal.

On 18 August 2003, the Prosecutor General charged four military members with the murder of a nurse and a porter in La Paz on 13 February 2003. The army refused co-operation, carried out its own investigation and asserted a competing claim of jurisdiction. The case was transferred to a military tribunal on 4 October 2003 by the Superior District Court of La Paz. A military court acquitted the accused on 16 February 2004. The same day, a District Court turned down the appeals filed by relatives of the victims and by the Prosecutor General challenging the military court's jurisdiction. However, the case went on to the Constitutional Tribunal which reversed the Superior District Courts decision and awarded jurisdiction to the civilian courts in a landmark judgement on 6 May 2004, by holding that when offences against constitutional rights and guarantees are committed, whether by civilian or military

personnel, the behaviour does not fall into the duties of service and the jurisdiction and therefore they do not enact military jurisdiction but the ordinary one ([Sentencia Constitucional 0664/2004-R](#), 6 May 2004, Exp. No. 2004-08469-RAC).

## Cases

### *The Trial against former president Lozada*

Under Bolivian legislation, the President, the Vice-president, the Ministers and the prefects of departments can be prosecuted for acts they committed while in office only upon Congress' authorization. Under this process of impeachment, called "trial of responsibility" (*juicio de responsabilidad*), the petitioners present draft charges to the Prosecutor General who prepares the documentation to be submitted to the Supreme Court which then asks Congress for authorization to proceed.

Once *Law No. 2445 on the trial of responsibility* ([Ley 2445 de juicio de responsabilidad](#)) was promulgated on 13 March 2003, various politicians presented charges to Prosecutor General Crespo who decided to archive the files on 22 August 2003 without providing any grounds nor informing the petitioners. On 6 October 2004, the Superior Court of Chuquisaca (*Corte Superior de Chuquisaca*) annulled Crespo's decision therefore allowing the reopening of the case. Presenting the charges against President Lozada and three of his ministers on 21 November 2003 to the Supreme Court, interim prosecutor General César Suárez asked for a trial of responsibility. The Court transmitted the case for decision to the Congress on 28 January 2004.

Efforts to try Lozada for the abuses occurring during October 2003 have progressed much further. Under intense popular pressure, on 14 October 2004 Congress authorized the trial of responsibility before the Supreme Court against former President Lozada and his Ministers for violating the constitutional rights and guarantees of the protestors during the events of October 2003. On 15 October 2004, the Supreme Court announced that it would apply the new criminal procedure code to fill the procedural gaps of Law No. 2445. So far, Bolivia has not requested Lozada's extradition from the US.

## Accountability for Past Human Rights Abuses

### *Inter-Institutional Council to Clarify Forced Disappearances*

[Presidential decree No. 27089](#) of June 2003 established the Inter-Institutional Council to Clarify Forced Disappearances (*El Consejo Interinstitucional para el esclarecimiento de Desapariciones forzadas*) occurring during the dictatorships of 1967-1982, most of which have not been investigated so far. A draft bill on compensation for the victims of political persecutions experienced during the dictatorships remains stalled in Congress.

### *Trujillo Case*

The case of the José Carlos Trujillo Orozawho concerns a student, who disappeared in 1971 during the dictatorship of General Hugo Banzer. On 4 September 2003, the

Bolivian government paid compensation to his relatives, in compliance with the Inter-American Court's [judgment on reparations](#) of 27 February 2002. This was a landmark case, as it was the first occasion upon which compensation had been paid to the relatives of a victim who had suffered persecution at the hands of the military government.

However, the Inter-American Court's request to bring those responsible for the disappearance to trial, has not yet been complied with. Following the [Inter-American Court of Human Rights Judgment on Merits of January 26, 2000](#), proceedings were opened against six individuals, including the then sub-secretary of the Ministry for Interior Affairs. However, judges in the city Santa Cruz systematically disqualified themselves to hear the case. Under pressure from the Inter-Institutional Council to Clarify Forced Disappearances, the case was handed over to a provincial judge who issued an indictment against six individuals on 7 June 2004. The President of the Supreme Court and Judicial Council announced on 23 August 2004 the start of an investigation against the judges in Santa Cruz for disqualifying themselves without apparent reason.

### ICJ ACTION

On 11 August 2003, the ICJ wrote a [letter](#) to the Bolivian government concerning a break-in which occurred with regard to the office of the lawyer Dr. Trigoso. The ICJ reminded the government of its obligation under the International Covenant on Civil and Political Rights to protect Dr. Trigoso's right to privacy. Furthermore, the ICJ expressed its concerns that the incident was related to Dr. Trigoso's representation of those involved in the police mutiny of February 2003.

### CASES

**Cliver Rocha**, a lawyer working for the non-governmental organization Centre for Legal Studies and Social Research (*Centro de Estudios Jurídicos e Investigación Social, CEJIS*), provides legal assistance to peasants and indigenous people in the context of land disputes. Unidentified individuals attacked him on 13 March 2003 and again on 23 April 2003.

**Mónica van Borries**, a prosecutor, was killed by a car bomb on 27 February 2004. She had been working for the Prosecutor General's office, in the special anti-drugs unit until she moved to the customs unit in 2000. On 30 November 2004 five men were charged with her murder.

**Gonzalo Trigoso**, a labour lawyer, represented the police during its mutiny in February 2003. Unidentified individuals broke into his office on 20 February 2003 and on 9 April 2003. Files were damaged and stolen. The Prosecutor General did not react to his denunciation.



## LEGAL REFORMS DURING THE PERIOD

- 12 March 2002:** *Law No. 2338* modified the voting regime and the Council Supreme Court's President's attributes, paving the way for giving him the same powers as an ordinary Counsellor.
- 1 August 2002:** Adoption of *Law No. 2410 on the Necessity to Reform the Constitution (Ley 2410 de Necesidad de Reformas a la Constitución Política del Estado)*.
- 13 March 2003:** *Law No. 2445 on the trial of responsibility (Ley 2445 de juicio de responsabilidad)*.
- 19 March 2003:** *Executive's Organisation Reform Law (Ley No. 2446 de la Organización del Poder Ejecutivo)* suppressed the ministry of justice and transformed it into a vice ministry, dependent upon the ministry of the Presidency.
- June 2003:** *Presidential decree No. 27089* established the Inter-Institutional Council to Clarify Forced Disappearances (*El Consejo Interinstitucional para el esclarecimiento de Desapariciones forzadas*) occurring during the dictatorships of 1967-1982.
- 4 August 2003:** Promulgation of the *Law on the National System of Citizen Security (Ley 2494 de Sistema Nacional de Seguridad Ciudadana)*.
- 4 August 2003:** *Law No. 2496* creates the national system of public defence (*Ley No. 2496 de Creación del Servicio Nacional de la Defensa*) providing for a public defence attorney, whenever necessary.
- 26 August 2003:** Approval of *Regulations of the Judicial Career System (Reglamento del Sistema de la Carrera Judicial)*.
- 20 February 2004:** *Law No.2631 on the Reform of the Constitution (Ley 2631 de Reforma de la Constitución)* which was incorporated into the Constitution by *Law No. 2650*, adopted by Congress on 13 April 2004.
- 30 July 2004:** *Presidential Decree No. 27650* appointing 6 Supreme Court judges, two Counsellors and new District Prosecutors. The decree was held unconstitutional by the Constitutional Tribunal on 10 November 2004.
- August 2004:** Approval of the Office of the Prosecutor's internal rules (*Reglamento Interno del Ministerio Público*), rules on admission to the prosecutorial career (*Reglamento de Ingreso y Planificación de la Carrera Fiscal del Ministerio Público*), an evaluation and disciplinary regime (*Reglamento de Evaluación y Promoción de la Carrera Fiscal del Ministerio Público* and *Reglamento de Organización y Funcionamiento de la Inspectoría General y Régimen Disciplinario de los Miembros del Ministerio Público*), and rules concerning the capacity building institute (*Reglamento Interno del Instituto de*

*Capacitación del Ministerio Público) and the forensic investigation institute (Reglamento de Organización y Funcionamiento del Instituto de Investigaciones Forenses del Ministerio Público).*

**15 September 2004:** Opening of the first of the Integrated Justice Centres (*Centros Integrados de Justicia*).