

BOLIVIA: CRIMINAL TRIAL OF CONSTITUTIONAL JUDGES BY LEGISLATIVE ASSEMBLY VIOLATES JUDICIAL INDEPENDENCE AND RIGHT TO A FAIR TRIAL

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INTRODUCTION

In June 2014 a criminal proceeding was initiated by the Chamber of Deputies of the Plurinational Legislative Assembly of the Republic of Bolivia, against three Constitutional Court judges: Gualberto Cusi Mamani, Soraida Rosario Chanez Chire and Ligia Mónica Velásquez Castaños. The Chamber of Deputies ordered the suspension from duty of the judges pending a trial before the Senate, which has scheduled the first hearing for 21 October 2014. The judges, acting as members of the Court's admissibility committee, had ordered the temporary suspension of the operation of a new Law on Notarial Services pending an assessment of its constitutionality in legal proceedings that had been initiated by a member of the Legislative Assembly. The criminal proceedings against the judges were initiated after two notaries filed a complaint to the Legislative Assembly requesting an investigation of the legality of the order.

The Centre for the Independence of Judges and Lawyers (CIJL), part of the International Commission of Jurists (ICJ)¹ in Geneva, has analyzed the pending proceedings in relation to international standards on the independence of the judiciary and the right to a fair trial. Their cases raise concerns in two ways. First, the prosecution of the accused judges for the content of their legal reasoning, and the vulnerability of other judges to similar treatment, undermines the independence of the judiciary and the rule of law in Bolivia more generally. This ultimately affects everyone in Bolivia, since anyone may eventually find themselves before the courts. Second, from the point of view of the individual human rights of the judges, criminal trial by the legislature itself in such circumstances violates the right to a fair trial.²

For the reasons set out below, the ICJ calls on the State of Bolivia immediately to:

- nullify or otherwise terminate the criminal proceedings;
- end the judges' suspensions from duty;
- cease any other form of interference with the independent administration of justice; and

¹ Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

² See *Judgment of 23 August 2013*, Inter-American Court of Human Rights, Supreme Court of Justice (Quintana Coello et al) v Ecuador, Series C no 266, para 154.

- initiate reforms of Constitutional and legal provisions for discipline and removal of judges to bring them in line with international standards.

DOMESTIC LEGAL FRAMEWORK

Article 12 of the 2009 Constitution of the Republic of Bolivia guarantees the principle of independence and separation of legislative, executive, judicial and electoral power. Article 178 highlights specifically the independence of the judiciary, and to this end guarantees judges' functional and the judiciary's financial independence. Article 120 guarantees that, "Every person has the right to be heard by a competent, impartial and independent judicial authority."

Articles 196 to 204 of the Constitution address the Constitutional Court. Article 203 of the Constitution provides that, "The decisions and sentences of the Pluri-National Constitutional Court are binding and of obligatory compliance, and no subsequent ordinary appeal of them is allowed." The 2010 Law of the Pluri-National Constitutional Court prescribes, among the "principles of constitutional justice", the principle of independence, which the Law defines as meaning that "constitutional justice is not subject to any other organ of the public authority."³

Constitutional Court judges may be removed from office only "upon completion of their mandate, imposition of a final sentence arising from a trial of responsibilities, resignation, death and other causes set forth in the law."⁴

The Constitution and law no. 44 (on prosecution of high officials) contemplate that the Legislative Assembly is the only body competent to prosecute judges of the Constitutional Court for criminal offences committed in the exercise of their professional activities, with the Chamber of Deputies bringing the accusation, and the Senate conducting the trial.⁵ Article 117 of the Constitution states, however, that, "No one shall be subject to a criminal sanction that has not been imposed by a competent judicial authority as a final judgment."

The Constitution of Bolivia provides that "international treaties and instruments in matters of human rights that have been signed and/or ratified, or those that have been joined by the State, which declare rights more favorable than those contained in the Constitution, shall have preferential application over those in this Constitution."⁶ It further directs that "the rights recognized in the Constitution shall be interpreted in agreement with international human rights treaties when the latter provide more favorable norms."⁷ The Constitution also states that, "Ratified international treaties are part of domestic law with the force of law".⁸

³ Law of the Plurinational Constitutional Court, law no. 027, 6 July 2010, article 3.

⁴ Political Constitution of the Plurinational State of Bolivia (hereafter "Constitution of Bolivia"), 7 February 2009, articles 182, 183, 200 and 201.

⁵ Constitution of Bolivia, 7 February 2009, articles Articles 159(11) and 160(6); Law no 44 on the Prosecution of the President and/or Vice President, of the High Authorities of the Supreme Court of Justice, Agro-environmental Court, Judicial Council, Plurinational Constitutional Court, and Public Prosecutors, 8 October 2010, articles 22 and following.

⁶ Constitution of Bolivia, article 256 (I).

⁷ Constitution of Bolivia, article 256 (II).

⁸ Constitution of Bolivia, article 257.

FACTUAL BACKGROUND

On 17 February 2014, a member of the Legislative Assembly in Bolivia requested the Constitutional Court to assess the constitutionality of a recently-passed piece of legislation, Law no. 483 on Notarial Services.⁹ The petition expressed concerns about the consistency of the law with Constitutional provisions for the protection of the independence of the judiciary. The petition also requested the Court to issue precautionary measures.

On 13 March 2014, an admissibility committee of judges Gualberto Cusi Mamani, Soraida Rosario Chanez Chire and Ligia Mónica Velásquez Castaños, declared the petition admissible and provisionally suspended the operation of Law no. 483, citing article 9 of the Constitutional Code of Procedure.¹⁰ On 22 March 2014, the admissibility committee amended its previous decision, limiting the suspension to cover only certain provisions of the Law no. 483.

On 4 June 2014, notaries Norka Jaqueline Soto Serrudo and Stenka Geovanna Udaeta España presented a complaint against the three judges, alleging that their order temporarily suspending parts of the law constituted various offences under the Criminal Code: "issuing resolutions or orders against the Constitution and Laws"¹¹ or "breach of duties",¹² which are offences under the heading of "abuse of power"; and "malfeasance", an offence under the heading of "crimes against the judicial function".¹³ The Criminal Code provides for periods of imprisonment for these offences of, respectively, between one month and two years, between one month and one year, and between two years and four years.

The complaint resulted in an investigation on 5 June 2014 by the Committee of the Public Prosecution and Legal Defence of the State, made up of members of the Chamber of Deputies of the Legislative Assembly.

On 7 July 2014, Constitutional Judge Ligia Mónica Velásquez Castaños requested the Chamber of Deputies of the Assembly to declare some provisions of law no. 44 on prosecution of high officials unconstitutional,¹⁴ and to request the Constitutional Court

⁹ Law no. 483 on the Plurinational Notaries, 25 January 2014.

¹⁰ Constitutional Code of Procedure, law no. 254, 5 July 2012, article 9: "El Tribunal Constitucional Plurinacional, de oficio o a petición de parte, a través de la Comisión de Admisión, podrá determinar las medidas cautelares que considere necesarias." "The Plurinational Constitutional Court can, ex officio or upon request, determine through the Admissibility Committee the interim measures it deems necessary."

¹¹ "ARTICULO 153.- (RESOLUCIONES CONTRARIAS A LA CONSTITUCIÓN Y A LAS LEYES).- El funcionario público o autoridad que dictare resoluciones u órdenes contrarias a la Constitución o a las leyes o ejecutare o hiciere ejecutar dichas resoluciones u órdenes, incurrirá en reclusión de un mes a dos años."

¹² "ARTICULO 154.- (INCUMPLIMIENTO DE DEBERES).- El funcionario público que ilegalmente omitiere, rehusare hacer o retardare algún acto propio de su función incurrirá en reclusión de un mes a un año."

¹³ "ARTICULO 173.- (PREVARICATO).- El juez que en el ejercicio de sus funciones dictare resoluciones manifiestamente contrarias a la ley será sancionado con reclusión de dos a cuatro años. Si como resultado del prevaricato en proceso penal se condenare a una persona inocente, se le impusiere pena más grave que la justificable o se aplicara ilegítimamente la detención preventiva, la pena será de reclusión de tres a ocho años. Lo dispuesto en el párrafo primero de este ARTICULO, es aplicable a los árbitros o amigables componedores o a quien desempeñare funciones análogas de decisión o resolución."

¹⁴ Judge Ligia Mónica Velásquez Castaños challenged articles 1, 2, 9, and 22 to 51 of law no. 044, which govern the competence of the Legislative Assembly to investigate and try

for an opinion on the constitutionality of the competence purportedly given to the legislative body under law no. 44. Both requests were rejected.

On 28 July 2014, the Chamber of Deputies issued a summary of the charges against the three judges, temporarily suspended the proceedings against Judge Gualberto Cusi Mamani, who had been hospitalized, until he regains his health, and ordered the other two judges suspended from duty. The purported theory of the charges is that, in temporarily suspending the operation of certain parts of the law, the Admissibility Committee failed to respect a presumption of constitutionality (citing a statutory presumption of constitutionality set out in the law on the Constitutional Court and the Constitutional Code of Procedure, though not in the Constitution itself).

As of 13 October 2014, the case remained pending before the Senate. According to Law no. 44, the Senate will function as the "Sentencing Court". If convicted, the accused can "appeal" the final decision to the Legislative Assembly in plenary.¹⁵

STANDARDS ON THE INDEPENDENCE OF THE JUDICIARY

Bolivia has been a party to the **International Covenant on Civil and Political Rights** (ICCPR) since 1982. Article 14 of the ICCPR addresses the right to a fair trial. Article 14(1) requires States parties to secure the right of everyone to have access to courts that are independent and impartial:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (...).

The **Human Rights Committee**, a body of independent experts established under the ICCPR, is an authoritative source of interpretation and guidance on its application.¹⁶ On the independence of judges, the Human Rights Committee has stated (emphasis added):

The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any

members of the higher courts, arguing that the attribution of judicial functions to a legislative body violates the right to a fair trial by a competent, independent and impartial tribunal, the separation of powers, due process, the presumption of innocence, and political rights.

¹⁵ Law no. 44, 8 October 2010, articles 41 and 50(1).

¹⁶ In *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010, p. 639, at para 66, the International Court of Justice said, in relation to the Human Rights Committee, that the International Court of Justice when called upon to interpret the ICCPR in a case, should itself "ascribe great weight to the interpretation adopted by" the Human Rights Committee, which "was established specifically to supervise the application of that treaty."

form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. (...)

Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. (...)¹⁷

The Human Rights Committee has also expressed concern that a procedure for the removal of judges that “allows Parliament to exercise considerable control over the procedure for removal of judges” is “incompatible with article 14 of the Covenant”;¹⁸ it consequently called on Sri Lanka, for instance, to “strengthen the independence of the judiciary by providing for judicial, rather than parliamentary, supervision and discipline of judicial conduct.”¹⁹

States have further elaborated additional instruments that, though not legally binding in themselves, reflect or assist in interpretation and application of binding legal obligations. Such instruments address all states, whether or not they are party to any particular treaty. **The United Nations Basic Principles on the Independence of the Judiciary**, for instance, provide among other things as follows (emphasis added):

1. (...) It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. (...)

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law. (...)

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.²⁰

¹⁷ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc CCPR/C/GC/32 (2007), paras 19 and 20.

¹⁸ Human Rights Committee, Concluding Observations on Sri Lanka, UN Doc CCPR/CO/79/LKA (2003), para 16.

¹⁹ Human Rights Committee, Concluding Observations on Sri Lanka, UN Doc CCPR/CO/79/LKA (2003), para 16.

²⁰ United Nations Basic Principles on the Independence of the Judiciary, endorsed by General Assembly resolutions 40/32 and 40/146, 1985, articles 1, 4. Full text available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx> (Accessed 8 October 2014). See also the Draft Universal Declaration on the Independence of Justice (“Singhvi Declaration”), cited with approval in UN Commission on Human Rights, resolution 1989/32, and available at: [http://www.cristidanilet.ro/docs/Shingvi Declaration.pdf](http://www.cristidanilet.ro/docs/Shingvi%20Declaration.pdf) (Accessed 8 October 2014). Article 20 of the Singhvi Declaration states, “Judges shall be protected from the harassment of personal litigation against them in respect of their judicial functions and shall not be sued or prosecuted except under an authorization of an appropriate judicial authority” (emphasis added).

Article 8(1) of the **American Convention on Human Rights**, to which Bolivia became a party in 1979, makes a very similar provision to that in article 14(1) of the ICCPR.²¹

The **Inter-American Court of Human Rights** is an authoritative source of interpretation and application of the American Convention. (It may be noted that, in interpreting and applying article 8(1), the Inter-American Court has frequently relied on specific guidance given in UN Basic Principles on the Independence of the Judiciary).²²

In its 2001 judgment in the *Case of the Constitutional Court v Peru*, the Inter-American Court affirmed the application of article 8(1) to parliamentary proceedings for the impeachment of Constitutional Court judges, including the requirements of independence and impartiality. On the facts of the case, the Court found that members of the Congress who participated in the dismissal procedure had earlier adopted positions on or participated in other ways in the legislation and other issues on which the impeachment proceedings were based. As such, the Court held that the Congress had violated article 8(1) by failing to ensure the guarantee of impartiality required. In addition to this subjective lack of impartiality, the Inter-American Court held that in the context of the case, as an institution, "the Legislature did not have the necessary conditions of independence and impartiality to conduct the impeachment proceeding against the three justices of the Constitutional Court."²³

In its 2013 judgment in *Case of the Constitutional Tribunal (Camba Campos et al) v Ecuador*, the Inter-American Court held parliamentary impeachment proceedings against several Constitutional Tribunal judges, based on certain parliamentarians' disagreement with their opinions in several decided cases, to have violated judicial independence as guaranteed under article 8(1) of the Convention. The Court noted that "judges may only be removed for serious disciplinary offences or incompetence" and that dismissal cannot be arbitrary.²⁴ It also noted provisions in the Constitution of Ecuador and domestic legislation, which affirmed the independence of the judiciary in the domestic legal order. The Court concluded in this regard that the Congressional impeachment proceedings in the case violated judicial independence, as the proceedings were clearly based on disagreement by members of Congress with the substance of legal decisions taken by the judges within the framework of their competencies under national law.²⁵

The **Inter-American Commission on Human Rights** has also addressed at length procedures for the removal of judges, from a human rights perspective, in its 2013

²¹ Article 8(1) of the American Convention states, "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

²² E.g. Inter-American Court of Human Rights, *Case of Constitutional Court v Peru*, Series C no 71, Judgment of 31 January 2001, paras 73 and 74; *Case of Aritz Barbera et al ("First Court of Administrative Disputes") v Venezuela*, Series C no 182, Judgment of 5 August 2008, paras 43, 84 (footnotes); *Case of Supreme Court of Justice (Quintana Coello et al) v Ecuador*, Series C no 266, Judgment of 23 August 2013, paras 144-147; *Case of Constitutional Tribunal (Camba Campos et al) v Ecuador*, Series C no 268, Judgment of 28 August 2013, paras 188-191.

²³ *Constitutional Court v Peru*, paras 77, 78, 84 and 85.

²⁴ *Constitutional Tribunal (Camba Campos et al) v Ecuador*, para 200.

²⁵ *Constitutional Tribunal (Camba Campos et al) v Ecuador*, paras 200 to 206.

report *Guarantees for the Independence of Justice Operators*.²⁶ The report states for instance:

[D]isciplinary control exercised by legislative bodies in “impeachment” proceedings poses a threat to the guarantees of independence and impartiality. States that vest their legislatures with that authority must ascertain, on a case-by-case basis, whether that political body affords the necessary guarantees to exercise the kind of legal oversight that does not compromise the principle of judicial independence. (...)

[V]esting the legislative branch with the authority to remove justice operators from their posts is at variance with the guarantee of independence that justice operators must have, without having to fear disciplinary action by other branches of government. The Commission therefore considers that because impeachment represents such a threat, in those States where it is permitted there must be assurances that the oversight will not be political but rather juridical and based on grounds that comply with the principle of freedom from *ex post facto laws* and procedures that afford the necessary guarantees, including review of the decision and measures to prevent it from being used for political, social or economic ends.

The Commission is of the view that the use of impeachment in the case of justice operators should be gradually eliminated in the region, as impeachment poses a significant threat to judicial independence. (...)²⁷

The Inter-American Commission also emphasizes in the report that:

[U]nder international law the grounds for disciplinary investigations and sanctions imposed on a judge should never be a legal opinion or judgment he or she wrote in a decision. It is important to understand that there are, on the one hand, the remedies of appeal, cassation, review, removal of cases to a higher court or the like, which are aimed at verifying that a lower court’s decisions are correct; but on the other, there is disciplinary oversight, which is intended to assess the conduct, suitability, and performance of the judge as a public official. The distinction between these two types of procedure is essential to guaranteeing independence, such that a superior’s disagreement with an interpretation must, under no circumstances, become grounds for seeking disciplinary measures.²⁸

²⁶ Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators*, OEA/Ser.L/V/II. Doc. 44 (5 December 2013), paras 184 to 239. The Inter-American Commission on Human Rights predates the American Convention but is also recognized and given particular functions under the American Convention.

²⁷ *Idem*, paras 202, 204 and 205.

²⁸ *Guarantees for the Independence of Justice Operators*, para 216; see also para 226. The Commission’s analysis here echoes that of the Inter-American Court in *Case of Apitz Barbera et al (“First Court of Administrative Disputes”) v Venezuela*, para 86, where the Court emphasised the strict distinction under international law between, on the one hand, procedures for challenging the correctness of a substantive legal decision taken by a judge acting within the competence given to them by domestic law, and on the other hand, “disciplinary oversight, which is intended to assess the conduct, suitability and performance of the judge as a public official”. The Court concluded that it was not enough, then, simply to believe that the judge was wrong about the law, there must be “an autonomous reason warranting a finding that a disciplinary offense has been committed.”

The Inter-American Commission recommended in this regard that:

States should refrain from establishing disciplinary grounds on actions related to the trial or legal test developed by justice operators in their decisions.²⁹

The report also states that, "Under international law, the penalty of suspension or removal must be applied only in the case of the most serious misconduct."³⁰

STANDARDS ON THE RIGHT TO FAIR TRIAL IN CRIMINAL PROCEEDINGS

Article 14 of the ICCPR also sets out a number of specific rights guaranteed to all individuals facing criminal proceedings. First, article 14(1) explicitly requires States parties to ensure that everyone who faces criminal charges of any kind is tried only by "an independent and impartial" tribunal. Second, paragraphs 2 to 7 of Article 14 set out a non-exhaustive list of specific rights guaranteed to all individuals facing criminal proceedings, including that, "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

Again, article 8 of the American Convention includes very similar provisions.

The Human Rights Committee has held as follows:

The notion of a "tribunal" in article 14, paragraph 1 designates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature. Article 14, paragraph 1, second sentence, guarantees access to such tribunals to all who have criminal charges brought against them. This right cannot be limited, and any criminal conviction by a body not constituting a tribunal is incompatible with this provision.³¹

ANALYSIS OF THE CASE

The present matter comes against a background of earlier expressions of concern, by for instance the Inter-American Commission of Human Rights about a lack of safeguards for independence of the judiciary in Bolivia, and about actual threats or interference with judges from the executive and legislature in some cases.³²

Applying the international standards on independence of the judiciary and fair trial, to Bolivian law and the facts of these cases, the International Commission of Jurists considers that the criminal proceedings against the judges are inconsistent with the state's duty to secure and safeguard the independence of the judiciary, and violate the right to fair trial of the individual judges, for the following reasons.

²⁹ *Idem*, para 249, recommendation 22.

³⁰ *Idem*, para 217.

³¹ Human Rights Committee, General Comment no 32, para 18.

³² See, for instance, Inter-American Commission of Human Rights, "Access to Justice and Social Inclusion: the Road towards Strengthening Democracy in Bolivia", OEA/Ser.L/V/II. Doc. 34, 28 June 2007, pages 18-44; Annual Report 2009, OEA/Ser/L/V/II.135, Doc. 40, 7 August 2009, chapter V "Bolivia Follow-up Report: Access to Justice and Social Inclusion", para 66 to 77.

First, the Senate is an legislative body, inherently political, that does not have the qualities of an independent and impartial tribunal of a judicial character as required by article 8 of the American Convention and Article 14 of the ICCPR.

- Particularly given that these proceedings are criminal in nature, and the judges have been charged with crimes that are punishable with terms of imprisonment, trial of these individuals by the Senate would violate their individual right to fair trial by an independent and impartial tribunal.
- International law and the Bolivian Constitution prohibit the imposition of criminal sentences by a body that lacks these features.
- Further, any avenue of “appeal” to the plenary of the Legislative Assembly as a whole cannot satisfy the right to appeal from criminal conviction under international human rights law, since the “appellate” body would be made up entirely of individuals who already were members of the bodies who indicted and convicted the accused at first instance.

Second, even if the matter is examined from a purely institutional point of view, the proceedings against the judges violate international standards on the independence of the judiciary on the following grounds:

- The charges against the judges appear to be based solely on disagreement with the correctness of legal decisions taken by them – specifically, as to the judges’ reasonable interpretation of provisions of the Constitution and laws of Bolivia.
 - In this respect the judges were clearly acting within the scope of the competencies expressly conferred upon them by the Constitution and by the legislature itself through the Law of the Pluri-National Constitutional Court, and, most specifically, article 9 of the Constitutional Code of Procedure.
 - Such grounds cannot meet the high threshold of “serious misconduct”, required under international standards to justify any removal from office; to the contrary, the proceedings amount to an “inappropriate or unwarranted interference with the judicial process” and an attempt to “revise” judicial decisions by the courts, contrary to the UN Basic Principles on the Independence of the Judiciary.
 - Like the proceedings condemned by the Inter-American Court in the *Case of the Constitutional Tribunal (Camba Campos et al) v Ecuador*, these proceedings consequently amount to arbitrary interference with the independence of the judiciary incompatible with the international legal obligations of Bolivia.³³
 - As the Inter-American Commission on Human Rights has emphasized, “the grounds for disciplinary investigations and sanctions imposed on a

³³ While disciplinary proceedings should not in any event be based solely on the “correctness” of a judge’s decision, a certain irony must be noted in the willingness of the Chamber of Deputies to suspend the judges as a precautionary measure despite the presumption of their innocence, while at the same time accusing the judges of having engaged in misbehaviour by their having suspended the operation of the law as a precautionary measure despite the presumption of its constitutionality.

judge should never be a legal opinion or judgment he or she wrote in a decision.”³⁴

- Further, the members of the Senate (and indeed the Legislative Assembly as a whole if an appeal were taken from a conviction by the Senate) who would serve as the “judges” in these proceedings cannot satisfy the requirements of individual impartiality under international standards, since they are the same individuals who were involved in enacting the legislation that was suspended in the impugned decisions of the judges. The case is in this respect similar to that of the *Case of the Constitutional Court v Peru*.
- Additionally, at the institutional level, the Chamber of Deputies and Senate as institutions lack the institutional independence and impartiality required by international standards. There appear to be no particular institutional arrangements to ensure that the body actually conducting the proceedings against the judges is constituted in such a way as to guarantee that the decisions taken by the body are judicial in nature and not political. The case is in this respect again similar to that of *Case of the Constitutional Court v Peru*.

CONCLUSIONS

For the reasons highlighted above, the International Commission of Jurists concludes that for the Legislative Assembly to continue these proceedings against Judges Gualberto Cusi Mamani, Soraida Rosario Chanez Chire and Ligia Mónica Velásquez Castaños would violate article 14 of the ICCPR and article 8 of the American Convention on Human Rights.

The ICJ therefore calls on Bolivia immediately to:

- Nullify or otherwise terminate the criminal proceedings;
- End the judges’ suspension from duty;
- Cease any other form of interference with the independent administration of justice;
- Initiate reforms of Constitutional and legal provisions for discipline and removal of judges to bring the procedures in line with international norms, including the International Covenant on Civil and Political Rights and the Inter-American Convention on Human Rights, as elaborated upon through jurisprudence and other international and regional standards.

Among the reforms the ICJ would recommend are the following:

- Abolish any jurisdiction for legislative bodies to conduct criminal trials;
- Clearly prescribe in law the possible grounds for removal from office, limited to those contemplated by international standards, particularly, incapacity or serious misconduct or incompetence or that renders the judge unfit to discharge their duties;
- Clearly incorporate in the law the standard as summarized by the Inter-American Commission: “the grounds for disciplinary investigations and sanctions

³⁴ Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators*, para 216; see also para 226.

imposed on a judge should never be a legal opinion or judgment he or she wrote in a decision”;

- Create a body that is independent of the executive and legislature, to conduct and decide disciplinary proceedings against judges, including judges of the Constitutional Court.
- Establish rules for the independent body that ensure that disciplinary proceedings before it are impartial and fair. For instance, the individual must have the right to timely access to the information on which the allegations of misconduct are based, the right to be represented, and to contest and present evidence. Penalties must be proportionate to the case, and decisions to discipline or remove a judge should be appealable before an independent, impartial and judicial body.³⁵

³⁵ For detailed analysis and recommendations, see ICJ, *Practitioners Guide no. 1: International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors* (2007), <http://www.icj.org/no-1-international-principles-on-the-independence-and-accountability-of-judges-lawyers-and-prosecutors/> (Accessed 10 October 2014).