

**Suggestions for the List of Issues Prior to Reporting to be adopted by the Human Rights Committee at its 127th Session in relation to:**

**Bolivia**

**Statement of Interest**

1. The Equal Rights Trust (the Trust) and Comunidad de Derechos Humanos (Comunidad) make this submission in order to inform the list of issues prior to reporting by Bolivia, to be adopted by the Human Rights Committee (the Committee) at its 127th Session.
2. This joint submission has been produced in the context of a three-year initiative funded by the European Union and implemented in Bolivia by the Trust in collaboration with Comunidad. Our aim is to improve the implementation of Bolivia’s obligations in respect of the rights to equality and non-discrimination in UN human rights Conventions, including the International Covenant on Civil and Political Rights (the Covenant).
3. The Trust is an independent international organisation whose mission is to eliminate discrimination and ensure that everyone can participate in society on an equal basis. We work in partnership with equality defenders around the world to secure the adoption and implementation of comprehensive equality laws. Over the last decade, we have supported partners in more than 45 countries to combat discrimination and promote equality through law reform and improved implementation.
4. Comunidad is a network of public and private organisations and institutions working to promote human rights through coordinated actions of its members to strengthen the promotion and protection of human rights in Bolivia. Among other initiatives, it has led the work of la Red Contra el Racismo, la Discriminación y la Impunidad (The Network Against Racism, Discrimination and Impunity) and has been a leading advocate for the adoption and implementation of anti-discrimination law in Bolivia.

**Article 2(1) and 26: The Legal Framework**

1. This joint submission focuses on the extent to which Bolivia has met its obligations to respect, protect and fulfil the right to non-discrimination. Thus, the submission is concerned with Bolivia’s performance under two articles of the Covenant: Article 2(1), which requires that states parties respect and ensure the enjoyment of the rights provided in the Covenant without distinction and Article 26, which, as the Committee has stated, provides an “autonomous right”[[1]](#footnote-1) to non-discrimination. The recommendations made in this submission focus specifically on measures required to bring Bolivia’s law, policy and practice in line with its non-discrimination obligations arising under the Covenant. The submission presents evidence collected in the development of a study on the extent to which Bolivia’s comprehensive anti-discrimination law – Ley Contra el Racismo y Toda Forma de Discriminación (Ley 045 of 2010) – has been effectively implemented and enforced.
2. In assessing Bolivia’s compliance with its obligations under Articles 2(1) and 26 of the Covenant, this submission relies, in part, on the interpretation of these provisions which has been provided by the Committee in its General Comment No. 18. In particular, we hope that this submission will respond to the Committee's wish to be informed of the existence of discrimination in fact and about “legal provisions and administrative measures directed at diminishing or eliminating such discrimination”.[[2]](#footnote-2)
3. This submission also relies upon the Declaration of Principles on Equality (the Declaration),[[3]](#footnote-3) a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts and has been described as “the current international understanding of Principles on Equality”.[[4]](#footnote-4)
4. Pursuant to its obligations under the Covenant, in 2010, Bolivia adopted Law 045 of 2010 Against Racism and All Forms of Discrimination (Law 045)*.* While Law 045 complies in many respects with the state’s obligations to adopt comprehensive equality legislation,[[5]](#footnote-5) there have been significant difficulties in its implementation. Although the Law is considered to have some deterrent effect and there has been progress regarding general awareness of it, such that citizens make claims based upon it,[[6]](#footnote-6) it remains poorly implemented and enforced.

***Access to Justice***

1. Under Article 2(3) of the ICCPR, states are required to ensure to all individuals whose rights to equality and non-discrimination has been violated,[[7]](#footnote-7) the right to an effective remedy,[[8]](#footnote-8) provided “by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State”.[[9]](#footnote-9) Where a violation of the rights to equality and non-discrimination is alleged to have occurred, States are required to investigate “promptly, thoroughly and effectively through independent and impartial bodies”.[[10]](#footnote-10) As a substantive Convention right, the right to an effective remedy must be provided to all individuals without discrimination.[[11]](#footnote-11)

*Administrative Proceedings*

1. Research conducted by Comunidad reveals that administrative, criminal, and constitutional proceedings designed to deal with discrimination have been ineffective in practice. Article 7 of Law 045 created the National Committee Against Racism and Discrimination (*Comité Nacional Contra el Racismo y toda forma de Discriminación*). Since the enactment of the Law, eight Departmental Committees have been created, but only three are operational.
2. Moreover, out of 195 cases reported by the Direction of the Fight Against Racism and All Forms of Discrimination in 2017 (*Dirección de Lucha contra el Racismo y Toda Forma de Discriminación,* an entity from the Ministry of Culture), 114 of the claims were made against public officials[[12]](#footnote-12). Comunidad’s interviews with key stakeholders also highlighted concerns that public officials responsible for handling administrative claims are biased by colonial, racist, and sexist prejudice, leading to the maintenance and reproduction of discriminatory practices across the population.[[13]](#footnote-13) Between 2013 and April 2018, only 13% of cases against public officials were resolved.[[14]](#footnote-14)
3. Although the State created a Protocol in 2017 – implemented in 20 ministries, 9 governorates, and 9 municipal governments – to accelerate the handling of administrative claims, research conducted by Comunidad found that there have been challenges in implementation due to continuous changes in staff, lack of economic resources, and the fact that the officials that have competence to review these claims tend to have connections to those whom the claims are made against.

*Criminal Proceedings*

1. The establishment of criminal sanctions for discrimination in Law 045 poses a number of problems. As the Equal Rights Trust has noted elsewhere, there are numerous problems with the criminalisation of discrimination.[[15]](#footnote-15) Moreover, in Bolivia, the use of criminal sanctions has also proved to be almost completely ineffective in providing effective remedies against discrimination.
2. The right to non-discrimination cannot be properly and effectively enforced through recourse to criminal law penalties and criminal liability for several reasons. Discrimination does not require intent or malicious motive on the part of the discriminator (and can therefore be committed both intentionally or unintentionally).[[16]](#footnote-16) As such, the application of criminal sanctions is unjustified and disproportionate: for example, it is clearly inappropriate to impose criminal liability in cases of indirect discrimination where rules, policies or procedures which result in disproportionate impact on certain groups may nevertheless have been implemented pursuant to legitimate aims. Furthermore, the effective enforcement of the right to non-discrimination requires provision for the transfer of the burden of proof to the respondent. As the Committee on Economic, Social and Cultural Rights has noted: “[w]here the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the (…) respondent, the burden of proof should be regarded as resting on the (…) respondent”.[[17]](#footnote-17)  The transfer of the burden of proof is essential to the effective enforcement of the right to non-discrimination, but is incompatible with the presumption of innocence, which is an essential principle of due process in criminal cases.[[18]](#footnote-18) Finally, the use of criminal proceedings is inappropriate because the focus of criminal proceedings is on the punishment of offenders rather than on securing legal redress and remedy for the victims of discrimination.[[19]](#footnote-19)
3. Research conducted by Comunidad has found that in Bolivia, the use of criminal sanctions has – for reasons including those set out in paragraph 14 – proved ineffective in securing remedy and sanction in discrimination cases. Comunidad’s research has found that, of 340 criminal complaints, there have only been two enforceable judgments, with a further two subject to appeal.[[20]](#footnote-20) This means that only 0.06% of criminal discrimination cases have been resolved. Furthermore, key stakeholders interviewed by Comunidad stated that criminal complaints frequently get stuck in a “cul-de-sac”whenever they involve public officials, particularly those belonging to the executive branch.[[21]](#footnote-21)

*Constitutional Proceedings*

1. The constitutional mechanisms, despite relevant judgments in this matter, have led to contradictory decisions. For example, Judgment SCP 076/17 declared unconstitutional provisions in the Law of Gender Identity which allowed a full exercise of all fundamental rights of transgender and transsexual persons who had changed their name, sex, and image according to their identity.[[22]](#footnote-22) The tribunal deferred to the legislature the treatment of issues such as marriage, adoption, confidentiality, and parity in electoral processes regarding this group of the population, despite the requirements of Law 045 to ensure the right to non-discrimination.

***Resources for implementation of the rights to equality and non-discrimination***

1. In its most recent concluding observations on Bolivia, the Human Rights Committee expressed concern regarding “the inadequacy of the mechanisms and resources for (…) implementation” of Law 045.[[23]](#footnote-23)
2. Article 11 of Law 045 establishes that the state must allocate the necessary resources for the implementation of the anti-discrimination law. However, it does not establish a fixed percentage of resources from the state budget, nor does it define criteria for the determination of such a budget. This, in practice, has meant the allocation of insufficient resources for the implementation of the law.[[24]](#footnote-24)
3. The *Policy of the Plurinational State of Bolivia against Racism and all forms of Discrimination* was adopted for the period 2012-15, but no information was made available on a budget allocation for its implementation. Subsequently, the National Committee worked on the *Multisectoral Plan of the Plurinational State of Bolivia against Racism and All Forms of Discrimination 2016 - 2020*, a public policy that aims to improve the quality of life of vulnerable populations. In 2018, a majority of Ministries have registered programmes and actions in accordance with the Multisectoral Plan.

**Suggested Questions – Legal Framework**

* Does the State Party consider that Law 045 of 2010 is effective in combating discrimination in the enjoyment of Covenant rights? What, if any, are the indicators which the State Party has used to assess the effectiveness of Law 045?
* What plans, if any, does the State Party have to improve the implementation and enforcement of Law 045?
* What concrete measures has the State Party taken to ensure access to justice for survivors of discrimination? What measures have been taken to ensure the prompt, impartial, and independent investigation of claims or complaints of discrimination?
* How does the State Party evaluate the effectiveness of the remedies that have been provided for the violation of the rights to equality and non-discrimination? Does the State Party consider the use of criminal penalties in discrimination cases to be proportionate, just and effective?
* How does the State Party determine the resources allocated to the implementation of Law 045? How does the State Party evaluate the adequacy of said resources in this regard? What mechanisms, if any, does the State Party have in place to monitor whether these resources have been adequately spent?
* What progress has the State Party made in the enactment of a special law which guarantees family plurality and diversity, in the compliance with the order by the Plurinational Constitutional Tribunal to the Legislator in judgment SCP 076/2017 regarding marriage between same sex couples?
1. Human Rights Committee, *General Comment No. 18: Non-discrimination*, 1989, Para 12. [↑](#footnote-ref-1)
2. *Ibid*. Para 10. [↑](#footnote-ref-2)
3. Declaration of Principles on Equality, The Equal Rights Trust, London, 2008. [↑](#footnote-ref-3)
4. Naz Foundation v. Government of NCT of Delhi and Others WP(C) No.7455/2001, Para. 93. [↑](#footnote-ref-4)
5. See note 3, Recommendation 15; Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 37; Committee on the Rights of Persons With Disabilities*,* *General Comment No. 6: Equality and Non-Discrimination*, UN Doc. CRPD/C/GC/6, 2018, Para 22; [↑](#footnote-ref-5)
6. Comunidad de Derechos Humanos interview with X, 2019 (name available on request). [↑](#footnote-ref-6)
7. International Covenant on Civil and Political Rights, Articles 2(1) and 26. [↑](#footnote-ref-7)
8. International Covenant on Civil and Political Rights, Article 2(3)(a). [↑](#footnote-ref-8)
9. International Covenant on Civil and Political Rights, Article 2(3)(b). [↑](#footnote-ref-9)
10. Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,* UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, Para 15. [↑](#footnote-ref-10)
11. International Covenant on Civil and Political Rights, Article 2(1). [↑](#footnote-ref-11)
12. Research conducted by Comunidad de Derechos Humanos. [↑](#footnote-ref-12)
13. Comunidad de Derechos Humanos interview with Z, 2019 (name available on request). [↑](#footnote-ref-13)
14. Research conducted by Comunidad de Derechos Humanos, citing: Comité Nacional Contra el Racismo y Toda Forma de Discriminación, *Reporte de denuncias de racismo y discriminación,* available at <http://www.noracismo.gob.bo/index.php/reporte-denuncias>. [↑](#footnote-ref-14)
15. Equal Rights Trust, *A Past Still Present: Addressing Discrimination and Inequality in Egypt*, 2018, pp. 53-54, available at: <https://www.equalrightstrust.org/ertdocumentbank/Egypt_EN_online.pdf> [↑](#footnote-ref-15)
16. Human Rights Committee, *General Comment No 18: Non-Discrimination,* 1989, HRI/GEN/1/Rev.6 at 146 (2003), Para 7. [↑](#footnote-ref-16)
17. Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (Article 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights),* UN Doc.E/C.12/GC/20, 2009, Para 40. [↑](#footnote-ref-17)
18. International Covenant on Civil and Political Rights, Article 14(2). [↑](#footnote-ref-18)
19. See above, note 3, Principle 5. [↑](#footnote-ref-19)
20. Diario Página Siete, “Se presentan hasta 220 denuncias por discriminación y racismo al año”, *Diario Pagina Siete,* 24 May 2018. Available at: <https://www.paginasiete.bo/sociedad/2018/5/24/se-presentan-hasta-220-denuncias-por-discriminacion-racismo-al-ano-181054.html> [↑](#footnote-ref-20)
21. Gutiérrez, Fabiola, “Discriminación: la ley influyó en los dichos, pero no en los hechos”, <https://social.shorthand.com/fagutierrez7/32cHnpAcYUf/discriminacion-la-ley-influyo-en-los-dichos-pero-no-en-los-hechos>; Comunidad de Derechos Humanos interview with A, 2019 (name available on request); Comunidad de Derechos Humanos interview with Z, 2019 (name available on request). [↑](#footnote-ref-21)
22. <https://jurisprudencia.tcpbolivia.bo/> [↑](#footnote-ref-22)
23. Human Rights Committee, *Concluding Observations*: *Bolivia*, UN Doc. CCPR/C/BOL/CO/3, 6 December 2013, Para 7. [↑](#footnote-ref-23)
24. Comunidad de Derechos Humanos interview with X, 2019 (name available on request); Comunidad de Derechos Humanos interview with Z, 2019 (name available on request); Comunidad de Derechos Humanos interview with B, 2019 (name available on request). [↑](#footnote-ref-24)