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(VENICE COMMISSION)

DRAFT OPINION

**ON THE DRAFT ORGANIC LAW
OF THE PUBLIC PROSECUTOR'S OFFICE
OF BOLIVIA**

On the basis of comments by

Ms Paloma BIGLINO (Member, Spain)
Mr Harry GSTÖHL (Member, Liechtenstein)
Mr Nicolás CABEZUDO (Expert, Spain)

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1. Introduction

1. By letter dated 9 February 2011 the Vice-Minister for Justice and Fundamental Rights of Bolivia, Dr Nelson Marcelo Cox Mayorga, requested the European Union Delegation in Bolivia to forward a request for an opinion on the draft Organic Law of the Public Prosecutor's Office.

2. This request was forwarded to the Venice Commission by Mr Ivo Hoefkens for the European Union Delegation in La Paz, on 10 February 2011. The preliminary draft Law was prepared by the Ministry of Justice in conjunction with the State Prosecutor General, the Plural Justice Commission of the Chamber of Deputies of the Plurinational Legislative Assembly of Bolivia with the participation of civil society.

3. The Venice Commission invited Ms Paloma Biglino, Mr Nicolás Cabezudo and Mr Harry Gstöhl to act as rapporteurs for the drawing up of this Opinion. On 24 February 2011 the Venice Commission forwarded a number of preliminary comments on the preliminary draft Law to the Ministry of Justice of Bolivia, based on the comments by the experts.

4. *The present opinion was adopted by the Venice Commission at its ... plenary session (Venice,...).*

2. Relevant texts

5. A series of texts exists reflecting international protective standards concerning the role of public prosecutor's offices which have created a wealth of relevant recommendations and guidelines. Although some of the texts used are European, others are international. The following were used, among others:

- United Nations 1990 Guidelines on the Role of Prosecutors;
- Recommendation Rec (2000) 19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecutors in the Criminal Justice System;
- 1999 International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors;
- 2009 Bordeaux Declaration of the Consultative Council of European Judges and of the Consultative Council of European Prosecutors on Relations between Judges and Prosecutors in a Democratic Society.

6. At its plenary session in December 2010 the Venice Commission adopted a report with recommendations concerning European standards on the independence of public prosecutors (CDL-AD(2010)040). The case law of human-rights courts such as the Inter-American Court of Human Rights will be kept in mind in drawing up the present Opinion.

3. General considerations

7. The draft Law submitted to the Venice Commission for consideration is a well structured text that expresses in a consistent form the principles set out in the Constitution. It has highly positive elements such as the defence of victims' rights (which is derived, *inter alia*, from the general principles included in Article 4, third paragraph, Article 5.10, Article 32, paragraphs 6, 9, 13, 14 and 16, Article 92 and Articles 113 to 115), the obligation to state reasons for the decisions made and inform the victim of his/her rights (Article 24), together with the principles of professionalism and independence of public prosecutors through security of tenure (Article 123).

8 Nevertheless, from a general perspective, the draft Law deals with a wide range of matters and establishes complex and very detailed rules on the status of the Public Prosecutor's Office. Some of them could have been covered by implementing byelaws instead of appearing with such great detail in the draft Law. Furthermore, the Public Prosecutor's Office appears to be an institution with very extensive powers and a complex organisation requiring abundant funds. The draft Law thus shows a number of shortcomings which are not in line with international standards, chiefly as regards independence in the selection of prosecutors, the powers they enjoy, the composition of the National Council of the Public Prosecutor's Office and immunities. Some of the safeguards introduced to ensure the autonomy of the public prosecutor's office, plus specifically the sources of its financial autonomy and the transitional provisions governing the current holders of the posts concerned, should be subject to further revision.

4. Title I: General provisions

A. Chapter I (Articles 1 to 4)

9. The general principles covered in the first chapter contain highly positive elements. For example, the openness towards international law, which aligns this draft Law with international treaties and agreements, is a very satisfactory aspect that can lead to increased international co-operation in the prosecutors' field of action (e.g. see Article 5.12, together with the possibility of entering into agreements with other institutions and bodies in this area regardless of nationality - Article 23.32 - or pursuant to the independence of the Public Prosecutor's Office - Article 4.21). Bolivia is also a party to the American Convention on Human Rights and has accepted the contentious jurisdiction of the Inter-American Court of Human Rights. All this shows the important and very positive role attributed to treaties, especially in the human-rights field.

10. Likewise, the principles in Article 4, especially the provision in paragraph 6 on the functional, administrative and financial autonomy of the Public Prosecutor's Office, as well as the recognition in paragraph 22 of the concept of independence of the Public Prosecutor's Office, which may not receive instructions or be subject to interference in the exercise of its functions, are to be welcomed. The Venice Commission has pronounced itself on this point in its report on *European Standards as regards the Independence of the Judicial System, Part II - The Prosecution Service*, which states in paragraph 22:

*"Therefore, the Commission focuses on methods to limit the risk of improper interference, which range from conferring independence on a prosecutor, subject to such powers of review, inspecting or auditing decisions as may be appropriate, to the prohibition of instructions in individual cases, to procedures requiring any such instructions to be given in writing and made public. In this connection the existence of appropriate mechanisms to ensure the consistency and transparency of decision-making are of particular importance."*¹

11. In its report, the Venice Commission notes the current tendency to organise a more independent Public Prosecutor's Office, which is not subordinate to the Executive. External independence is a key element in the functions of a public prosecutor's office and entails a requirement for non-interference by the Executive in individual cases affecting the prosecutors' work (this is in line with what is also said in Article 7.11). The preliminary draft Law clearly affirms the external independence of the Bolivian Public Prosecutor's Office and is therefore in line with current trends in most democracies.

¹ CDL-AD(2010)040.

12. The provision in paragraph 10 of Article 4 is also to be welcomed. It affirms the necessity to protect the police, prosecutors, witnesses and experts, which is a unique precondition for establishing an efficient public prosecutor's office and fighting impunity. The introduction in items 13 and 14 of Article 4 of the concept of juridical pluralism and interculturalism is also very positive, in which cultural, institutional and linguistic diversity are factors to be borne in mind under the Constitution and international law. Normative diversity, also mentioned in the Article, must not result in the unequal application of the law or discriminatory results (see the statements on this point in connection with Article 11).

13. Nevertheless, this first chapter also contains a number of provisions that present difficulties. Article 2.II states that the Chamber of Deputies of the Plurinational Legislative Assembly will be able to bring charges against, among others, judges of the highest courts, including the Constitutional Court, the State Prosecutor General and the Deputy Prosecutor General, for offences committed in the exercise of their functions. This provision creates a direct threat of politicisation of the system by leaving the charge in the hands of the Chamber of Deputies which, despite having great political legitimacy, is not a judicial body and may decide not to proceed with a trial for purely political reasons. Clearly, the State Prosecutor General, the Deputy Prosecutor General and the judges of higher courts must be publicly accountable for their actions, but a decision to bring or not to bring charges should lie with the Public Prosecutor's Office and not with the Executive or Legislative. If the charge were brought by the Public Prosecutor's Office, the Chamber of Deputies might exercise a veto corresponding to its political function and in that case society would be informed about the whole debate. The right to a fair and public hearing resulting from, among others, Article 8 of the American Convention on Human Rights and Article 14 of the United Nations International Covenant on Civil and Political Rights must be respected.

14. It is very positive that Article 4 sets out a number of genuine functional and organisational principles, such as legality, responsibility, objectivity, autonomy, unity and hierarchy. However, these principles appear to be mixed up with other ideas which are more in the nature of general objectives of the activity of the Public Prosecutor's Office and of the institutional system as a whole (protection of society, respect for juridical pluralism and cultural diversity, promotion of due process and legal certainty). Furthermore, the same Article covers other provisions such as operating rules (no charge for services, speed, control of prosecutor's office resolutions, confidentiality, respect for one's own decisions). It would perhaps be advisable to separate the various types of rules from the principles, in order to be in line with the terminology of Article 225 of the Constitution.

B. Chapter II (Article 5)

15. Article 5 of the draft Law is devoted entirely to the functions of the Public Prosecutor's Office, which are too comprehensive. Although Article 225.1 of the Constitution provides that the Public Prosecutor's Office "will defend the legality and general interests of society", the draft Law should define the functions of prosecutors limiting them to the field covered by the exercise of criminal proceedings (which appear at the end of Article 225.1 of the Constitution). Paragraph 1 of Article 5 should therefore be qualified so as to state, as the Venice Commission has pointed out on several occasions, that the exercise of public-prosecutor functions should focus mainly on the criminal-law field. Although the Commission agrees with the Consultative Council of European Prosecutors, which has provided that "*there are no common international legal norms and rules regarding tasks, functions and organisation of prosecution service outside the criminal-law field*" and that "*it is the sovereign right of the state to define its institutional and legal procedures of realisation of its functions on protection of human rights*

*and public interests...*², experience in other countries has shown that a conflict of interest may arise between the bringing of a criminal action and that of a civil action.³

16. Given these considerations, the third paragraph provides that the Public Prosecutor's Office shall bring class actions and other constitutional actions. Likewise the sixth paragraph lays down that the Public Prosecutor's Office shall be a party in any matter relating to protection of *"the person, interests, assets, constitutional rights and safeguards of women, children, adolescents, young people, elderly people, adults lacking legal capacity, the disabled, the poor and the absent"*. Although covered by the Constitution and by the Law on the Constitutional Court, the Law on the Public Prosecutor's Office in Moldova, which was the subject of an Opinion by the Venice Commission, contained a very similar provision. In that case, the Commission stated that since prosecutors represent the interest of the State, it appears that they may not be the most suitable parties for discharging these functions⁴. In its *Report on European Standards as regards the Independence of the Judicial System, Part II - the Prosecution Service*, the Commission also stated that *"... when the prosecutor has to act against the state, claiming for example social benefits on behalf of such vulnerable persons, he or she would be in a clear situation of conflict of interest between the interest of the state, which the prosecutor represents, and the interest of the individual he or she is obliged to defend"*⁵.

17. Further to the previous statement, the seventh paragraph also lays down overly broad functions for the Public Prosecutor's Office. The Prosecutor General should not have the function of coordinating and taking an active part in actions of civil society and private bodies. Civil society requires freedom from the state and should not work under state control; the exercise by the Prosecutor General of preventive-style oversight of civil society action, even if it were only consultative in nature, can deter civil society from its activities.

18. The fourth paragraph of Article 5 should make it clear that orders given to the police and investigative bodies by prosecutors should be subject to judicial control. This paragraph corresponds to Article 102 of the draft Law, which mentions that police and investigative body operations must be subject to judicial control, not just control by prosecutors.

19. Paragraph 13 deals with the question of the application of indigenous justice. The Public Prosecutor's Office should ensure that indigenous justice is applied with full respect for human rights and for trial rights.

20. Paragraph 17 makes the Public Prosecutor's Office responsible for overseeing human rights in prisons, hostels, psychiatric and health centres, which are all tasks that would seem more appropriate for the Ombudsman than for the Public Prosecutor's Office. Paragraph 18 also grants prosecutors direct powers in the immigration field, which are outside the scope of prosecutors, except for the prosecution of criminal offences in this area.

C. Chapter III (Articles 6 to 9)

21. Article 6 sets out the obligation to co-operate with the Public Prosecutor's Office by making those who refuse to do so criminally responsible. It should be remembered that the Public Prosecutor's Office's activities may jeopardise certain fundamental rights such as privacy, the confidentiality of communications, right to the protection of personal data etc. A proper balance between the different rights must be established by appropriate judicial control.

² Opinion No 3 (2008) on the Role of Prosecution Services outside the Criminal Law Field, para. 31.

³ See in this connection the Opinions of the Venice Commission on the Public Prosecutor's Office in Moldova (CDL-AD(2008)019, para. 30) and Ukraine (CDL-AD(2009)048).

⁴ CDL-AD(2008)019, para. 30.

⁵ Para. 83.

22. Article 7 entitled "Institutional co-operation" should define relations between the Public Prosecutor's Office and other state bodies more clearly. In the first paragraph, the Office appears to be on the same level as legislative, executive and judicial bodies, while at the same time the latter can also issue general instructions, although it is not stated which bodies - Executive or Parliament – can do so. Likewise, the third paragraph, which appears to suggest that the Public Prosecutor's Office may receive instructions from private parties and bodies, is not clear. This Article should clearly indicate the relations between the Office and other bodies.

23. The second paragraphs of Articles 8 and 9 provide for the possibility of the exercise of certain functions by departmental prosecutors. Inclusion of these provisions in this chapter may cause confusion about the powers and functions of departmental prosecutors, the rules and competences of whom are defined in Title II, Chapter III of the Preliminary Draft. Their deletion from this section and inclusion in the appropriate chapter are therefore recommended.

24. Article 4.19 deals positively with the confidentiality question, with particular reference to the special protection of children. However, Article 4.19.II is too broad. The presumption of innocence must be safeguarded and therefore it must not be publicised that someone is being investigated before a charge is brought.

5. Title II: Organisation of the Prosecution Service

A. Chapter I (Articles 10 to 19)

25. The internal organisation of the Public Prosecutor's Office appears highly complex. Five types of prosecutor are listed: the Prosecutor General and his/her Deputy, the Departmental Prosecutor and his/her Deputy, Senior Prosecutors, Subject Prosecutors and Assistant Prosecutors. It is recommended that the system be simplified and made more accessible and less expensive in terms of organisation.

26. Among the qualifications for becoming a prosecutor in Article 11, the requirement to be a professional lawyer (third paragraph) should be clarified to show whether this means all law graduates or only those who have been advocates and are registered with the bar. The profession of prosecutor should be open to all those who have followed law studies satisfactorily, have passed the necessary prosecutor examinations and had the necessary training.

27. The fourth paragraph of Article 11 stipulates the requirement to "speak at least two official languages" without specifying the level of knowledge required. Prosecutors already working as such should be allowed time to learn the second language. In addition, the second language concerned may not always be used in a specific case, because another language than that learned may be required. It seems therefore difficult to guarantee the right to use local languages, as set out in Article 32.23 or Article 63 of the preliminary draft Law.

28. Article 12, which stipulates who can appoint prosecutors at each level, grants excessive powers to the Prosecutor General, who can appoint departmental prosecutors, senior prosecutors and specialised subject prosecutors. No limit is imposed on that power nor is any measure introduced to curb it. The Venice Commission recommends that the Prosecutor General operates on the basis of recommendations by the National Council of the Public Prosecutor's Office⁶.

⁶ CDL-AD(2010)040, *op.cit.*, para. 48.

29. Article 17 covers the question of immunities. The first paragraph provides for extensive immunity, which prohibits all arrest except in cases of *flagrante delicto*. The Venice Commission has always recommended to limit the immunities granted to judges and prosecutors, stating that "[P]rosecutors should not benefit from a general immunity, which could even lead to corruption, but from functional immunity for actions carried out in good faith in pursuance of their duties."⁷

30. The fourth paragraph of Article 17 has no connection with the question of immunities but regulates the reporting of disturbances and possible interference by other public authorities. This issue is unconnected to immunities but because of its importance it should appear in a separate article.

31. The possible cases of dismissal covered in Article 18 raise a problem in paragraph 6, which provides that dismissal may be the outcome of "receiving a definitive report of 'unsatisfactory' for the post in question following the performance assessment for public prosecutors". This is a factor which should be regulated with greater precision to prevent it becoming a route for undue interference and impartiality. The competent authority should be specified, together with the circumstances in which these grounds may be applied. Otherwise the paragraph should be deleted.

32. Article 19 on substitutes should also contain clear and systematic criteria, which show who the substitutes are in each case. For example, they could be prosecutors with longer experience in the post (and put Article 49.II of the preliminary draft Law on the same line).

B. Chapter II (Articles 20 to 24)

33. For the sake of order and consistency, it would be advisable to complement in this chapter the constitutional provisions concerning the appointment and personal status of the State Prosecutor General. It should be stressed, for example, that the Legislative Assembly elects him/her by a majority of two thirds of the members present: a measure vaguely touched on by the draft Law in Article 12 and covered only indirectly for the election of the Deputy Prosecutor General. Stress should also be placed on the requirements laid down in the Constitution for eligibility for the post, namely a public announcement and a report on the applicant's professional ability. Furthermore, it would be advisable for the requirements in Article 21 to be in line with those set out in Article 227.2 of the Constitution.

34. Chapter II on the State Prosecutor General contains certain repetitions which are unnecessary and should be deleted. For example, Article 21, which partly repeats the requirements in Article 11, should be streamlined and clearly indicate the specific requirements for State Prosecutor General. The same remark applies to Article 22, which partly repeats Article 18 and should be deleted to avoid confusion.

35. Article 23 sets out the Prosecutor General's competences, which are extremely extensive and may result in an excessive concentration of power in the Prosecutor General's hands. Regarding paragraph 21 of the same Article, the 5-day period allowed seems too short and, although speed is an essential element of every trial depending on the characteristics and complexity of the case, a longer period may be necessary.

C. Chapters III to XII (Articles 25 to 71)

36. Articles 29 and 31 on senior prosecutors and subject prosecutors respectively repeat the general requirements for becoming a prosecutor covered in Article 11 and should therefore

⁷ CDL-AD(2010)040, para. 61.

disappear or indicate only the specific eligibility requirements of such posts. The second paragraph of Article 29 also provides for the necessity to "have a special interest in any branch of law". This should be clarified and its implications clearly explained.

37. As regards the powers of senior prosecutors set out in Article 30, the second paragraph should not be used to disregard final judgments, and appeals for extraordinary retrial should be subject to strict conditions. The third paragraph allows senior prosecutors to plead before the Supreme Court in "constitutional-privilege proceedings". This concept should be clarified to explain the difference between such proceedings and those brought before the Constitutional Court. As regards 'subject prosecutors', Article 31 indicates as one of their chief functions, in addition to criminal actions, the bringing of 'popular actions'. This is also the case with specialised subject prosecutors (Article 34.1). As provided by Article 97 of the Law on the Constitutional Court, not only any party but also the Public Prosecutor's Office has the legal capacity to bring such an action. The scope of this action and the risk of creating a judicial overload by exercising it make it inadvisable to grant legal capacity to several levels of the Public Prosecutor's Office as this needs to be used consistently and in a coherent and centralised fashion.

38. The second paragraph of Article 33 refers to the possibility of the departmental prosecutor ordering the setting up of a "Board of Prosecutors" to assess the progress of the investigation and see how the case is going. The role of this board and the reason for setting it up, together with the number of members composing it, are not very clear: would members be able to take compulsory joint decisions or only make recommendations and suggestions on routine matters and operations? This should be made clear in the draft Law.

39. As regards specialised subject prosecutors, the division of tasks and functions between them and subject prosecutors is rather confusing, as shown by Article 35. Once again, it appears unnecessary to have two bodies rather than just one, with the resulting risk of duplicating activities, not mentioning the additional budgetary cost involved. Article 36 provides for a duty to inform the "National Specialised Unit Co-ordinator", a post the regulations of which are set out in Article 57. He/she is appointed directly by the Prosecutor General, but it is not clearly stated whether this national co-ordinator may have access to all types of information and how consistency is ensured not only for specialised topics, but also from the general viewpoint. This question should be regulated more clearly. Likewise his/her ability to "assess" cases should be limited by law to avoid partiality.

40. Numerous welcomed references are made throughout the draft Law to respect the principle of non-discrimination. However, certain questions should be avoided. For example, the second paragraph, relating to the procedure for electing the Deputy Prosecutor General, proposes in Article 43 that where the holder of the post is a man, the woman who received the most votes will be the Deputy and vice versa. The necessary respect for the principle of equality and non-discrimination must be combined, however, with the need for respect for and legitimacy of the person occupying the post. The number of votes should therefore be the chief criterion, not just being of one or the other gender. Situations should be avoided where a person having received fewer votes gets the post for simply being a man or a woman, since doing so could undermine the confidence placed by society in such an important post. It is therefore recommended gender balanced lists be drawn up and that the Prosecutor General and his/her Deputy be elected from the list which has received the most votes.

41. Article 65 provides that every Prosecution Service have an office responsible for data processing, statistics and the follow-up of cases which is responsible for data handling, registration and centralisation and the transmission of such data to other bodies. No reference is made to personal-data protection or to respect for the rights of victims and accused persons in this field, a question which should be dealt with in this section.

D. Chapter XIII (Articles 72 to 75)

42. The composition of the National Council for the Public Prosecutor's Office, which is regulated in Article 72, also presents problems. It is currently composed exclusively of prosecutors. The President is the State Prosecutor General, followed by the departmental prosecutors and subject prosecutors; the only non-prosecutor member is the Director of the Disciplinary Proceedings.

43. The Venice Commission has compared many systems and has always considered that where such a type of council exists – its establishment is not an obligation - it should be composed not only of prosecutors but also of other actors such as lawyers or legal academics from appropriate branches of law⁸. The composition of the National Council for the Public Prosecutor's Office should not grant unduly large internal powers to the public prosecutors, which would prevent them from being publicly accountable and their actions should be transparent.

44. Article 74 regulates the functions of the National Council for the Public Prosecutor's Office, but none of them allow it to issue compulsory decisions (in this draft Law, the Council appears to be a simple consultative body on prosecution policy and does not possess any competence for appointing or for disciplinary measures). In this way, the institution is deprived of the ability to prevent both internal and external influences from affecting sensitive subjects such as access to and performance of the prosecutorial function.

6. Title III: Instructions, conduct of trials and challenges (Articles 72 to 99).

45. As regards instructions, Article 79 lays down the steps to be followed where a prosecutor objects to an instruction received from his/her hierarchical superior. Nonetheless, there is never any intervention by a judge or the National Council for the Public Prosecutor's Office but all decisions devolve on hierarchical superiors up to the Prosecutor General. As the Venice Commission has stated,

*"An allegation that an instruction is illegal is very serious and should not simply result in removing the case from the prosecutor who has complained. **Any instruction to reverse the view of an inferior prosecutor should be reasoned and in case of an allegation that an instruction is illegal a court or an independent body like a Prosecutorial Council should decide on the legality of the instruction.**"⁹*

46. The rules contained in Article 79 do not provide sufficient protection for the prosecutors' objectivity and impartiality and should therefore be redrafted to include the safeguards mentioned. Article 74 should be modified accordingly so as to grant such powers to the National Council for the Public Prosecutor's Office.

47. The requirement for specialised prosecutors and for norms that make special arrangements for the trials of minors (Article 93)¹⁰ is a highly positive factor which accords with relevant international standards and case law. The draft Law shows concern, throughout its articles, to respect the rights of indigenous populations. However, in the field of criminal justice, it is good to note that the opinions of indigenous bodies or their representatives are not binding on prosecutorial decisions which aim at justice that respects constitutional and international standards of human-rights protection and at consistent and uniform application of the law by professionals appointed for this purpose (Article 96). Prosecutorial impartiality is ensured

⁸ CDL-AD(2010)040, para. 66.

⁹ CDL-AD(2010)040, para. 59.

¹⁰ See the judgement of the Inter-American Court of Human Rights – *Instituto de Reeduación del Menor v. Paraguay* - of 2 September 2004, Series C, No 112.

through a coherent system that allows the prosecutor to pull out of a case on his or her own initiative or through a challenge. This could be further improved from the procedural viewpoint by establishing channels of control external to the institution itself.

48. Article 99 provides for the possibility of being excused from a case by the Prosecutor General. However, if a case arises from which the Prosecutor General himself/herself wishes to be excused, this would be a very sensitive matter with an important political content. Clear rules should set out the mechanism for replacing him/her. Nevertheless, the question of replacing the Prosecutor General is not dealt with either in Chapter II of Title II or in Article 99. This is a shortcoming which should be addressed.

7. Titles IV and V: Investigative bodies and human resources (Articles 100 to 133)

49. The draft Law opts for the setting up of an independent investigative body (Articles 101 *et seq.*). However, there is confusion about the division of powers with the Bolivian police. The police appear to co-operate with investigative units on an equal footing, but it is stated that where active members of the police are concerned they will be declared to be on permanent secondment. The relationship between the police and investigative units must be clearly defined.

50. The creation of these bodies (e.g. investigative units) requires the use of considerable economic and human resources. Furthermore, the establishment of a Department of Prosecutorial Management, Supervision and Assessment at the Public Prosecutor's Office is planned, which is responsible for assessing that prosecutors are carrying out their tasks properly. The Director is appointed directly by the Prosecutor General and the members may be prosecutors but do not need to be. It is not clearly stated how this body's assessment is made (Article 112 refers in paragraph 4 to verification tools and statistics) and this may lead to subjective judgments. The functioning of this body must be made clear and, in any case, it must be possible to revise its assessments of "satisfactory or unsatisfactory" before the competent judicial authority. It should be compared with Articles 126 and 127, which are vague and do not allow the concrete criteria used in the "subsystems" created to be established.

51. As regards assistance to victims, witnesses and officials, the protection of vulnerable groups, both minors and foreigners, and the gender aspect should be included in a provision in order to ensure their specific treatment, as provided by the case law of the Inter-American Court of Human Rights (IACtHR, judgment, *Cotton field case v. Mexico*, 16 November 2009, Series C, No. 205).

52. As regards the system for entering on a prosecutor's career, implementing regulations should clearly indicate the existence of objective proof such as written papers in the competitive examination concerned.

8. Titles VI and VII: Disciplinary, administrative, economic and financial provisions (Articles 134 to 189)

53. Articles 152 *et seq* establish a specific bodies within the Public Prosecutor's Office to deal with disciplinary proceedings. Due to their complexity, they risk to be over-burdened, something that should be simplified. The right to a fair hearing and access to an independent judge who will supervise the trial must not be infringed. It would therefore be advisable not to establish special courts for this purpose as these may lead to inequitable results both for the victim/private party through possible corporatism and for the prosecutor.

54. Following the same line of thought, Articles 161 *et seq* create another body, the *litigant's defender*, which is another specialised unit that comes under the Ministry of Justice and which will keep an eye specifically on the proper conduct of disciplinary and criminal proceedings

against the Public Prosecutor's Office. The creation of such a defender does not appear necessary, but it will be extremely expensive and will thus not be a practical proposition. Ordinary judges can decide on appeals against sanctions decided in disciplinary and criminal proceedings, so that no specific body such as the *litigant's defender* is needed.

55. Finally, the rights of the accused must be respected throughout the proceedings as regards both the right to legal representation chosen by the accused (which should be explicitly stated in Article 168) and to the rights concerning appeal (particularly Articles 175 and 126). The right of appeal should be available to all those accused.

56. In Title VII on "Administrative, economic and financial arrangements", functional, administrative and financial autonomy should be defined more clearly given the importance of such definitions for the body's independence. Article 187 regulates the funding of the Public Prosecutor's Office in such a way as to potentially place the Office at risk. The funding provided for in Article 187.2, a, b, c, d and e may influence an action by the Public Prosecutor's Office or even make it dependent on private, national or foreign interests.

9. Transitional provisions

57. Security of tenure of prosecutors who are currently working or in their trial periods appears to be regulated by the second transitional provision. It would seem desirable to make such continuity subject to a merit and ability assessment. However, it is necessary to indicate very carefully the way in which the public and participatory processes referred to in these provisions can really help to assess the probity and objectivity on which security of tenure depends..

10. Conclusions

58. The draft Law is drafted in a consistent manner on the basis of a series of solid principles, including victims' rights, alternative conflict resolution, protection of human rights, permanent appointment and the transparency principle.

59. Nevertheless, the following recommendations must be made:

1. Trials of the highest judicial bodies should not be instituted by the Parliament.
2. A prosecutor must not "co-ordinate" civil society.
3. Any instruction to reverse the opinion of a lower-rank prosecutor must be motivated and in the event of an allegation that an instruction is illegal an independent court or a body such as the National Council for the Public Prosecutor's Office should decide on the legality of the instruction.
4. In disciplinary procedures, the accused prosecutor must have the right to legal representation and an appeal should be open before an ordinary court.
5. The financial independence of the Public Prosecutor's Office must be ensured without resorting to funds involving the carrying out of certain actions or donations from private or foreign sectors.

60. The Venice Commission remains at the disposal of the Bolivian authorities for any additional information they may need and to continue working with them.