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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT OPINION

ON THE DRAFT CODE OF CONSTITUTIONAL PROCEDURE

OF BOLIVIA

on the basis of comments by

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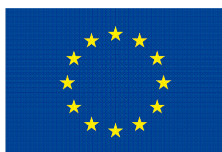

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I. Introduction

1. By letter dated 20 September 2011, the President of the Chamber of Deputies of Bolivia, Mr Héctor Arce Zaconeta, requested the European Union Delegation in Bolivia to forward to the Venice Commission a request for an opinion on the draft Code on Constitutional Procedure of Bolivia.

2. This request was forwarded to the Venice Commission by Mr Soren Stecher Rasmussen, from the European Union Delegation in La Paz, on 22 September 2011. The draft Law was prepared by the Chamber of Deputies of the Plurinational Legislative Assembly of Bolivia with the participation of the Constitutional Court and experts in the topic. The European Union has sent the legislation in the framework of the joint program of cooperation between the European Union and the Venice Commission on the development of constitutional reforms in Bolivia.

3. The Venice Commission invited Ms Finola Flannagan, Mr Harry Gstöhl and Mr Carlos Mesía to act as rapporteurs for the drawing up of this Opinion.

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

II. Relevant texts

5. At the national level, several national texts are relevant to this Draft code on Constitutional Procedure. Title IV of the Constitution (Articles 109-140) regulates in three chapters the main aspects of the remedies existing before the Constitutional Court. The first chapter is devoted to the main principles ensuring the effectiveness of the rights and guarantees enshrined in the Constitution, mainly through the principle of judicial independence and access to justice. Chapter II concerns the remedies available, and details the five main remedies existing which can be filed at the Constitutional Court level. Chapter III refers to the state of exception in the country and forbids the restriction of judicial guarantees of rights during this period.

6. The Law on the Constitutional Court of Bolivia (*Ley del Tribunal Constitucional Plurinacional*) was adopted on the 6th July 2010 and devotes the second part to constitutional proceedings. Titles II and III of Part II deal particularly with the different remedies available and regulate this issue in quite some detail (Articles 56-118). Finally, the Law on the distribution of competences between the different courts (*Ley de Deslinde Jurisdiccional*) was adopted on the 29 December 2010 and is a key text as it regulates the distribution of competences between the three different jurisdictions: the ordinary justice, the agro-environmental justice and the indigenous justice in Bolivia. This Law further establishes the mechanisms of coordination and cooperation between jurisdictions and delimits the role of the Constitutional Court to solve possible conflicts of competence and ensure the respect of the constitutional rights.

7. At the international level, there is no comprehensive set of standards that must be obeyed regarding constitutional justice. National systems are manifold and provide for a wide range of different solutions. Nevertheless, certain aspects, namely the right to an independent and impartial tribunal and the right to a decision within a reasonable time, are guaranteed by main international treaties, such as the European Convention of Human Rights (Article 6), the American Convention of Human Rights (Articles 8 and 25), as well as the International Covenant on Civil and Political Rights (Article 9), as interpreted by the relevant human-rights courts, such as the Inter-American Court of Human Rights.

8. The Venice Commission has often analysed national legislation dealing with the organisation and the rules of procedure of constitutional courts. Extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning constitutional

justice have been compiled by the Sub-Commission on Constitutional Justice in the Compilation on Constitutional Justice[1]. Certain aspects of good practice in this field have moreover been laid down in the Study on the individual access to constitutional justice[2].

9. While those documents are not in all respects also applicable to constitutional courts, the principle of independence is referred to in numerous documents supplying standards for regulations on the judiciary in general, in particular, for the European level, in the Venice Commission's Report on the independence of the judicial system, Part I: The independence of judges[3] and in Opinions of the Consultative Council of European Judges (CCJE), namely Opinion No 1 "On Standards Concerning the Independence of the Judiciary and the Irremovability of Judges". For the international level, reference may be made to the UN's "Basic Principles on the Independence of the Judiciary"7 and the "Bangalore Principles of Judicial Conduct of 2002".

10. A constitutional court forms a specific judicial power, which is usually separate from the courts of general jurisdiction. While some of the principles laid down in the instruments mentioned above are applicable to the ordinary judiciary only, there are other principles, *e. g.* the independence of judges, which apply to both the judges of the ordinary judiciary and those of the constitutional courts.

Finally, the Laws on constitutional courts of the Council of Europe member States, which can be found in the Commission's CODICES database, as well as the Laws and Codes existing in other countries of Latin America, such as Peru, which has an extended experience in the field of the regulation of constitutional procedure, may function as useful comparators in assessing the draft Code.

III. General considerations

11. The constitutional reform initiated in Bolivia by its President, Mr Evo Morales, in 2009, has brought about essential changes in the organisation of the Judiciary of the country. After the adoption of the new Constitution on 7 February 2009, several key laws have been adopted, such as the Law on the Plurinational Constitutional Court of Bolivia (2010), the Law on the distribution of competences (2010), the Law on the Electoral regime (2010), the Framework Law on autonomies and decentralisation (2010) and the Law on the Electoral Tribunal (2010).

12. Many other fields have been regulated at the same time, such as the regulation of the Prosecutors' office (see opinion of the Venice Commission on the Opinion on the Draft Organic Law of the Public Prosecutor's Office of Bolivia[4]), the Law on the Ombudsman of Bolivia and draft Code on Constitutional Procedure, submitted for the present opinion.

13. Currently the Judiciary in Bolivia faces crucial changes, as the members of the High Judicial Council and all judges of the Constitutional Court, of the Supreme Court and of the High Agro-Environmental Court will be directly elected by the population on 16 October 2011.

14. The draft Code submitted to the Venice Commission for consideration is quite a comprehensive text (it has 8 titles and 147 Articles) and regulates first the general rules, special powers of the Plurinational Constitutional Court, the effects and execution of its judgments and decisions (Part I);. it further deals one by one with the different constitutional defence actions available (*acciones de defensa*, Part II); it continues by establishing the regime

[1] CDL(2011)048.

[4] CDL-AD(2011)007, Opinion on the Draft Organic Law of the Public Prosecutor's Office of Bolivia, adopted by the Venice Commission at its 86th Plenary Session (Venice, 25-26 March 2011).

for actions for unconstitutionality (Part III); Part IV regulates the conflicts of jurisdiction; Part V deals with the prior verification of constitutionality and requests for reviews; Part VI concerns requests for reviews from indigenous peasant authorities regarding the application of their legal norms in a specific case; Part VII is devoted to other types of remedies and finally Part VIII to the procedure for the reform of the Constitution.

15. From a general perspective, the draft Law deals with a wide range of matters and establishes **complex and very detailed rules**. Some of them **should be covered by the rules of procedure of the Court** instead of appearing with such great detail in the draft Code. This is important because otherwise the Court will have to wait for an Act of Parliament before even minor changes in the procedure can be undertaken. Such a dependence of the Court on Parliament can be dangerous from the viewpoint of judicial independence.

16. The Constitutional Court risks being overburdened by the existence of multiple and complex actions and remedies, which could endanger its effectiveness. However, the multiplicity of remedies and actions stems from the Constitution and the Law on the Constitutional Court of Bolivia. Therefore it is not possible to limit these sometimes overlapping procedures within the current legal and constitutional framework.

17. Finally, the draft Code has some shortcomings also concerning the clarity in ensuring the independence of the Constitutional Court and in the procedure to solve conflicts of competences, mainly with the indigenous justice.

IV. Title I: General provisions, special powers, decisions, effects and execution

A. Chapter I (Articles 1 to 4)

18. The general principles covered in the first chapter contain very positive elements. The importance of fair trial, the obligation to reason decisions, the requirement to keep formalities to a minimum in the proceedings as a way of making the Constitution effective and not only based in a formal interpretation are most welcome.

19. Article 2 is also welcome, as it refers to the different criteria of interpretation and contains a specific reference to the international human rights treaties. When these treaties contain more favourable provisions for the individuals or even contain rights not included in the Constitution, they shall be considered part of the constitutional order. This is in line with the Constitution and the Law on the Constitutional Court (Article 6). Very positively, the draft Law provides for the principle *pro homine* interpretation or the application of the most favourable interpretation of the norm towards the individual. In introducing this principle in Article 2.4, the **Law should refer to the interpretation of international human rights norms contained in the international treaties as applied by specialised bodies, such as the United Nations Committees and the Inter-American Court of Human Rights**.

20. Article 2.1 requires that the Court, in interpreting the Constitution, "apply the literal meaning of the constitutional text and, in case of doubt…preferably use as the criterion for interpretation the drafter's intent as evidenced by documents and decisions". Whilst there are varying approaches to constitutional interpretation, the requirement that interpretation, first and foremost, be literal has the potential to produce results which do not allow for a harmonious interpretation overall. It is also undesirable that the Court be tied to a historic interpretation of the Constitution. This would petrify the Constitution and make it impossible to adapt it to the needs of the time, especially in the field of human rights and freedoms. Furthermore, it is not clear whether provisions in international treaties that create rights not provided for the Constitution and which, by virtue of Article 2.4, are to be "considered part of the constitutional order" are also to be interpreted in a literal fashion. The Vienna Convention on the Law of

Treaties provides on the topic of interpretation that: *"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."* (article 31(1). A completely literal interpretation of treaties would be problematic in the light of the recommendation at paragraph 19 above that the "*Law should refer to the interpretation of international human rights norms contained in the international treaties as applied by specialised bodies, such as the United Nations Committees and the Inter-American Court of Human Rights"* as this provides for another and different method of interpretation.

B. Chapter II (Articles 5 to 9)

21. Chapter II deals with the special powers of the Plurinational Constitutional Court and the duty of cooperation and collaboration of public and private bodies, institutions and persons.

22. Articles 7 and 8 provides for the presence of the "Public Prosecutor's Office and the Office of the State Prosecutor General" at hearings and states that the *"presence of the Office of the State Prosecutor General shall be mandatory where the defence of state interests is involved".* Firstly, it is not clear what the different roles of these two offices are in the proceedings. In any event, the role of the State Prosecutor General in this respect seems too comprehensive and should be further clarified. Their precise competences and powers, and the state interest in the hearings is not clear, and in particular in actions to protect fundamental individual rights. **The mandatory presence and powers of the Public Prosecutor in all constitutional hearings** could have a chilling effect on individual applicants and **should be removed**.

23. As the Venice Commission has pointed out on several occasions[5], the exercise of public-prosecutor functions should focus mainly on the criminal-law field.. This point was also made in relation to the Draft Law on the Public Prosecutor in Bolivia [6]

24. In the *Report on European Standards as regards the Independence of the Judicial System, Part II - the Prosecution Service,* the Venice Commission 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*"[7].

C. Chapter III (Articles 10 to 19)

25. Article 10 establishes that the Plurinational Constitutional Court can issue the following decisions: constitutional judgments, constitutional declarations and constitutional orders. The inclusion of constitutional declarations seems to contradict the rest of the chapter and the general framework established by the Draft Code. Indeed, one of the main elements of the Constitutional proceedings is that the actions of the Constitutional Court have binding effects, that they have *res judicata* effect (Article 14) and that they become precedents (Article 15) whereas it a appears that declarations and opinions are not binding. Taking into account the importance of the implementation of the decisions and orders (Articles 16 and 17 of the Draft Code), the term 'declaration' seems rather confusing and should be removed.

[5] See in this connection the Opinions of the Venice Commission on the Public Prosecutor's Office in Moldova (CDL-AD (2008) 019, paragraph 30) and Ukraine (CDL-AD (2009) 048).
[6] CDL-AD(2011)007, paras. 15 and 16.

[7] Paragraph 83.

D. Chapter IV (Articles 20 to 24)

26. This chapter deals with the common rules in actions for unconstitutionality, disputes concerning the jurisdictions, requests for review and appeals. Articles 21 to 23 establish **very short time limits, which should be extended**.

27. Indeed, according to Article 22.1, the Admissibility Committee shall note any failure to comply with the requirements laud down in Article 20 of the draft Code within 24 hours. This seems too short, as it may happen that the Court is unable to verify all the details, such as the correct statement of the facts by the applicants, as well as the identification of the constitutional norms under consideration.

Consideration should be given to placing most of the detailed rules in this chapter in rules of court procedure rather than in this Code.

V. Part II: Constitutional Defence Actions

A. Chapter I (Articles 25 to 41)

28. The rules on constitutional defence actions are highly complex. Five types of defence actions are listed: habeas corpus, action for constitutional protection (*amparo* action), privacy action, enforcement action and popular actions. There are two levels of proceedings for each of these actions: they have to be lodged first before the ordinary courts, and the Constitutional Court has a revision competence. Taking into account that the draft Code concerns the constitutional procedure, it would seem more logical that **the precise and detailed procedures before the ordinary courts should not be regulated in the Code on Constitutional Proceedings**, as this may lead to confusion.

29. It should also be stated that the constitutional defence actions seem to overlap with other types of action and it may be difficult to identify which action suits best the interests of the individual. This may lead to the inadmissibility of the action and therefore result into a lack of access to constitutional justice in practice. The various types of action should be simplified to reduce or eliminate this possibility. Furthermore, there is a risk of overburdening the Constitutional Court, because it is given too broad competences. This type of consideration would suggest that the Constitution, as well as the Law on the Constitutional Court, be modified. Therefore, some recommendations and considerations concerning the draft Code may not be possible taking into account the existing legislative and constitutional framework.

30. Article 25.9 of the draft Code, which states that "*No action for unconstitutionality shall be allowed in constitutional defence actions*", seems to preclude the possibility of adjudication of constitutionality of norms by the ordinary judge. However, in most of the situations concerned by the defence actions, it is precisely the application of a norm which is unconstitutional that creates the unconstitutional situation against which a remedy is sought. **The ordinary judge should be allowed not to apply the norm deemed unconstitutional in the specific case and such cases should be referred to the Constitutional Court for final decision.** The declaration of unconstitutionality with *erga omnes* effect remains nevertheless only in the hands of the Constitutional Court.

31. Article 33 establishes an automatic referral of any decision taken in a constitutional defence action before the Constitutional Court of Bolivia within the 24 hours after the decision has been issued. This automatic referral seems excessive, as the Court can be easily overwhelmed by the number of actions and decisions taken. As set out above, a plausible alternative could be that **the automatic referral before the Constitutional Court should only take place in those actions in which a provision was found to be unconstitutional**. In other cases, the

parties should of course retain the right to appeal to the Constitutional Court themselves. This also should be taken into account in combination with Articles 37 to 41, which refer to the procedure of review of the decisions on defence actions by the Constitutional Court.

32. Article 34 of the Draft Code deals with the liability (civil or criminal) stemming from the decision taken by the ordinary judge in any of these defence actions. **If there is civil liability, the amount granted for damages should be established** and if it is criminal liability, the case should be referred to the Public Prosecutor. This is a provision which should be modified. The constitutional judge would be overwhelmed if he or she would be obliged to establish damages in each case. **The Constitutional Court should be able to refer this task to civil jurisdiction and decide itself on damages only in urgent cases.** This should also be taken into account concerning Articles 58.1, 62 and 66 of the Draft Code.

B. Chapter II (Articles 42 to 45)

33. Concerning the *habeas corpus* action, the possible plaintiffs needs to be wide. The Inter-American Court has very often stated the importance of the *habeas corpus* procedures in Latin America, mainly in respect of forced disappearances of victims. It is therefore **welcome that Article 43 provides that another person can introduce a habeas corpus action on behalf of the victim, even without formal legal representation.**

C. Chapter III (Articles 46 to 52)

34. Article 46 regulates the *amparo* action (or action for constitutional protection) and reads that "*The purpose of an action for constitutional protection is to safeguard the constitutionally and legally recognised rights of any physical or legal person from illegal acts or wrongful omissions by public servants or private individuals which restrict or suppress them or threaten to restrict or suppress them*." It should be made clear that **the *amparo* action should not only protect against illegal acts, but also against unconstitutional acts or acts which are legal but unconstitutional.**

D. Chapter IV (Articles 53 to 58)

35. Concerning the privacy action, the main goal is to protect personal data. In order to avoid the intrusion of public bodies in private affairs, the basis for the public prosecutor and the ombudsman taking a privacy action should be clearly delimited (Article 54). Such an action may for example be justified if personal data is published by public authorities without justification but the persons concerned do not take action against such publication.

E. Chapter V (Articles 59 to 62)

36. Chapter V concerns the enforcement action, the object of which is "to guarantee the execution of a constitutional or legal rule when public servants or state bodies fail to execute it". This action will not be admissible when the rights concerned could be protected under any other of the defence actions (Article 61). In substance, this action seems to overlap with other actions. The very broad regulation of this action in the draft Code could lead to misunderstandings with individuals who may have difficulty in deciding whether they can revert to another action in substance or whether they have to use the enforcement action, which seems to be a remedy of last resort only.

37. **The circumstances where lack of execution by an administrative body or public servant of a constitutional or legal rule permits bringing proceedings before a judicial body should be delimited more clearly** in order to avoid overburdening of the judicial system.

F. Chapter VI (Articles 63 to 66)

38. The *actio popularis* or public interest action is the last of the constitutional defence actions listed in the draft Code. The purpose listed in Article 63 - collective rights related to heritage, land, public safety, public health, environment or others – especially with its reference to "other rights" makes it difficult to define its scope. However, it seems limited to collective rights. This limitation seems not justified because these rights explicitly referred to can also be a result of a violation of the rights of an individual.

39. Concerning the capacity to initiate proceedings, any legal or physical person, also in his or her own behalf, can decide to introduce such an action. In its Study on Individual Access to Constitutional Justice, the Venice Commission warned about the risk of having an *actio popularis* at the constitutional level and the fact that the Constitutional Court can be easily blocked by a large number of applications in this respect. Of course, this relates to what was said in relation to the *amparo* above. The **Constitutional Court should be able to annul unconstitutional legislation directly in *amparo* proceedings and should not be confined to settle the case only inter partes. As a consequence, a separate *actio popularis* would become unnecessary**. If a larger number of persons were affected by a violation of their rights they could of course bring a joint *amparo* complaint.

VI. Part III: Actions for Unconstitutionality

40. In Article 67, it seems inappropriate to say that the action for unconstitutionality has as its main purpose the non application of any legal norm, decree or any other non judicial act against the Constitution. According to Article 73.2, "The judgment finding the unconstitutionality of all or part of a challenged provision or of any provision which, by analogy, should be declared unconstitutional, will have the effect of repealing the latter." The abstract action for unconstitutionality regulated in Part II of the Draft is a procedure with *erga omnes* effects. However, the non-application of a provision takes place only in specific cases and has *inter partes* effects. In this later case, the norm is not repealed, but it is not applied to the case. Therefore, the terminology should be reviewed in this article.

41. Concerning the **actions for abstract unconstitutionality**, it is highly recommended not to grant the power to introduce this sort of action to each member of the Plurinational Legislative Assembly of Bolivia or any member of the legislative bodies of the autonomous territorial entities (Article 69). This would not only overwhelm the Constitutional Court but could also lead to its constant abuse as a political weapon. While it is important that also political minorities can appeal to the Constitutional Court, this **should be limited to a certain number of members of the legislative bodies or established groups within them.** A collective decision is more likely to be reasoned and less likely to become a standard remedy to delay the entry into force of legislation. The danger of politicisation through actions for abstract unconstitutionality by single parliamentarians is high, also in view of the fact that judges of the Constitutional Court are elected through universal suffrage.

42. The time-limits, established in Article 72.2, are rather short: the Court has only 30 days for issuing the judgment, which seems very difficult to respect depending on the complexities of the cases under consideration.

43. According to Article 74.II.3 and 74.II.4, the finding of unconstitutionality in a judgment would *per se* and immediately render null that legal norm. This might, in practice not always be the best solution because in many cases there would be a void. **The Court should have possibility, to determine a time period before the annulment of the law enters into force**, allowing the Parliament to remedy the problem by a adopting new legislation in conformity with the Constitution.

44. Furthermore, the references to any type of norm (statute, decree, or any type of non judicial resolution) are too broad **and the actions of unconstitutionality before the Constitutional Court should be limited to legal norms** (Article 68.1). The control of the legality of lower level norms should be left to the ordinary courts.

45. Article 77 provides that the proceedings - of the ordinary court - shall not be suspended until the final judgement by the Constitutional Court. Usually, ordinary courts however suspend the proceedings after having made a request for a preliminary ruling (concrete control) to the Constitutional Court and they resume the case only after they receive the Constitutional Courts' judgement.

46. In the same vein, Article 79 on effects should include an additional element. As these cases concern proceedings which are still pending before the ordinary judge, **the case should be sent back to the ordinary judge** for him/her to decide the case on the basis of the decision by the Constitutional Court. The ordinary judge should also be given some indications concerning which is the norm applicable in case the norm questioned is declared unconstitutional.

VII. Part IV: Conflicts of jurisdiction

47. **The rules on the various types of conflict of competences contained under Part IV should be simplified**, as the effects of the judgments issued by the Constitutional court are always the same: the determination which body should have the competence. The **time limits given – of ten 30 days only** (e.g. Article 85) **– are too short,** especially in complex cases.

48. Concerning the conflicts of jurisdiction between the indigenous courts and the ordinary and agro-environmental courts, it is important to include a reference to the respect of human rights and to international treaties, as established in Article 190.II of the Constitution and to provide for the principles of fair trial and equal access to justice as guiding principles. The imposition of any punishment implying cruel, inhuman or degrading treatment, as well as torture, should be excluded.

49. As this issue has been regulated in a special Law (*Ley de deslinde jurisdiccional*), it is highly recommended that the relevant references to the rules included in that Law be included in the present draft Code, which remains somewhat vague and imprecise as to the rules of distribution of competences, including the definition of indigenous jurisdiction.

VIII. Part V and VI: Prior verification of constitutionality and requests for reviews

50. The Venice Commission considers that "to avoid over-politicizing the work of the Constitutional Court and its authority as a judicial body, the right to initiate *ex ante* review should be granted rather restrictively."[8] The danger of prior verification of laws by the Constitutional Court is twofold:

51. First, in deciding such cases, the Constitutional Court lacks any information on the application of a law. Often it is only through practice that the unconstitutionality of laws becomes apparent.

52. Second, contrary to a posteriori abstract review cases (once the Law has been enacted), the Constitutional Court has to intervene in a priori cases in the middle of legislative proceedings, at the height of political dispute. The danger that the Constitutional Court is dragged into political games is extremely high in such cases.

[8] Opinion on three legal questions arising in the process of drafting the New Constitution of Hungary, CDL-AD(2011)001.

53. The **possibility of seeking prior constitutional review should therefore be limited to a minimum (Articles 106).** Prior constitutional review of statutes of territorial entities is likely to contribute to a serious overburdening of the Court (Article 111).

54. However, as Kelsen pointed out, prior verification of the constitutionality should be available in the case of international treaties. Once a treaty is ratified the State is bound to follow it and a later decision declaring unconstitutional the ratifying / implementing legislation would place the State in a difficult situation internationally because it would be obliged to denounce a treaty it already has ratified and which is binding under public international law. Such a prior control is provided for in Articles 101 to 105.

55. The requests for a review of the constitutionality of referendum questions, do not seem to a relate to a referendum on a draft legal text, which is to be approved or rejected by the voters but rather to open questions, which should give guidance to the legislative or executive in its action. Thus, this technique seems more to relate to a sort of plebiscite than to a referendum on a Law. Consequently, the terminology should be revised (Article 116).

IX. Part VII: Remedies before the CC

56. **The specific regulation of a review against taxes, patents and special rights seems superfluous** because these issues are already covered by the abstract review (Article 128). This is true also for the appeal against acts adopted by the legislator (Article 135).

X. Conclusions

57. The Venice Commission expresses its satisfaction with the quality and consistency of the draft Code, which is a good basis for further improvement.

58. The powers conferred on the Constitutional Court are too broad and the Court is in serious risk of being overburdened. This is due to a combination of a high number of competences, covering not only national acts but also those of territorial entities and sometimes extremely short time limits to exercise these wide competences (e.g. Articles 21, 22, 23, 72, 85, etc.)

59. In order to improve that draft Code, a number of recommendations can be made:

1. The draft Code seems to be too detailed; more detailed provisions should be left to rules of procedure of the Constitutional Court.
2. The establishment of a hierarchy between interpretation criteria should be avoided (Article 2.1).
3. The Code should refer not only to international human rights norms contained in the international treaties but also to their interpretation by the appropriate international bodies / courts (Article 2.4).
4. The mandatory presence of the Public Prosecutor in constitutional hearings could have a chilling effect on individual applicants and should be removed (Articles 7 and 8).
5. The amparo procedures before ordinary courts should not be regulated in the Code on Constitutional Proceedings but rather in the procedural codes of the ordinary judiciary (Part II, Chapter 1, Section I).
6. The ordinary judge should be allowed not to apply a norm deemed unconstitutional in the specific case and such cases should be referred to the Constitutional Court for final decision *erga omnes* (Article 25).
7. The automatic referral of a constitutional defence action from an ordinary court to the Constitutional Court should take place only in those actions in which a provision was found to be unconstitutional (Article 33).
8. The Constitutional Court should refer the attribution of compensation to civil courts and decide itself on damages only in urgent cases (Article 34).

9. It should be made clear that the *amparo* action should not only protect against illegal acts, but also against unconstitutional acts or acts which are legal but unconstitutional (Article 46).
10. The element of the lack of compliance by an administrative body or public servant with a constitutional or legal rule and bringing proceedings before a judicial body on this respect should be delimited more clearly (Article 61).
11. The Constitutional Court should be able to annul unconstitutional legislation directly in *amparo* proceedings and should not be confined to settle the case only *inter partes*.
12. The actions of unconstitutionality before the Constitutional Court should be limited to legal norms, leaving the control of the legality of lower level norms to the ordinary courts (Article 68.1).
13. The possibility to bring an action for abstract unconstitutionality should not be open to individual members of the legislative bodies (Article 69).
14. The Court should have possibility, to determine a time period before the annulment of the law enters into force (Article 74).
15. The Code should make it clear that the judgement in a case initiated by a request from an ordinary court is referred back to the ordinary judge (Article 79).
16. The rules on the various types of conflict contained under Part IV should be simplified.
17. The possibility to seek prior constitutional review should be limited to international treaties before their ratification (Article 106, 111).
18. The specific regulation of a review of taxes, patents and special rights seems superfluous because these issues are already covered by the abstract review (Article 128).

60. Finally, it is essential that the Constitutional Court effectively controls all jurisdictions and, in particular, the indigenous peasant original jurisdiction, which has to respect the right to a fair trial and the prohibition of cruel and unusual punishments. More severe punishments than those in the ordinary system of justice would violate the right to equal access to justice enshrined in the Constitution.

61. The Venice Commission remains at the disposal of the Bolivian authorities for any further assistance they may need.