



HUMAN
RIGHTS
WATCH

JUSTICE AS A WEAPON

Political Persecution in Bolivia



Justice as a Weapon

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Map



Human Rights Watch conducted research in El Alto, La Paz, Cochabamba, Sacaba, Santa Cruz, Sucre, Potosí, and Betanzos in February 2020.

Summary

Political interference in the justice system is a longstanding problem in Bolivia. Former president Evo Morales repeatedly rejected judicial independence. During his almost 14 years in office, prosecutors filed charges against several of his political rivals in cases that appeared to be politically motivated.

In November 2019, Morales was forced to resign and fled the country amid nationwide protests motivated by allegations of electoral fraud—now disputed—and after the commanders of the armed forces and the police asked him to step down. Since then, former members of the Morales administration and Morales himself have become victims of the same political interference in the justice system that they exerted when in power.

Jeanine Áñez, who replaced Morales as interim president, had a chance to break with the past and ensure judicial independence. Instead, her government has publicly pressured prosecutors and judges to act to further its interests, leading to criminal investigations of more than 100 people linked to the Morales government and Morales supporters for sedition and/or terrorism. Morales is among those charged with terrorism. Scores more are under criminal investigation for belonging to a criminal organization, dereliction of duty, and other crimes. Many of the cases appear to be politically motivated.

Interior Minister Murillo has vowed to “hunt down” and “pursue” members of the Morales administration. He has asked the attorney general to “purge” the prosecutors’ office and warned he would “pursue” judges and prosecutors “who free criminals,” a threat that is a blatant attack on the independence of the justice system. In June, his ministry filed criminal complaints against two judges for granting house arrest to people linked to the Morales administration who were awaiting trial in detention. Police detained one of the judges, who was released the next day after another judge ruled the detention had been illegal.

Human Rights Watch traveled to Bolivia in February 2020 to examine those cases, conducting more than 80 interviews, and followed up with remote interviews. In all, we interviewed 90 people in eight cities, including Interior Minister Murillo and other government officials, Ombudsperson Nadia Cruz, prosecutors, defense attorneys, civil

society representatives, participants in roadblocks and demonstrations—some in support of and others against Morales—in October and November 2019, witnesses to violence, and relatives of protestors killed. We also reviewed thousands of pages of police reports, judicial decisions, and other court records.

Abusive Prosecutions and Arbitrary Detention

While Human Rights Watch did not examine all investigations against former members of the Morales administration and supporters, in the 18 cases we did analyze, including some against high-profile individuals, we found instances of baseless charges, due process violations, infringement on freedom of expression, and excessive and arbitrary use of pretrial detention.

- Prosecutors charged **Patricia Hermosa**, Morales' attorney and former chief of staff, with terrorism, financing of terrorism, and sedition based on the mere fact that she had telephone contact with Morales after he resigned. Prosecutors say that the phone calls, for which there are no recordings or transcripts, make her a collaborator in the crimes attributed to Morales. Despite the lack of evidence that she committed any crime, Hermosa was arrested on January 31, 2020, and held in pretrial detention while pregnant, a violation of Bolivian law. She received no medical care and had a miscarriage in March. She was transferred from jail to house arrest on August 5.
- Prosecutors charged **Mauricio Jara** with sedition, instigation to commit a crime, and crimes against public health. At a press conference on April 22, 2020, police cited as evidence of his criminal activity that Jara had admitted he was a supporter of Morales; had used WhatsApp groups to “misinform”; had called the government “a tyrant” and “dictatorial”; and had urged people to protest. Police also cited as evidence that Jara had called the killing of at least 10 protestors in Senkata in November 2019 a “massacre,” a term also used by the Inter-American Commission on Human Rights to describe the case. He remains in pretrial detention.
- **Edith Chávez Arauco** worked as a maid and babysitter for the family of Morales' former minister of the presidency, Juan Ramón Quintana. On January 10, police raided Chávez's home, on the basis of her connection to Quintana, and said they found a handgun. Prosecutors charged her with aiding and abetting, without stating what crime she had allegedly aided and abetted, and with unlawfully carrying a firearm, though the charging document itself says police found the gun inside a cabinet—that is, she was not carrying it. Had Chávez been charged exclusively with unlawful possession of a firearm, a crime punishable with up to

two years in prison, pretrial detention would have been unlawful, as Bolivian law prohibits pretrial detention for people charged with a crime for which the maximum sentence is under four years in prison. In contrast, unlawfully carrying a firearm is punished with up to five years in prison. Chávez was held in pretrial detention. On May 22, 2020, judge **Hugo Huacani** granted her house arrest. Hours later, two government lawyers reported the judge to police, stating he had shown a possible “lack of independence” in his ruling. Police detained the judge and held him in custody until the next day, when another judge ruled his arrest had been illegal. The Interior Ministry filed a criminal complaint against judge Huacani for dereliction of duty and for issuing decisions that violate the law. Chávez was released to house arrest pursuant to Judge Huacani’s order, but another judge revoked the order on June 10 and she returned to pretrial detention, where she remains.

Disproportionate Charges against Evo Morales

In February 2020, Human Rights Watch also had access to the full file of Bolivian prosecutors’ investigation of Evo Morales on suspicion of terrorism and financing of terrorism. Prosecutors issued a warrant for his arrest in December 2019, and formalized charges against him in July 2020.

In addition to reviewing the file, which consisted of more than 1,500 pages, Human Rights Watch interviewed a prosecutor who was working on the case at the time, a prosecutor who had worked on the case at an earlier stage, and the then-chief prosecutor in La Paz, where the case is being prosecuted. Bolivian authorities have not publicly put forward additional evidence in the terrorism case against Morales since February 2020.

The probe focuses primarily on a November 2019 phone call, days after Morales had left office, in which a person alleged to be Morales urged an associate to mobilize protesters to block roads into cities and prevent food from entering.

Blocking roads is a common means of protest in Bolivia and other countries in the region. After the October 20, 2019 presidential election, where results showed Morales narrowly winning by enough margin for a controversial fourth term without the need for a second round of voting, opposition demonstrators blocked roads and went on a strike, alleging electoral fraud. Morales supporters tried to break some of those roadblocks and set up

their own roadblocks. After Morales resigned on November 10, his supporters intensified their protests, blocking the main roads leading to some cities. That caused fuel and food shortages that resulted in price spikes in some areas. The call attributed to Morales allegedly took place on November 14. On November 22, after all sides reached an agreement to hold new elections, Morales supporters started lifting road barriers.

While most protests were peaceful, some anti- and pro-Morales demonstrators allegedly abducted people identified as supporting the other side, burned homes and other buildings, and committed other acts of violence during the October and November 2019 upheaval, including the killing of two anti-Morales protesters in the town of Montero by alleged Morales supporters. In addition, at least 20 Morales supporters were killed in two massacres in which witnesses said state forces opened fire against demonstrators. Investigators have not yet identified those responsible.

In the recorded conversation that the interim government attributes to Morales—and which occurred after the violent incidents described above—the speakers discuss blocking roads and use the words “fight” and “battle,” terms that protesters in Bolivia often use to refer to their demonstrations. But they do not, at any point, overtly discuss the use of violence or participation in any of the violent acts that had occurred.

Prosecutors in the case allege that the acts of violence committed by Morales supporters were carried out under Morales’ orders. But the evidence Human Rights Watch reviewed—primarily consisting of the one phone call—simply does not support such allegations.

Conspiring to block essential provisions from entering cities would be an action that Bolivia is entitled to criminalize and punish, but it would not rise to the level of any reasonable definition of terrorism. Indeed, the terrorism charges against Morales are based on a definition of terrorism under Bolivian law that is so broad that it can be used to criminalize behavior protected by freedoms of expression and association, and disproportionately punish actions that fall far short of what most reasonable observers would consider a terrorist act.

Using an overbroad terrorism definition to charge Morales with offenses punishable with up to 20 years in prison is disproportionate to the conduct reflected in the phone call, and

appears to be a political attack on Morales and his supporters rather than enforcement of the law.

A History of Arbitrary Prosecutions

This report also documents cases of arbitrary prosecutions of Morales opponents during Morales' presidency. It finds that the Morales administration weakened the independence of the judiciary, creating a context that allowed the Morales administration then, and the Áñez administration now, to misuse the justice system for political purposes.

Key Recommendations

To uphold the rule of law and respect the basic rights of all Bolivians, regardless of their political opinions, Bolivia should implement far-reaching changes to its justice system, prioritizing reforms that allow judges and prosecutors to act independently without fear of reprisals.

Prosecutors should drop the terrorism charges against Morales. In addition, the attorney general should carry out an independent, thorough analysis of evidence and due process in all cases involving former members of the Morales administration and supporters, and request that judges dismiss charges in those cases in which the evidence does not support the charges, or where the charges are disproportionate to the alleged conduct.

Legislators should narrow Bolivia's definition of terrorism so that it cannot be used to criminalize or curb the rights to free speech and assembly, to impose disproportionate punishment, or to encompass crimes that are not genuinely terrorist in nature.

Prosecutors and judges should ensure respect for the basic rights of all people accused of a crime, independently from any pressures exerted by whatever government is in office at the time. They should end the excessive use of pretrial detention and employ it as an exception, rather than the norm, in adherence with Bolivian law and international standards. This is particularly important now, given the very serious threat that Covid-19 represents for those held in Bolivia's extremely overcrowded prisons and jails. Authorities should consider releasing detainees accused of non-violent crimes pending trial, including those with links to the Morales administration.

Finally, the government and the Inter-American Commission on Human Rights should install the Interdisciplinary Group of Independent Experts, as agreed upon by both sides in discussions in December 2019 and March 2020, to thoroughly investigate the acts of violence and violations of human rights that took place in the country between September 1 and December 31, 2019.

I. Events Surrounding Evo Morales' Resignation

In 2016, Bolivia's then-president Evo Morales called a referendum on a constitutional amendment that would have eased term limits and allowed him to run for a fourth term. He lost the referendum.

But a year later, his supporters in the Plurinational Legislative Assembly, as Bolivia's Congress is called, filed a lawsuit before the Constitutional Tribunal, claiming that the term limit violated Morales' human rights.¹ They relied on a provision in the American Convention on Human Rights, the main human rights treaty in the Americas, which says that political rights can "only" be limited under very specific circumstances.²

The interpretation was far-fetched. The clause was designed in 1969 to prevent abusive governments from arbitrarily barring opposition candidates from running for office, not to impede constitutional re-election limits designed to prevent the rise of autocrats.³

In a controversial ruling, Bolivia's Constitutional Tribunal revoked the constitutional term limit.⁴

Morales ran for re-election on October 20, 2019. With more than 80 percent of votes counted, Morales was ahead of the other candidates but by an insufficient margin to avoid a second round of voting. Then, electoral authorities suspended the publication of vote tallies without any explanation. When they resumed it, almost 24 hours later, Morales had widened his lead and the electoral tribunal declared that he had enough votes to win, by a

¹ "MAS insiste y presenta un recurso en el TCP para la reelección de Evo," *Opinión*, September 18, 2017, <https://www.opinion.com.bo/content/print/mas-insiste-presenta-recurso-tcp-reelecci-oacute-n-evo/20170918195000590220> (accessed August 26, 2020).

² American Convention on Human Rights ("Pact of San José, Costa Rica"), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> (accessed July 31, 2020), art. 23, para. 2.

³ José Miguel Vivanco and Juan Pappier, "The Hypocrisy of Evo Morales," *New York Times*, November 20, 2017, <https://www.nytimes.com/2017/11/20/opinion/eva-morales-bolivia.html> (accessed July 31, 2020).

⁴ "El Tribunal Constitucional de Bolivia autoriza a Evo Morales a buscar la reelección como presidente sin límites," *BBC*, November 29, 2017, <https://www.bbc.com/mundo/noticias-america-latina-42159445> (accessed July 24, 2020).

very narrow margin, without a second round of voting.⁵ Electoral observers from the Organization of American States (OAS) pointed out that the change in the voting trend in favor of Morales was “drastic and hard to explain.”⁶ People protested in cities around the country, going on strike, and, in the biggest cities, setting up roadblocks.⁷ In some areas, anti-Morales protestors clashed with Morales supporters.⁸

Starting on November 8, some police units refused to follow orders and joined the protests against Morales.⁹

Morales invited the OAS to audit the electoral results. On November 10, the OAS published a preliminary report which found serious irregularities in the elections, including the use of two secret servers to process votes, the forging of signatures of poll officials, deficiencies in the chain of custody of sensitive election material, and a “highly unlikely” trend in the last 5 percent of the vote count that gave the victory to Morales without a second round of voting.¹⁰

⁵ “TSE reanuda el TREP y sorprende: Evo gana en primera vuelta,” *Página Siete*, October 21, 2019, <https://www.paginasiete.bo/nacional/2019/10/21/tse-reanuda-el-trep-sorprende-evo-gana-en-primera-vuelta-235091.html> (accessed July 24, 2020).

⁶ OAS, “Declaración de la Misión de Observación Electoral de la OEA en Bolivia,” October 21, 2019, https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-085/19 (accessed August 30, 2020); Ana Melgar, “OEA denuncia irregularidades en conteo de votos en Bolivia y recomienda segunda vuelta,” *CNN en español*, October 23, 2019, <https://cnnespanol.cnn.com/2019/10/23/oea-denuncia-irregularidades-en-conteo-de-votos-en-bolivia-y-recomienda-segunda-vuelta/> (accessed July 24, 2020).

⁷ “Protestas en seis de las nueve regiones de Bolivia por las irregularidades en el conteo de votos,” *Infobae*, October 26, 2019, <https://www.infobae.com/america/america-latina/2019/10/26/protestas-en-seis-de-las-nueve-regiones-de-bolivia-por-las-irregularidades-en-el-conteo-de-votos/> (accessed July 24, 2020).

⁸ Human Rights Watch interviews with four anti-Morales protestors and six pro-Morales protestors in Cochabamba, February 1 and 2, 2020; 16 anti-Morales protestors in Potosí, February 5, 2020; three pro-Morales protestors in Betanzos, February 5, 2020; and two anti-Morales protestors in Santa Cruz, February 7, 2020. Names withheld upon request. Paula Muñoz Encinas, “Tensión en Bolivia: violentos choques entre simpatizantes y opositores a Evo Morales en Cochabamba,” *Infobae*, October 29, 2019, <https://www.infobae.com/america/america-latina/2019/10/29/tension-en-bolivia-violentos-choques-entre-simpatizantes-y-opositores-a-evo-morales-en-cochabamba/> (accessed July 24, 2020).

⁹ “Motín de policías en Bolivia: agentes de varias ciudades se declaran en rebeldía contra el gobierno de Morales, quien denuncia un ‘golpe de Estado,’” *BBC*, November 9, 2019, <https://www.bbc.com/mundo/noticias-america-latina-50355750> (accessed July 24, 2020).

¹⁰ OAS, “Electoral integrity analysis General Elections in the Plurinational State of Bolivia October 20, 2019. Preliminary report to the General Secretariat,” November 10, 2019, <http://www.oas.org/documents/eng/press/Electoral-Integrity-Analysis-Bolivia2019.pdf> (accessed July 24, 2020).

On November 10, OAS Secretary General Luis Almagro called for a new election.¹¹ The same day, Morales announced a new election and the removal of Supreme Electoral Tribunal members.¹² Later that day, the commanders of the armed forces and the police asked him to step down.¹³ Morales did step down, denouncing that there had been a “coup,” and left the country, first to Mexico and from there to Argentina, where he was still residing as of September 2020.¹⁴

On November 12, opposition lawmaker Jeanine Áñez, second vice president of the Senate, became interim president, after other authorities belonging to Morales’ party—the Movement Toward Socialism (MAS, in Spanish)—who preceded her in the line of succession had also resigned.¹⁵ At the time, Morales said Áñez had been “self-proclaimed” president because she assumed the presidency at a session of the Plurinational Legislative Assembly without the necessary quorum, as MAS representatives had not attended.¹⁶ But the Constitutional Tribunal ruled the same day that Áñez was the legal interim president of Bolivia. The Tribunal stated that the presidency could not remain vacant and that the person in line of succession becomes interim president “ipso facto,” without the need for “a law or congressional resolution.”¹⁷

¹¹ OAS, “Comunicado del Secretario General sobre Informe Preliminar Auditores Proceso Electoral en Bolivia,” November 10, 2019, https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-100/19 (accessed July 24, 2020).

¹² Miguel Angel Roca Villamontes, “Tras el informe de la OEA, Evo anuncia nuevas elecciones en Bolivia,” *El Deber*, November 10, 2019, https://eldeber.com.bo/156154_tras-el-informe-de-la-oea-evo-anuncia-nuevas-elecciones-en-bolivia (accessed July 24, 2020).

¹³ “Las Fuerzas Armadas y la Policía piden la renuncia del presidente Morales,” *Agencia de Noticias Fides*, November 10, 2019, <https://www.noticiasfides.com/nacional/politica/las-fuerzas-armadas-y-la-policia-piden-la-renuncia-del-presidente-morales-402317> (accessed July 24, 2020).

¹⁴ Fernando Molina, “El Ejército obliga a Evo Morales a renunciar como presidente de Bolivia,” *El País*, November 11, 2019, https://elpais.com/internacional/2019/11/10/actualidad/1573386514_263233.html (accessed July 24, 2020);

“Renuncia de Evo Morales: el líder boliviano anuncia su salida del país rumbo a México,” *BBC*, November 12, 2019, <https://www.bbc.com/mundo/noticias-america-latina-50384530> (accessed July 24, 2020).

¹⁵ Jesús Reynaldo Alanoca Paco, “Áñez asume la Presidencia de Bolivia ante vacancia y aplicando la sucesión constitucional,” *El Deber*, November 12, 2019, https://eldeber.com.bo/elecciones/anez-asume-la-presidencia-de-bolivia-ante-vacancia-y-aplicando-la-sucesion-constitucional_156411 (accessed July 24, 2020).

¹⁶ “Bolivia: Jeanine Áñez se proclama presidenta del país por sucesión constitucional,” *France 24*, November 13, 2019, <https://www.france24.com/es/20191113-bolivia-jeanine-anez-presidenta-sucesion> (accessed August 18, 2020).

¹⁷ “Tribunal Constitucional avala a Jeanine Áñez como presidenta interina de Bolivia,” *AFP*, November 12, 2019, <https://www.eluniversal.com.mx/mundo/tribunal-constitucional-avala-jeanine-anez-como-presidenta-interina-de-bolivia> (accessed August 18, 2020); Manuel Trillo, “¿Es legal que la vicepresidenta del Senado de Bolivia asuma la presidencia del país?,” *ABC*, November 14, 2019, https://www.abc.es/internacional/abci-legal-vicepresidenta-senado-bolivia-asuma-presidencia-pais-201911140143_noticia.html?ref=https:%2F%2Fwww.google.com%2F (accessed August 18, 2020).

In the days leading up to and following Morales' resignation, 35 people were killed and more than 800 were injured in the context of protests, according to the Ombudsperson's Office, an independent state body tasked with protecting human rights.¹⁸ In June 2020, a 36th victim died of injuries sustained at a protest in November 2019.¹⁹

Of the 36 fatal victims, at least 10 were Morales supporters shot in the central town of Sacaba on November 15. Seven witnesses told Human Rights Watch that soldiers and police who were blocking passage at a bridge opened fire against demonstrators.²⁰ Prosecutors told Human Rights Watch that 49 of the 50 witnesses they interviewed said the shots came from soldiers or police.²¹ One of the prosecutors in charge of the case said that, based on the evidence, he believed that soldiers, not police, had killed the protestors.²² In a separate incident, at least 10 people were killed in front of the Senkata fuel plant in El Alto, on the outskirts of La Paz, on November 19.²³ Prosecutors told Human Rights Watch that military forces were inside the plant, because they had been deployed to protect it.

In a preliminary report in December 2019, the Inter-American Commission on Human Rights (IACHR) said that "the patterns of injuries" in the two cases "point strongly to extrajudicial killing practices."²⁴ A report in July 2020 by the International Human Rights

¹⁸ Bolivian Ombudsperson's Office, "Fallecidos en conflictos," <https://www.defensoria.gob.bo/contenido/muertos-en-los-conflictos> (accessed July 30, 2020); Bolivian Ombudsperson's Office, "Informe de la Defensoría del Pueblo en el 175 periodo de sesiones de la CIDH," March 7, 2020, <https://www.defensoria.gob.bo/uploads/files/informe-de-la-defensoria-del-pueblo-en-el-175-periodo-de-sesiones-de-la-cidh.pdf> (accessed July 30, 2020).

¹⁹ Julio Pinto Mamani died on June 15, 2020 of a gunshot injury to the head that he suffered when he was demonstrating in Sacaba on November 15, 2019. Human Rights Watch interview with Fortunata Romero, wife of Julio Pinto Mamani, Cochabamba, February 2, 2020; "Muere Julio Pinto, recibió un impacto de bala en el conflicto de noviembre en Huayllani," *La Razón*, June 11, 2020, <https://www.la-razon.com/nacional/2020/06/11/muere-julio-pinto-recibio-un-impacto-de-bala-en-el-conflicto-de-noviembre-en-huayllani/> (accessed August 26, 2020).

²⁰ Human Rights Watch interviewed seven witnesses, some of whom were injured, and five relatives of people killed in Sacaba on February 2, 2020. Names withheld for security reasons.

²¹ One of the 50 witnesses said the shot that injured him came from the area where demonstrators were, according to prosecutors. Human Rights Watch interviews with Oscar Terrazas, chief prosecutor in Cochabamba, and Richard Terrazas, one of three prosecutors working on the Sacaba case, Cochabamba, February 3, 2020.

²² Human Rights Watch interview with Richard Terrazas, one of three prosecutors working on the Sacaba case, Cochabamba, February 3, 2020.

²³ Human Rights Watch interviews with William Alave, then chief prosecutor in La Paz department, La Paz, February 4, 2020; and with Pilar Díaz, chief prosecutor in El Alto, and the two prosecutors working on the case, Jhoel Orlando Ramos Galindo and Iván Cernadas, El Alto, February 5, 2020.

²⁴ Inter-American Commission on Human Rights, "The IACHR presents its preliminary observations following its visit to Bolivia and requests an urgent international investigation take place into the serious human rights violations that have occurred in the country since the October 2019 elections," December 10, 2019, http://www.oas.org/en/iachr/media_center/PReleases/2019/321.asp (accessed July 31, 2020).

Clinic at Harvard Law School and the University Network for Human Rights based on witness testimony and other evidence concluded state agents were responsible for the killings in both cases.²⁵ In August, the Office of the United Nations High Commissioner for Human Rights issued another report that included information about multiple sources verified by its staff who suggested that security forces used lethal ammunition to disperse protesters.²⁶ By contrast, Interior Minister Murillo told Human Rights Watch that MAS leaders killed the party's own supporters in Sacaba and Senkata.²⁷

Witnesses also told Human Rights Watch that military forces opened fire against pro-Morales protestors in the Andean town of Betanzos on November 12, killing one.²⁸ Prosecutors had not pressed any charges related to any of the three incidents as of September 2020.

The Office of the United Nations High Commissioner for Human Rights also documented 28 cases of people who it said were arbitrarily detained and tortured by police in the city of El Alto on November 11, 2019.²⁹

²⁵ International Human Rights Clinic at Harvard Law School and the University Network for Human Rights, "'They shot us like animals.' Black November and Bolivia's interim government," July 27, 2020, <http://ain-bolivia.org/wp-content/uploads/2020/07/Black-November-English-Bolivia.pdf> (accessed August 2, 2020).

²⁶ Office of the United Nations High Commissioner for Human Rights, "The Human Rights Situation in the Aftermath of the 20 October 2019 General Elections in Bolivia," August 24, 2020, <https://www.ohchr.org/Documents/Countries/BO/OACNUDH-Informe-Bolivia-EN.pdf> (accessed August 27, 2020).

²⁷ Human Rights Watch interview with Interior Minister Arturo Murillo, La Paz, February 4, 2020.

²⁸ Human Rights Watch interview with five witnesses, names withheld for security reasons, Betanzos, February 5, 2020.

²⁹ Office of the United Nations High Commissioner for Human Rights, "The Human Rights Situation in the Aftermath of the 20 October 2019 General Elections in Bolivia," August 24, 2020, <https://www.ohchr.org/Documents/Countries/BO/OACNUDH-Informe-Bolivia-EN.pdf> (accessed August 27, 2020).



People visit a makeshift memorial on February 2, 2020 at the site where protestors were killed in Sacaba, Bolivia, on November 15, 2019. © 2020 César Muñoz Acebes/Human Rights Watch



Relatives of Juan López, who was killed in Sacaba, Bolivia, on November 15, 2019, hold a banner calling for international help to defend human rights in Bolivia, on February 2, 2020. © 2020 César Muñoz Acebes/Human Rights Watch



Leonarda Apaza holds a picture of her son Juan López, who was killed in Sacaba, Bolivia, on November 15, 2019. © 2020 César Muñoz Acebes/Human Rights Watch



Portraits of some of the 10 or more people who were killed in front of the Senkata fuel plant in El Alto, Bolivia, on November 19, 2019. © 2020 César Muñoz Acebes/Human Rights Watch

Other people died in clashes between anti- and pro-Morales protestors, including two men killed allegedly by Morales supporters in the town of Montero, near Santa Cruz, in the tropical lowlands.³⁰ Two police officers also died in separate incidents.³¹

Other acts of violence in November 2019 included the attack against and burning of the mayor's office in Vinto by a mob that also abducted and publicly humiliated the mayor, Patricia Arce, a member of MAS.³² A mob also burned a house where the sisters of Víctor Borda, president of the Chamber of Deputies for MAS, lived and the house of his brother, Marco Borda. The mob took Marco Borda hostage and forced him to walk naked through the streets of Potosí.³³ Víctor Borda resigned, as the kidnappers demanded.

At Playa Verde, Vila Vila, and Caracollo, along the road from Oruro to La Paz, Morales supporters attacked buses carrying anti-Morales protestors to demonstrate in the capital, 14 witnesses and victims told Human Rights Watch.³⁴ A man said he lost his hand when dynamite allegedly thrown by Morales supporters exploded next to him;³⁵ five anti-Morales

³⁰ Human Rights Watch interviews with Demetrio Salvatierra, nephew of Mario Salvatierra; and Marcelo Terrazas, son of Marcelo Terrazas Seleme, Santa Cruz, February 7, 2020. Mario Salvatierra, 55, and Marcelo Terrazas Seleme, 48, died from shots allegedly fired by a group of Morales supporters in Montero on October 30, 2019.

³¹ Sargent Juan José Alcón Parra died of injuries after being beaten allegedly by a mob on November 11, 2019; while Lieutenant Coronel Heybar Yamil Antelo Alarcón died in a motorcycle accident allegedly after being attacked by protestors on November 12, 2019. "Juan José Alcón, tercer policía que fallece en servicio," *Página Siete*, November 20, 2019, <https://www.paginasiete.bo/nacional/2019/11/20/juan-jose-alcon-tercer-policia-que-fallece-en-servicio-237900.html> (accessed July 30, 2020); "Fallece el Comandante de la UTOP," *Red Uno*, November 12, 2019, <https://www.reduno.com.bo/nota/fallece-el-comandante-de-la-utop-20191112122718?fbclid=IwARoR6VRLqUUSHbCHnsp3NjE8qXjzJR3HU-NfUzEqu-Ov4iACrVh2RHgDJ9w> (accessed July 30, 2020).

³² Videos and photos show the mob forcing Arce to walk on the streets without shoes and covered in red ink on November 6, 2019. Protestors also cut her hair. "Grupo retiene y humilla a la Alcaldesa de Vinto," *Opinion*, August 28, 2020, <https://www.opinion.com.bo/articulo/cochabamba/grupo-retiene-humilla-alcaldesa-vinto/20191107030817735801.html> (accessed August 28, 2020); Inter-American Commission on Human Rights, "CIDH otorga medidas cautelares a favor de María Patricia Arce Guzmán, alcaldesa del Municipio de Vinto, en Bolivia," December 27, 2019, <http://www.oas.org/es/cidh/prensa/comunicados/2019/339.asp> (accessed August 28, 2020).

³³ "Prenden fuego en la casa de Víctor Borda," *El Potosí*, November 10, 2019, https://elpotosi.net/local/20191110_prenden-fuego-en-la-casa-de-victor-borda.html (accessed August 28, 2020); "Víctor Borda renuncia de manera irrevocable a la presidencia de la Cámara de Diputados," *Los Tiempos*, November 10, 2019, <https://www.lostiempos.com/actualidad/pais/20191110/victor-borda-renuncia-manera-irrevocable-presidencia-camara-diputados> (accessed August 28, 2020); "Dueños de casas quemadas viven con el dolor de lo ocurrido y esperando justicia," *Página Siete*, December 7, 2019, <https://www.paginasiete.bo/sociedad/2019/12/2/duenos-de-casas-quemadas-viven-con-el-dolor-de-lo-ocurrido-esperando-justicia-239141.html> (accessed August 28, 2020).

³⁴ The most serious incidents along the road occurred on November 9 and November 11, 2019. Human Rights Watch interviews with Dario Willian, Cuiza Navarro, Franz Alvaro Soraide, Mijael Medina Uvaldaz, Javier Gutierrez Fuertes, Ramiro Ugarte, Juan Carlos Fuertes, Miguel Angel Quispe, Lourdes Tito, Saul Conaviri Mendoza, Roso Laureano Mamani, Veronica Fuertes Rioja, and with two additional victims who requested that their name not be published, Potosí, February 5, 2020.

³⁵ Human Rights Watch interview with Ramiro Ugarte, Potosí, February 5, 2020.

protestors said they suffered gunshot wounds;³⁶ and four men said Morales supporters abducted them along with another eleven men, robbed them, forced them to strip, and beat them for hours.³⁷ “We were all soaked in blood,” one of them said.³⁸ The homes of human rights defender Waldo Albarracín and journalist Casimira Lema were also burned, allegedly by Morales supporters.³⁹

In December 2019, the interim government and the IACHR agreed to establish an Interdisciplinary Group of Independent Experts to investigate acts of violence and violations of human rights in the country between September 1 and December 31, 2019.⁴⁰ In April 2020, they agreed that the group would start its work after presidential elections, currently scheduled for October 18, 2020.

On December 4, 2019, the OAS issued its final report on the elections, reaffirming its preliminary findings and concluding it had found “intentional manipulation” of electoral data and “serious irregularities” that made it impossible to validate the electoral results.⁴¹ On December 20, 2019, European Union electoral observers issued their own report, which also pointed out “numerous errors and irregularities,” and described the process of tallying votes as “chaotic.”⁴²

³⁶ Human Rights Watch interviews with Dario Willian, Cuiza Navarro, Franz Alvaro Soraide, Mijael Medina Uvaldaz, and Javier Gutierrez Fuertes, Potosí, February 5, 2020.

³⁷ Human Rights Watch interviews with Miguel Angel Quispe, Saul Conaviri Mendoza, Roso Laureano Mamani, and an additional victim who requested that his name not be published, Potosí, February 5, 2020.

³⁸ Human Rights Watch interview, Potosí, February 5, 2020. The interviewee asked that his name be withheld.

³⁹ Both incidents occurred in La Paz on November 10, 2019. Human Rights Watch interview with attorney Franco Albarracín, son of Waldo Albarracín, La Paz, February 3, 2020. “Dueños de casas quemadas viven con el dolor de lo ocurrido y esperando justicia,” *Página Siete*, December 7, 2019, <https://www.paginasiete.bo/sociedad/2019/12/2/duenos-de-casas-quemadas-viven-con-el-dolor-de-lo-ocurrido-esperando-justicia-239141.html> (accessed August 28, 2020).

⁴⁰ Inter-American Commission on Human Rights (IACHR), “CIDH anuncia fortalecimiento y fecha tentativa de instalación del Grupo Interdisciplinario de Expertos Independientes (GIEI) para coadyuvar las investigaciones de los hechos de violencia y violaciones de los derechos humanos en Bolivia,” April 28, 2020, <http://www.oas.org/es/cidh/prensa/comunicados/2020/091.asp> (accessed August 10, 2020).

⁴¹ Organization of American States (OAS), “Final Report of the Audit of the Elections in Bolivia: Intentional Manipulation and Serious Irregularities Made it Impossible to Validate the Results,” December 4, 2019, https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-109/19 (accessed July 26, 2020).

⁴² European Union Electoral Experts Mission to Bolivia, “Unión Europea Misión de Expertos Electorales Bolivia 2019. Informe Final,” December 21, 2019, <https://www.uetrabajandojuntos.org/wp-content/uploads/2019/12/EU-EEM-BOL-2019-FR-ES.pdf> (accessed July 26, 2020); and “Informe de la UE detectó “numerosos errores” en elecciones de Bolivia,” *Voice of America*, December 21, 2019, <https://www.voanoticias.com/a/union-europea-detector-errores-irregularidades-elecciones-bolivia/5215093.html> (accessed July 26, 2020).

In February 2020, two US academic researchers disputed the OAS observers' conclusion that the change in the voting trend in the last 5 percent of the vote was highly unlikely, arguing, among other things, that votes from poorer areas, which may have favored Morales, could have come in later than votes from elsewhere due to longer polling lines and delays in counting and reporting votes.⁴³

In June, another three researchers from two universities in the United States said that the sudden change in the voting trend appeared only when they excluded results from manually processed, late-reporting polling booths, which suggested to them that the OAS had used an incorrect data set.⁴⁴ The researchers also claimed that the organization used an inappropriate statistical method that artificially created the appearance of a break in the voting trend.

The OAS stood by its findings.⁴⁵ The two studies by researchers in the United States did not address the other alleged irregularities identified by OAS and EU observers.

⁴³ John Curiel and Jack Williams, "Bolivia dismissed its October elections as fraudulent. Our research found no reason to suspect fraud," *The Washington Post*, February 27, 2020, <https://www.washingtonpost.com/politics/2020/02/26/bolivia-dismissed-its-october-elections-fraudulent-our-research-found-no-reason-suspect-fraud/> (accessed July 24, 2020).

⁴⁴ Anatoly Kurmanaev and Maria Silvia Trigo, "A Bitter Election. Accusations of Fraud. And Now Second Thoughts," *The New York Times*, June 7, 2020, <https://www.nytimes.com/2020/06/07/world/americas/bolivia-election-evo-morales.html> (accessed July 24, 2020).

⁴⁵ Organization of American States (OAS), "Press Release on Disinformation Campaign Regarding the Role of the OAS in the Bolivian Elections," June 16, 2020, https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-064/20 (accessed July 24, 2020).

II. Prosecution of People with Links to the Evo Morales Administration and Supporters

Shortly after taking office, the interim government said it was investigating close to 600 members of the Morales administration and people associated with them, including “all relatives” of Morales, some for terrorism and sedition and others for corruption, dereliction of duty, and other crimes.⁴⁶

Interior Minister Murillo has vowed to “hunt down” and “pursue” members of the Morales administration.⁴⁷ He has also asked the attorney general, who under Bolivian law is supposed to operate independently from the executive branch, to “purge” the prosecutors’ office and warned he would “pursue” judges and prosecutors “who free criminals.”⁴⁸

The Attorney General’s Office told the Office of the United Nations High Commissioner for Human Rights (OHCHR) that it had opened criminal investigations for sedition, terrorism or belonging to a criminal “association” or a criminal organization against 159 people from November 11, 2019 to February 3, 2020.⁴⁹ Those investigated were former Morales administration officials of different seniority levels, said the OHCHR.⁵⁰

⁴⁶ Iván Alejandro Paredes Tamayo, “Gobierno investiga a 592 exautoridades del MAS,” *El Deber*, February 16, 2020, https://eldeber.com.bo/166673_gobierno-investiga-a-592-exautoridades-del-mas (accessed August 10, 2020).

⁴⁷ “Ministro de Gobierno Arturo Murillo: El que haga sedición en el país se va a la cárcel,” *Red Unitel*, November 14, 2019, <https://www.youtube.com/watch?v=Uu32sgDXQXM> (accessed August 10, 2020); “Murillo a Quintana y Raúl García Linera: Que empiecen a correr porque los vamos a agarrar,” *Página Siete*, November 13, 2019, <https://www.paginasiete.bo/seguridad/2019/11/13/murillo-quintana-raul-garcia-linera-que-empiecen-correr-porque-los-vamos-agarrar-237335.html> (accessed August 10, 2020).

⁴⁸ “Murillo advierte con ‘perseguir’ personalmente a jueces y fiscales que benefician a ‘delincuentes,’” *Página Siete*, February 11, 2020, <https://www.paginasiete.bo/nacional/2020/2/11/murillo-advierte-con-perseguir-personalmente-jueces-fiscales-que-benefician-delincuentes-246387.html> (accessed August 10, 2020).

⁴⁹ The report says 38 people were under investigation for terrorism and, in some cases, sedition and other crimes; 78 people were under investigation for sedition and, in some cases, other crimes, but not for terrorism; and 43 were under investigation for belonging to a criminal “association” or a criminal organization, and not for terrorism or sedition. “Informe DGFSE Number 17/2020,” signed by Aldrin Barrientos Vargas, Director of Fiscal Management, Supervision and Evaluation, Attorney General’s Office, February 3, 2020.

⁵⁰ Office of the United Nations High Commissioner for Human Rights, “The Human Rights Situation in the Aftermath of the 20 October 2019 General Elections in Bolivia,” August 24, 2020, <https://www.ohchr.org/Documents/Countries/BO/OACNUDH-Informe-Bolivia-EN.pdf> (accessed August 27, 2020), para. 21.

In most of the cases examined by Human Rights Watch, the interim government had filed formal complaints prompting the Attorney General's Office to open those criminal investigations.

In some of those cases, prosecutors filed charges without evidence that the accused had committed any crime.

- On January 31, 2020, police detained **Patricia Hermosa**, Morales' attorney and former chief of staff.⁵¹ On February 1, prosecutors charged her with terrorism, financing of terrorism, and sedition. The only



Patricia Hermosa, Evo Morales' attorney and former chief of staff, on January 31, 2020, after she was detained; the next day she was charged with terrorism, financing of terrorism, and sedition. © 2020 Marco Aguilar/Página Siete

evidence contained in the charging document and case file, which Human Rights Watch reviewed, was that Hermosa had telephone contact with Morales in November 2019, after he resigned, as well as with a former minister and with a member of MAS.⁵² In the charging document, prosecutors argued that those calls “led to violence.”⁵³ They provided no proof, nor did they describe the content of the calls. In a statement to prosecutors, Hermosa said that on those calls, she and Morales discussed the removal of his clothes from the presidential residence and administrative paperwork that she would fill out for him, as required under Bolivian law when an official resigns. Despite the lack of evidence that Hermosa committed any crime, she was held in pretrial detention from January 31 to August 5, 2020, when she was transferred to house arrest.⁵⁴

⁵¹ Human Rights Watch interview with Patricia Hermosa's attorney, Martín Irusta, La Paz, February 6, 2020.

⁵² “Resolución de ampliación de imputación formal,” Charging document by prosecutors, Case Number: FIS LPZ1914866, February 1, 2020.

⁵³ Ibid, page 12.

⁵⁴ “Dan detención domiciliar a la exjefa de Gabinete de Evo,” *Página Siete*, July 29, 2020,

- On December 20, 2019, police detained **Luis Hernán Soliz Morales**, Morales' cousin, who worked as an assistant in the president's office; and 10 days later they detained **Fernando Morales Virreyra**, a businessperson who told prosecutors he was Morales' friend.⁵⁵ Prosecutors charged them with terrorism, financing of terrorism, and sedition based solely on their maintaining phone contact with Morales after he had resigned, according to the case files, which Human Rights Watch reviewed. The case files do not include transcripts or recordings of those calls. Morales Virreyra was granted house arrest, while Soliz Morales was initially held in pretrial detention and later transferred to house arrest.⁵⁶

Some cases are based on generic information, not on individualized evidence of crimes:

- On November 10, 2019, police detained **Eulogio Núñez Aramayo**, **Ramiro Valle Mandepora**, and **Gober López Velasco**, members of the Santa Cruz Department Electoral Tribunal, and **Sandra Kettels Vaca**, the tribunal's president during the October 2019 elections.⁵⁷ Defense lawyers say police did not have arrest warrants or search warrants when they entered the homes of the suspects and arrested them.⁵⁸ Police presented the accused, handcuffed, to the press.⁵⁹

Prosecutors charged the four with forging documents, altering election results, and dereliction of duty. They based the charges solely on the report by the Organization of American States (OAS) that alleged serious irregularities in the presidential elections of October 2019, according to the charging document and the official transcripts of three hearings reviewed by Human Rights Watch.⁶⁰ Prosecutors have

<https://www.paginasiete.bo/seguridad/2020/7/29/dan-detencion-domiciliaria-la-exjefa-de-gabinete-de-evo-262811.html> (accessed July 29, 2020); Human Rights Watch communication with Patricia Hermosa's attorney, Martín Irusta, through a messaging service, August 6, 2020.

⁵⁵ Case Number: FIS LPZ1914866, against Juan Evo Morales Ayma, Faustino Yucra Yarhui, and others, La Paz Prosecutor's Office, opened on November 21, 2019, pages 1309-1333 and 1452-1464; and "Resolución 519/19. Auto Interlocutorio. Consideración de Medidas Cautelares," December 31, 2019, included in the case file without page numbers.

⁵⁶ Ibid; Human Rights Watch interview with Patricia Hermosa's attorney, Martín Irusta, La Paz, February 6, 2020.

⁵⁷ "Imputación formal con aprehendidos," Charging document by prosecutors in Santa Cruz de la Sierra, Case number FIS-SCZ 1912229, November 11, 2019.

⁵⁸ "Acta de Audiencia de medida cautelar. Caso Tribunal departamental electoral. NUREJ 70260565," Arraignment hearing, Case number FIS-SCZ 1912229, November 12, 2019.

⁵⁹ "Dictan detención preventiva en Palmasola para los cuatro vocales cruceños," *Red Uno*, November 12, 2019, <https://www.reduno.com.bo/nota/dictan-detencion-preventiva-en-palmasola-para-a-los-cuatro-vocales-crucenos-20191112233624> (accessed July 29, 2020).

⁶⁰ "Imputación formal con aprehendidos," Charging document by prosecutors in Santa Cruz de la Sierra, November 11, 2019; "Acta de Audiencia de medida cautelar. Caso Tribunal departamental electoral. NUREJ 70260565," Arraignment hearing, November 12, 2019; "Acta de audiencia de apelación a la audiencia de aplicación de medidas cautelares," Official transcript of hearing, November 25, 2019; and "Acta de Audiencia de cesación de la detención preventiva de los imputados Ramiro

not alleged or provided evidence of any specific actions taken by each of them resulting in electoral fraud in Santa Cruz, where the official election results showed that Carlos Mesa, a former president of Bolivia and Morales' main rival on the ballot, won the vote. The former officials were initially held in pretrial detention and are now under house arrest.

Prosecutors are also pursuing charges against people connected with the Morales government for their public statements, in ways that undermine freedom of expression. Under international human rights standards, a government may impose restrictions on the right to free speech only if such restrictions are provided for in legislation, necessary for a legitimate purpose, and proportional to that end.⁶¹

- On February 7, 2020, prosecutors charged **Gustavo Torrico**, a member of the Plurinational Assembly and a former minister under Morales, with terrorism, financing of terrorism, sedition, and incitement to commit crimes.⁶² The terrorism and sedition charges are solely based on public statements Torrico made on the radio on October 29, 2020, when Morales was still president and thousands of people were protesting against the government.⁶³ “The only thing we need to see is whether mothers, fathers are willing to have their children in the street when there is a confrontation. I don’t know how many are willing to sacrifice their children, to carry such a criminal pain [sic], to feel the pain of the death of a child,” said Torrico. “We need to see if Mr. Carlos Mesa is willing to start a war,” he added. While those statements are serious, it is disproportionate to prosecute them as acts of terrorism and sedition. Torrico was initially kept in pretrial detention and is now under house arrest.⁶⁴

Valle Mandepora y Eulogio Núñez Aramayo,” Official transcript of hearing, December 5, 2019. All documents are Case number FIS-SCZ 1912229.

⁶¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Bolivia on 1982, art. 19; UN Human Rights Committee, General Comment No. 34, Article 19: “Freedoms of Opinion and Expression,” GE.11-45331 (2011), <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (accessed July 27, 2020), para. 22.

⁶² “Resolución de imputación formal,” Charging document by the La Paz prosecutor’s office, Case FIS LPZ19194974, February 7, 2020, page 4.

⁶³ The original statements are available here: “Torrico: Aquí solo falta ver, en este panorama oscuro que se presenta, si las madres y los padres están dispuestos a perder a sus hijitos en la calle cuando hay enfrentamientos,” *ANF Noticias Fides*, October 29, 2019, <https://www.facebook.com/watch/?v=540587416513828> (accessed July 27, 2020); “Aprehenden al asambleísta Gustavo Torrico,” *Página Siete*, February 7, 2020, <https://www.paginasiete.bo/nacional/2020/2/6/aprehenden-al-asambleista-gustavo-torrico-245813.html> (accessed July 27, 2020).

⁶⁴ “Dan detención domiciliaria al asambleísta del MAS Gustavo Torrico,” *Opinión*, February 10, 2020, <https://www.opinion.com.bo/articulo/pais/dan-detencion-domiciliaria-asambleista-mas-gustavo-torrico/20200210205748750496.html> (accessed July 27, 2020).

- **Orestes Sotomayor** and **Alejandra Salinas** were detained on December 31, 2019, and charged with sedition, influence peddling, and improper use of government property. Prosecutors claim both were associated with the online news site “La Resistencia” (The Resistance) and with social media accounts and radio programs linked to it.⁶⁵ They asserted that La Resistencia publications were generating “animosity” toward the interim government and “misinforming.”⁶⁶ A police report provided, as evidence, several news stories and memes that criticized the interim government, such as posts attributing responsibility for the killing of protestors in 2019 to the interim government and pointing out that President Áñez was inaugurating public works initiated by Morales.⁶⁷ Prosecutors claim Sotomayor registered the internet domain for La Resistencia and that he and Salinas used equipment at the government agency where they were employed to work on the news site. Prosecutors did not provide any evidence that either Sotomayor or Salinas were the authors of the articles, posts, and memes. But even if they were, they should not be prosecuted for exercising their right to free speech. The courts granted house arrest to Salinas and, after holding him for one month in pre-trial detention, to Sotomayor.⁶⁸ La Resistencia continues to publish, and the articles highlighted in the police report are still online.

In response to the spread of Covid-19, the interim government has adopted policies that have threatened to curb free speech, particularly by political opponents. These include an overly broad provision in an emergency decree that authorities could use to prosecute those who criticize government policies.⁶⁹ In response to public outcry, the government first made cosmetic changes to the decree and, on May 14, revoked the problematic provision.⁷⁰

⁶⁵ See website here: <https://laresistencia.info/> (accessed July 29, 2020).

⁶⁶ “Audiencia de consideración de medidas cautelares,” Official transcript of arraignment hearing, Case number: NUREJ 20328722, January 2, 2020.

⁶⁷ Bolivian police, “Informe para apertura de caso,” December 23, 2019; Cybercrime Unit of Bolivian Police, “Reporte Confidencial,” December 18, 2019. Both reports were included in the case file.

⁶⁸ Human Rights Watch telephone interview with Karla Ascarrunz, attorney of Orestes Sotomayor, March 3, 2020. Human Rights Watch also conducted telephone interviews with two co-workers of Sotomayor and Alejandra Salinas on March 13 and March 19, 2020, respectively. They requested their names be withheld for fear of prosecution.

⁶⁹ “Bolivia: COVID-19 Decree Threatens Free Expression,” Human Rights Watch news release, April 7, 2020, <https://www.hrw.org/news/2020/04/07/bolivia-covid-19-decree-threatens-free-expression>.

⁷⁰ “El Gobierno boliviano anula normas cuestionadas contra la libertad de prensa,” *EFE*, May 14, 2020, <https://www.lavanguardia.com/politica/20200514/481148718075/el-gobierno-boliviano-anula-normas-cuestionadas-contra-la-libertad-de-prensa.html> (accessed July 31, 2020).

On March 18, 2020, Interior Minister Murillo announced that he had ordered the armed forces, police, and his staff to “cyberpatrol” the internet to identify and prosecute those who “misinform” the public about the coronavirus, and he warned Luis Arce, the MAS presidential candidate, “not to misinform.”⁷¹

- One result of that “cyberpatrolling” was the arrest of **Mauricio Jara**. Police presented him in handcuffs surrounded by heavily armed guards at a press conference on April 22, 2020, during which they cited as evidence of criminal activity that Jara had admitted he was a supporter of Morales; had used WhatsApp groups to “misinform”; had called the interim government “a tyrant” and “dictatorial”; and had urged people to protest.⁷² Police also cited as evidence that Jara had described the killing of at least 10 protestors in Senkata in November 2019 as a “massacre,” a term also used by the Inter-American Commission on Human Rights to describe the case.⁷³ Prosecutors charged Jara with sedition, instigation to commit a crime, and crimes against public health. A judge ordered his pretrial detention, and he remained in pretrial detention as of August 27, 2020.⁷⁴

Some of the cases against Morales’ allies appear to include violations of due process rights including arbitrary denial of bail, which constitutes arbitrary deprivation of liberty and may infringe on the presumption of innocence.⁷⁵

⁷¹ “Murillo advierte con ciberpatrullaje y procesos a quienes desinformen en redes sociales,” *Página Siete*, March 18, 2020, <https://www.paginasiete.bo/sociedad/2020/3/18/murillo-advierte-con-ciberpatrullaje-procesos-quienes-desinformen-en-redes-sociales-250035.html> (accessed July 29, 2020).

⁷² Guider Arancibia Guillén, “Envían a Palmasola a ‘guerrero digital’ del MAS acusado por sedición e instigación pública a delinquir,” *El Deber*, April 22, 2020, https://eldeber.com.bo/175926_envian-a-palmasola-a-guerrero-digital-del-mas-acusado-por-sedicion-e-instigacion-publica-a-delinquir; “Denuncian detención ilegal de Mauricio Jara y atentado contra libertad de expresión,” *Correo del Sur*, April 29, 2020, https://correodelsur.com/seguridad/20200429_denuncian-detencion-ilegal-de-mauricio-jara-y-atentado-contra-la-libertad-de-expresion.html (accessed July 29, 2020).

⁷³ Inter-American Commission on Human Rights, “The IACHR presents its preliminary observations following its visit to Bolivia and requests an urgent international investigation take place into the serious human rights violations that have occurred in the country since the October 2019 elections,” December 10, 2019, http://www.oas.org/en/iachr/media_center/PReleases/2019/321.asp (accessed July 31, 2020).

⁷⁴ Human Rights Watch communication with the Ombudsperson’s Office in Santa Cruz through an internet messaging service, August 27, 2020.

⁷⁵ ICCPR, Arts. 9(1), (3), 14(2); American Convention on Human Rights, Arts. 7(3), 8(2). The Inter-American Court of Human Rights has repeatedly held that pretrial detention “is the most severe measure that can be applied to a person charged with an offense; hence, its use should be exceptional, limited by the principle of lawfulness, the presumption of innocence, and the need and proportionality, in keeping with what is strictly necessary in a democratic society, because it is a precautionary rather than a punitive measure.” Inter-American Court of Human Rights, *Bayarri v. Argentina* Case, Preliminary Objection, Merits, Reparations, and Costs, Judgment of October 30, 2008, Inter-Am Ct. H.R., (Ser. C) No. 187, https://www.corteidh.or.cr/docs/casos/articulos/seriec_187_ing.pdf (accessed August 28, 2020), para. 69. As a result, the Court has also held, “the deprivation of liberty of the accused cannot be based on general preventive or special preventive purposes, which could be attributed to the punishment, but [...] based on a legitimate purpose, which is: to ensure that the accused does not prevent the proceedings from being conducted or elude the system of justice.” Inter-American Court of

- On January 8, a group of anti-Morales protestors blocked for three days the door of the home of **Carlos Romero**, Interior minister under Morales, calling for his arrest.⁷⁶ A friend of Romero's, who is a former Morales minister, told Human Rights Watch that Romero called him at midnight on January 8 and told him he was afraid the protestors would try to enter his home, and asked for help to leave.⁷⁷ That former minister, who asked not to be identified for fear of reprisal by the interim government, said he called two police colonels he knew. Police arrived at the scene but did not help Romero leave his home. Romero remained locked up without water, after an unknown person closed the main water valve, or access to food until January 10, when a friend called an ambulance that took him to the hospital. Doctors said he suffered dehydration, hypertension, pain from an ulcer in the upper abdomen, and anxiety and depression.⁷⁸ Prosecutors ordered police to bring Romero in to make a statement on January 14, after his release from the hospital.⁷⁹ He was detained after making his statement. A judge said in a ruling, reviewed by Human Rights Watch, that Romero's arrest was illegal because there was no arrest warrant against him at the time. Nevertheless, the judge ordered his pretrial detention.⁸⁰ Romero was held in pretrial detention on charges of influence peddling and dereliction of duty in connection with a corruption case until June 30, when he was transferred to house arrest after posting bail.⁸¹

Human Rights, Case of Barreto Leiva v. Venezuela, Merits, Reparations, and Costs, Judgment of November 17, 2009, Inter-Am. Ct. H.R., (Ser. C) No. 206, https://www.corteidh.or.cr/docs/casos/articulos/seriec_206_ing.pdf (accessed August 28, 2020), para. 111. In turn, the Inter-American Commission on Human Rights has stated that it understands that the Convention establishes "as the sole legitimate grounds for pretrial detention, the risk of the accused attempting to escape justice or hindering the judicial investigation." Inter-American Commission on Human Rights, "Report on the Use of Pretrial Detention in the Americas," OEA/Ser.L/V/VII, Doc. 46/13 (2013), <https://www.oas.org/en/iachr/pdl/reports/pdfs/Report-PD-2013-en.pdf>, para. 144.

⁷⁶ "Resistencia civil instala vigilia en la casa de Carlos Romero para evitar posible fuga," *Bolivia TV*, January 9, 2020, <http://www.boliviavt.bo/principal/noticia.php?noticia=ba9a01664d9ff7354cfe6e68fe415c7a&lang=es&fbclid=IwAR1Vnqg7O2HmMv97-Ayzias4khgwVBSMTMUb4uAyUXQaVNfgSVcvkUIWCaY> (accessed July 29, 2020); Human Rights Watch interview with Andrés Zúñiga, defense lawyer of Carlos Romero, La Paz, February 4, 2020.

⁷⁷ Human Rights Watch interview with a friend of Carlos Romero and former minister, February 2020. Name withheld upon request.

⁷⁸ "Carlos Romero trasladado al hospital," *Red Unitel*, January 11, 2020, <https://www.youtube.com/watch?v=AjAkHyYDpmc> (accessed July 29, 2020).

⁷⁹ Order issued by prosecutor Rudy Terrazas to the Bolivian Police's Special Force to Combat Crime in La Paz, Case Number LPZ 1903492, January 14, 2020.

⁸⁰ "Resolución 42/2020. Auto interlocutorio mixto de incidente de aprehensión ilegal y de aplicación de medidas cautelares," decision by judge Alan Mauricio Zárate Hinojosa, January 27, 2020.

⁸¹ The case involves suspected irregularities in contracts to service helicopters and planes for an anti-drug military unit from 2013 to 2019. Prosecutors opened the case after receiving a criminal complaint on March 19, 2019 from Romero, when he was still minister. Romero also froze the contracts at that time. On December 27, 2019, Rose Marie Sandoval Farfán, a member of the Chamber of Deputies for Unión Demócrata, a party opposed to Morales, asked prosecutors to press charges against Romero alleging that he knew about the contracts and had appointed the officials involved in awarding them. Prosecutors charged Romero on January 15, 2020, arguing he had been negligent "by not taking necessary actions at the appropriate time." Prosecutors did not claim in the charging document that Romero received kickbacks or any other financial

Excessive use of pretrial detention has been a longstanding problem in Bolivia. In May 2019, the Morales government enacted a law intended to make pretrial detention an exceptional measure, reserved for a narrow group of people accused of serious crimes who are found to be a flight risk or to present a risk of interfering with the investigation.⁸² Those criteria are consistent with international human rights standards.

Despite the law, about 65 percent of Bolivia's detainees were awaiting trial as of January 2020.⁸³ Prosecutors have repeatedly sought pretrial detention in cases involving people connected to the Morales government. This has been true even when the charges are based on weak or non-existent evidence of criminal activity or when they are clearly excessive in relation to the wrongdoing alleged.

- **Edith Chávez Arauco** worked as a maid and babysitter for the family of Morales' former minister of the presidency, Juan Ramón Quintana.⁸⁴ In November 2019, prosecutors issued an arrest warrant against Quintana for terrorism and other crimes.⁸⁵ On January 10, police raided Chávez's home, on the basis of her connection to Quintana, and said they found a .22-caliber handgun in a cabinet in her bedroom.⁸⁶ Prosecutors claim to have found .22 caliber bullets "of similar characteristics" in Quintana's home. Chávez's lawyer told Human Rights Watch that police have not performed any ballistics analysis.⁸⁷ Prosecutors charged her with aiding and abetting, without stating what crime she had allegedly aided and abetted, and with unlawfully carrying a gun, though the charging document itself

benefit from the contracts. Romero is under investigation in other criminal cases. "Resolución de aprehensión," Case FIS: LPZ1903492, January 14, 2020; Charging document, Case FIS: LPZ1903492, January 15, 2020; "Ampliación de denuncia," criminal complaint filed by Congresswoman Rose Marie Sandoval Farfan, Case FIS: LPZ1903492, December 27, 2020; Human Rights Watch interview with Andrés Zúñiga, defense lawyer of Carlos Romero, La Paz, February 4, 2020; "Exministro Romero deja el penal de San Pedro y consigue la detención domiciliaria," *Página Siete*, June 30, 2020, <https://www.paginasiete.bo/seguridad/2020/6/30/exministro-romero-deja-el-penal-de-san-pedro-consigue-la-detencion-domiciliaria-259935.html> (accessed July 29, 2020).

⁸² Law Number 1173, signed into law May 8, 2019, <https://www.lexivox.org/norms/BO-L-N1173.html>, art. 233. The law was amended by Law Number 1226, signed into law on September 23, 2019, <https://www.lexivox.org/norms/BO-L-N1226.xhtml>. The official bulletin of Bolivia's justice system stated reducing abuse of pretrial detention was a main objective of the May 2019 law. "Boletín Informativo del Órgano Judicial," Special Edition Number 1; Law 1173, no date, <https://tsj.bo/publicaciones/boletin-informativo-edicion-especial-n1-ley-1173/> (accessed July 29, 2020).

⁸³ Bolivian Ombudsperson's Office, "Situación de las personas privadas de libertad en el Estado Plurinacional de Bolivia," no date. The Ombudsperson's Office sent the report to Human Rights Watch in June 2020.

⁸⁴ Human Rights Watch telephone interview with Karla Ascarrunz, attorney of Edith Chávez Arauco, March 3, 2020.

⁸⁵ "Fiscalía libra orden de detención contra exministro de la Presidencia de Bolivia," *France 24*, November 26, 2019, <https://www.france24.com/es/20191126-fiscal%C3%ADa-libra-orden-de-detenci%C3%B3n-contra-exministro-de-la-presidencia-de-bolivia> (accessed August 19, 2020).

⁸⁶ "Resolución ampliación de imputación formal," Charging document signed by prosecutor Roberto Villa, January 11, 2020.

⁸⁷ Human Rights Watch communication with Karla Ascarrunz, attorney of Edith Chávez Arauco, through a messaging service, September 1, 2020.

says police found the gun inside a cabinet—that is, she was not carrying the gun. Had Chávez been charged exclusively with unlawful possession of a gun, a crime punishable with up to two years in prison, pretrial detention would have been unlawful, as Bolivian law prohibits pretrial detention of people charged with a crime for which the maximum sentence is under four years in prison.⁸⁸ In contrast, unlawfully carrying a gun is punished with up to five years in prison. Prosecutors argued that she was a flight risk, because Bolivia’s borders were “open,” and a danger to society because she had possessed a gun.⁸⁹ A judge agreed, and Chávez remains in pretrial detention.

- **César Cocarico**, Morales’ minister of land and rural development, was detained on February 21, 2020, on charges of dereliction of duty, influence peddling, exercising a profession illegally, and holding a public role without a proper appointment.⁹⁰ All the charges are based exclusively on the fact that he had named **Juan Carlos León** as director of the National Institute of Land Reform, a role for which a bachelor’s degree and seven years of experience are required. León allegedly lacked both.⁹¹ Even if the appointment did indeed violate administrative law, the charges are disproportionate to the alleged wrongdoing. Cocarico remained in pretrial detention until May 13, 2020, when a judge granted him house arrest.⁹² León was detained on February 27 on the same charges as Cocarico and remains in pretrial detention.⁹³
- In the case of **Patricia Hermosa**, prosecutors argued that she should be kept in pretrial detention because, as part of her duties as a public servant in the Morales government, she had travelled abroad.⁹⁴ A judge ordered her pretrial detention after her arrest on January 31.

⁸⁸ Law Number 1226, signed into law on September 23, 2019, <https://www.lexivox.org/norms/BO-L-N1226.xhtml>, art. 232, para. I.5. .

⁸⁹ “Resolución ampliación de imputación formal,” Charging document signed by prosecutor Roberto Villa, January 11, 2020.

⁹⁰ “Aprehenden al exministro César Cocarico,” *Página Siete*, February 21, 2020, <https://www.paginasiete.bo/nacional/2020/2/21/aprehenden-al-exministro-cesar-cocarico-247428.html> (accessed July 29, 2020).

⁹¹ Peter Luna, “Determinan detención preventiva para César Cocarico,” *Opinión*, February 22, 2020, <https://www.opinion.com.bo/articulo/pais/determinan-detencion-preventiva-cesar-cocarico/2020022212810752857.html> (accessed August 27, 2020).

⁹² “Detención domiciliaria para exministro César Cocarico,” *Correo del Sur*, May 13, 2020, https://correodelsur.com/seguridad/20200513_detencion-domiciliaria-para-exministro-cesar-cocarico.html (accessed July 29, 2020).

⁹³ “León es detenido y acusado de 3 delitos tras negarse a declarar,” *Página Siete*, February 28, 2020, <https://www.paginasiete.bo/economia/2020/2/28/leon-es-detenido-acusado-de-delitos-tras-negarse-declarar-247969.html> (accessed July 29, 2020).

⁹⁴ “Resolución de ampliación de imputación formal,” Charging document by prosecutors. Case Number: FIS LPZ1914866, February 1, 2020. Patricia Hermosa’s travels are detailed in a document that Bolivia’s migration agency gave to the police. The document expressly notes that the information is confidential, should not be included in the case file, and “does not

On February 7, Hermosa showed a jail doctor the result of a test indicating she was pregnant, according to a report written by medical staff at the jail almost three months later.⁹⁵ Bolivian law forbids pretrial detention of pregnant women.⁹⁶ The doctor told her she had to take another pregnancy test with the doctor as a witness to verify the results, but neither this doctor nor any other staff member at the jail provided her with a test. A month later, Hermosa suffered bleeding for 10 days and, as a result, the doctor's report says, "it is assumed she had a miscarriage." The report does not mention any medical care provided to Hermosa during those 10 days, or previously or subsequently. Hermosa's lawyer told Human Rights Watch there were no health personnel caring for detainees in the jail after early February and that a doctor examined her for the first time only in mid-May.⁹⁷ In February, Hermosa's lawyer petitioned a judge to release her, but the hearing took place only in April, and the judge kept her in pretrial detention on the assumption that she was no longer pregnant.⁹⁸ Hermosa was granted house arrest on July 29, but was released from jail only on August 5.⁹⁹

Detention facilities in Bolivia hold more than double their intended capacity, in packed, unsanitary cells with scant ventilation and little access to health care.¹⁰⁰ In April 2020, the interim government issued a decree to reduce overcrowding in response to the spread of Covid-19,¹⁰¹ but in cases linked to the Morales government it has sought to keep suspects in pretrial detention.

have legal validity." Yet the document was not treated as confidential; it was included in the case file, of which Human Rights Watch obtained a copy; and prosecutors used it as the legal basis to argue that Hermosa was a flight risk. "Ficha de Migración. Nro. 002/2020 – HMW," issued by the Centro de Fusión de Información, January 31, 2020.

⁹⁵ "Informe médico de la privada de libertad Patricia Pamela Hermosa Gutiérrez," report signed by Dr. José Ignacio Quisbert, doctor at Obrajes prison, May 1, 2020.

⁹⁶ Law Number 1226, signed into law on September 23, 2019, <https://www.lexivox.org/norms/BO-L-N1226.xhtml>, art. 232, para. I.7. .

⁹⁷ Human Rights Watch telephone interview with Patricia Hermosa's attorney, Martín Irusta, July 16, 2020.

⁹⁸ Human Rights Watch telephone interview with Patricia Hermosa's attorney, Martín Irusta, July 16, 2020.

⁹⁹ It took eight days for justice and prison officials to process the paperwork for her release to house arrest, Hermosa's attorney told Human Rights Watch. Human Rights Watch communication with Patricia Hermosa's attorney, Martín Irusta, through a messaging service, August 6, 2020; "Dan detención domiciliar a la exjefa de Gabinete de Evo," *Página Siete*, July 29, 2020, <https://www.paginasiete.bo/seguridad/2020/7/29/dan-detencion-domiciliaria-la-exjefa-de-gabinete-de-evo-262811.html> (accessed July 29, 2020).

¹⁰⁰ In January 2020, detention facilities were at 212 percent capacity. Bolivian Ombudsperson's Office, "Situación de las personas privadas de libertad en el Estado Plurinacional de Bolivia," no date. The Ombudsperson's Office sent the report to Human Rights Watch in June 2020.

¹⁰¹ "La Asamblea Legislativa aprueba nuevo indulto y amnistía," *La Razón*, April 30, 2020, <https://www.la-razon.com/nacional/2020/04/30/asamblea-legislativa-nuevo-indulto-amnistia/> (accessed July 31, 2020).

The interim government has gone so far as to seek criminal charges against two judges who granted house arrest, rather than continued pretrial detention, to people linked to the Morales administration. Police detained one of them.

- On May 22, 2020, judge **Hugo Huacani** ordered the transfer of **Edith Chávez Arauco**, the babysitter of Morales' minister of the presidency, from pretrial detention to house arrest, as the time period ordered for her pretrial detention had expired.¹⁰² Hours later, two government lawyers reported the judge to police, stating he had shown a possible "lack of independence" in his ruling, according to a statement from the Interior Ministry.¹⁰³ The Interior Ministry argued that the Supreme Court had suspended time limits on pretrial detention because of the coronavirus emergency, effectively suggesting people could be held in pretrial detention indefinitely. Police detained the judge "in flagrante," the Interior Ministry said. The Prosecutor's Office clarified it had not participated in the arrest and there was no arrest warrant.¹⁰⁴ Judge Huacani was held in custody until the next day, when another judge ruled his arrest had been illegal.¹⁰⁵ The Interior Ministry filed a criminal complaint against judge Huacani for dereliction of duty and for issuing decisions that violate the Constitution and the law on May 22.¹⁰⁶ Prosecutors opened an investigation into those alleged crimes. Chávez was released to house arrest pursuant to Judge Huacani's order, but on June 10, another judge revoked the order and she returned to pretrial detention.¹⁰⁷

¹⁰² "Acta de declaración informativa," Judge Hugo Huacani's statement to police, Case Number LPZ 18184643, May 22, 2020; "Revocan detención domiciliaria de trabajadora de Quintana y la dirigen a la cárcel," *Opinión*, June 11, 2020, <https://www.opinion.com.bo/articulo/pais/revocan-detencion-domiciliaria-trabajadora-quintana-dirigen-carcel/20200611163653772307.html> (accessed July 29, 2020).

¹⁰³ Interior Ministry, "Comunicado," May 24, 2020.

¹⁰⁴ Erick Ortega, "El Ministerio Público niega que haya emitido orden de aprehensión contra juez Hugo Huacani," *La Razón*, May 23, 2020, <https://www.la-razon.com/nacional/2020/05/23/el-ministerio-publico-niega-que-haya-emitido-orden-de-aprehension-contra-juez-hugo-huacani/> (accessed July 29, 2020).

¹⁰⁵ "La justicia pone en libertad al juez Huacani," *Radio Fides*, May 23, 2020, <https://www.radiofides.com/es/2020/05/23/juez-huacani-es-liberado-tras-ser-detenido-antes-de-presidir-audiencia-cautelar-del-exministro-navajas/> (accessed July 29, 2020).

¹⁰⁶ Police complaint form that lists Edgar Osmar Uchani and Víctor Hugo Callisaya, lawyers with the Interior Ministry, as complainants and Hugo Huacani as the subject of the complaint, May 22, 2020. "Acta de declaración informativa," Judge Hugo Huacani's statement to police, Case Number LPZ 18184643, May 22, 2020. Issuing decisions that violate the Constitution and the law is a crime under Article 153 of Bolivia's Penal Code and dereliction of duty, under Article 154. Código Penal y Código de Procedimiento Penal, Ministerio de Justicia, June 2010, http://www.unodc.org/res/cld/document/bol/codigo-penal_html/Bolivia_Codigo_Penal.pdf.

¹⁰⁷ "Mandamiento de Detención Domiciliaria," issued by Judge Hugo Huacani Chambi on May 22, 2020; Human Rights Watch communication with Karla Ascarrunz, attorney of Edith Chávez Arauco, through an internet messaging service, May 27, 2020; and online hearing before judge Willy Arias, at which he ordered pretrial detention on June 10, 2020, recording on file.

- On July 3, the interim government announced it would seek charges of malfeasance and issuing decisions that violate the Constitution and the law against Judge **Alan Zárate** for granting house arrest to Nemesia Achacollo, a minister of Rural Development and Land in the Morales administration who was held in pretrial detention for a corruption case for which she was first detained in 2016, while Morales was still in office.¹⁰⁸ The former minister's attorney told the Bolivian press that judge Zárate had simply followed the law as the six-month period of pretrial detention determined at an earlier hearing had expired and neither prosecutors nor the government had requested that it be extended.¹⁰⁹

The interim government is also seeking criminal charges against high-level officials in other branches of government.

- On June 12, the interim government announced it had asked the Attorney General's Office to prosecute the presidents of the Senate, **Eva Copa**, and the Chamber of Deputies, **Sergio Choque**, who are members of MAS, on charges of influence peddling and dereliction of duty for the "delayed and unjustified treatment" of a request to approve a list of promotions to the highest ranks in the armed forces.¹¹⁰

Bolivia's Constitution gives the Senate the authority to "ratify" promotions to general, admiral, vice admiral, and rear admiral.¹¹¹ In February, the interim government sent the list of candidates for promotion to the Senate, but the Senate did not immediately approve it. Senator Copa later explained that she was

¹⁰⁸ Viceministry of Communication, "Gobierno iniciará proceso penal contra el juez Alan Zarate tras cesación de detención preventiva de Nemesia Achacollo," July 3, 2020, <https://www.comunicacion.gob.bo/?q=20200703/29901> (accessed July 29, 2020); Fernando Rojas Moreno, "El Gobierno activará causa penal contra juez que dictó detención domiciliaria para Achacollo," *El Deber*, July 5, 2020, https://eldeber.com.bo/dinero/el-gobierno-activara-causa-penal-contra-juez-que-dicto-detencion-domiciliaria-para-achacollo_188778 (accessed July 29, 2020).

¹⁰⁹ Carlos Quisbert, "Gobierno ni Fiscalía pidieron ampliar prisión de Achacollo," *Página Siete*, July 4, 2020, <https://www.paginasiete.bo/seguridad/2020/7/4/gobierno-ni-fiscalia-pidieron-ampliar-prision-de-achacollo-260328.html> (accessed July 29, 2020).

¹¹⁰ "Defensa presenta denuncia penal contra Copa por 'respuesta tardía' en ascensos militares," *La Razón*, June 12, 2020, <https://www.la-razon.com/nacional/2020/06/12/defensa-presenta-denuncia-penal-contra-copa-por-respuesta-tardia-en-ascensos-militares/> (accessed July 29, 2020); Iván Alejandro Paredes Tamayo, "Fiscalía admite denuncia contra Eva Copa y Sergio Choque por el caso de ascensos militares," *El Deber*, June 23, 2020, https://eldeber.com.bo/pais/fiscalia-admite-denuncia-contra-eva-copa-y-sergio-choque-por-el-caso-de-ascensos-militares_186058 (accessed July 29, 2020).

¹¹¹ Bolivia's Political Constitution, February 7, 2009, https://www.oas.org/dil/esp/Constitucion_Bolivia.pdf, art. 160, para 8.

prioritizing bills related to the Covid-19 pandemic.¹¹² In May, the high command of the armed forces went to the Senate, uninvited, and the commander-in-chief gave the Senate a week to “ratify” the list, warning that otherwise the armed forces would enact the promotions on their own.¹¹³ Two days later, Interior Minister Murillo threatened members of the Plurinational Assembly with prison if they did not approve the promotions.¹¹⁴ On June 19, Senator Copa said she had just received documentation that was missing from the request for promotions.¹¹⁵ On July 15, the interim government issued a decree approving the promotions, without Senate ratification.¹¹⁶

Prosecutors accepted the interim government’s criminal complaint and opened a criminal investigation against Copa and Choque.¹¹⁷ They sent Copa a request for information that cited dereliction of duty, but did not mention influence peddling.¹¹⁸ Bolivia’s Constitution gives no role to the Chamber of Deputies in ratifying promotions to generals, and the interim government did not explain why it was seeking charges against its president.

- After accusing interim Ombudsperson **Nadia Cruz** of “politicking” on behalf of MAS, the interim government filed a criminal complaint against her on July 24 for

¹¹² “Áñez reclama ascensos en FFAA y Policía, mientras que Copa dice que no es prioridad,” *Página Siete*, May 11, 2020, <https://www.paginasiete.bo/sociedad/2020/5/11/anez-reclama-ascensos-en-ffaa-policia-mientras-que-copa-dice-que-no-es-prioridad-255237.html> (accessed July 29, 2020).

¹¹³ Bolivian Senate “ALP rechaza intromisión del Alto Mando Militar que con pedido de acelerar ascensos desconoció a su Capitana General y la cadena de mando,” May 25, 2020, <https://web.senado.gob.bo/prensa/noticias/alp-rechaza-intromisi%C3%B3n-del-alto-mando-militar-que-con-pedido-de-acelerar-ascensos> (accessed July 29, 2020); “FF.AA. piden que Asamblea cumpla con su trabajo,” *Bolivia TV*, May 21, 2020, <https://www.facebook.com/watch/?v=297158121684737> (accessed July 29, 2020); “Fuerzas Armadas de Bolivia dan ultimátum al Senado para aprobar ascensos a generales,” *AFP*, May 21, 2020, <https://www.elcomercio.com/actualidad/fuerzas-armadas-bolivia-senado-ascensos.html> (accessed July 29, 2020).

¹¹⁴ “Ascenso en las FFAA: Murillo advierte que legisladores pueden ser procesados por incumplimiento de deberes,” *El Día*, May 23, 2020, https://www.eldia.com.bo/index.php?cat=1&pla=3&id_articulo=305709 (accessed July 29, 2020).

¹¹⁵ “Copa asegura que ‘recién’ enviaron documentos faltantes para ascenso de Generales,” *Página Siete*, June 19, 2020, <https://www.paginasiete.bo/nacional/2020/6/19/copa-asegura-que-recien-enviaron-documentos-faltantes-para-ascenso-de-generales-258895.html> (accessed July 29, 2020).

¹¹⁶ Bolivian Ministry of Defense, “Ministro de Defensa impuso grados a Generales y Almirantes de las FF.AA.,” July 21, 2020, <https://www.mindef.gob.bo/mindef/node/4097> (accessed July 29, 2020).

¹¹⁷ “Fiscalía admite denuncia contra Eva Copa y Sergio Choque por el caso ascensos en las FFAA,” *Página Siete*, June 23, 2020, <https://www.paginasiete.bo/seguridad/2020/6/23/fiscalia-admite-denuncia-contra-eva-copa-sergio-choque-por-el-caso-ascensos-en-las-ffaa-259225.html> (accessed July 29, 2020).

¹¹⁸ “Requerimiento fiscal a la Asamblea Legislativa Plurinacional de Bolivia,” signed by prosecutor Lupe Zabala Huanca, Case number 20110201002030, July 7, 2020.

“usurping and prolonging” service in a public position.¹¹⁹ The interim government accused her of violating the law by remaining in an interim position for longer than 90 days, which it claimed was the maximum period allowed.¹²⁰

The Plurinational Assembly, where the MAS has a majority, had appointed Cruz in January 2019 as interim director of the ombudsperson’s office, the independent state body tasked with protecting human rights. On July 13, the interim government said it would not respond to any requests for information signed by Cruz, claiming that the Constitutional Tribunal had ruled in 2004 that interim public positions could only be held for 90 days.¹²¹ Cruz responded that the ruling was based on an interpretation of the previous Bolivian Constitution and applied to the acting directors of the Customs Authority, not to the Ombudsperson, who is designated by the Assembly, not the Executive. She also argued that under current law, the 90 day limit applies to career public servants and not to “designated” officials, like the Ombudsperson.¹²² Cruz accused the interim government of trying to end the work of the Ombudsperson’s Office in defense of human rights, and responded with her own criminal complaint against two government officials for obstructing the work of her office.¹²³

¹¹⁹ “Gobierno dice desconocer a Nadia Cruz como Defensora del Pueblo,” *Opinión*, July 13, 2020, <https://www.opinion.com.bo/articulo/pais/gobierno-desconoce-nadia-cruz-como-defensora-pueblo-atendera-solicitudes/20200713175734777387.html> (accessed July 29, 2020). The interim government had previously questioned the independence of the Ombudsperson and accused her of acting out of political motivation. See for instance: “Murillo califica de ‘vergonzosa’ la acción de la Defensora, ésta ve ‘desesperación,’” *La Razón*, April 12, 2020, <https://www.la-razon.com/nacional/2020/04/12/murillo-defensora-desesperacion-bolivia-acusacion/> (accessed July 31, 2020).

¹²⁰ President’s Office, “Ministro de la Presidencia interpone demanda penal contra Nadia Cruz por ejercer ilegalmente como Defensora del Pueblo,” July 24, 2020, <http://www.presidencia.gob.bo/index.php/prensa/noticias/1319-gobierno-informa-que-nadia-cruz-ejerce-ilegalmente-el-cargo-de-defensora-del-pueblo> (accessed August 27, 2020); “Núñez formaliza denuncia contra la Defensora por delitos de prolongación y usurpación de funciones,” *Brújula Digital*, July 24, 2020, <https://brujuladigital.net/404#:~:text=Seg%C3%BAAn%20el%20C%C3%B3digo%20Penal%20Boliviano,de%20dos%20a%20seis%20meses> (accessed July 29, 2020).

¹²¹ The ruling mentioned by the interim government is Constitutional Sentence 0218/2004, February 11, 2004, <https://jurisprudenciaconstitucional.com/resolucion/23845-sentencia-constitucional-0218-2004-r>; President’s Office, “Gobierno informa que Nadia Cruz ejerce ilegalmente el cargo de Defensora del Pueblo,” July 13, 2020, <http://www.presidencia.gob.bo/index.php/prensa/noticias/1319-gobierno-informa-que-nadia-cruz-ejerce-ilegalmente-el-cargo-de-defensora-del-pueblo> (accessed July 29, 2020); and “Gobierno dice desconocer a Nadia Cruz como Defensora del Pueblo,” *Opinión*, July 13, 2020, <https://www.opinion.com.bo/articulo/pais/gobierno-desconoce-nadia-cruz-como-defensora-pueblo-atendera-solicitudes/20200713175734777387.html> (accessed July 29, 2020).

¹²² Bolivian Ombudsperson’s Office, “La Defensoría del Pueblo denuncia nuevos ataques contra la institución y su máxima autoridad,” July 14, 2020, <https://www.defensoria.gob.bo/noticias/la-defensoria-del-pueblo-denuncia-nuevos-ataques-contra-la-institucion-y-su-maxima-autoridad> (accessed July 29, 2020).

¹²³ Bolivian Ombudsperson’s Office, “Defensora del Pueblo presenta denuncia formal contra el ministro Núñez y viceministro Santamaría por desconocer y afectar el trabajo defensorial,” July 24, 2020,

III. The Terrorism Case against Evo Morales

Timeline

Bolivia's interim government has filed several complaints with the Attorney General's Office against Morales, calling for his prosecution on terrorism and other charges. In July 2020, prosecutors formally charged Morales with terrorism in one of the cases, concerning a November 14, 2019 phone call in which they allege the former president told a follower to mobilize supporters to block access to cities.

On November 19, 2019, police arrested Alejandro Yucra, a Morales supporter, for allegedly blocking a road along with other supporters and confiscated his phone.¹²⁴ On the phone, they found what prosecutors say is a video recording of the November 14 call showing Yucra's father, Faustino Yucra Yarwi, talking on speakerphone with another man whom prosecutors say was Morales.¹²⁵ Prosecutors allege that Alejandro Yucra's brother had recorded the call and forwarded it to him.¹²⁶

The next day, Interior Minister Murillo made the recording public at a press conference and claimed that in the call Morales was talking to Faustino Yucra and "committing terrorism."¹²⁷ On November 22, 2019, the prosecutor's office opened a criminal investigation against Morales on suspicion of terrorism and sedition.¹²⁸

<https://www.defensoria.gob.bo/noticias/defensora-del-pueblo-presenta-denuncia-formal-contr-el-ministro-nunyez-y-viceministro-santamaria-por-desconocer-y-afectar-el-trabajo-defensorial> (accessed July 29, 2020).

¹²⁴ Case Number: FIS LPZ1914866, against Juan Evo Morales Ayma, Faustino Yucra Yarhui, and others, La Paz Prosecutor's Office, opened on November 21, 2019 page 308.

¹²⁵ The video recording is available here: "Audio de Evo Morales - Faustino Yucra," [n.d.], video clip, YouTube, <https://www.youtube.com/watch?v=pXbruGHpfUQ> (accessed July 30, 2020).

¹²⁶ Human Rights Watch interview with Heydi Gil, one of the prosecutors working on the Evo Morales case at the time, La Paz, February 5, 2020.

¹²⁷ "Press conference by Interior Minister Arturo Murillo," November 20, 2019, video clip, YouTube, <https://www.youtube.com/watch?v=s4BUUP6Syys> (accessed July 24, 2020).

¹²⁸ Bolivian Attorney General's Office, "Caso Audio: Fiscalía General investiga de oficio a Faustino Yucra y Evo Morales por delitos de terrorismo y sedición," November 22, 2019, <https://www.fiscalia.gob.bo/index.php/noticias/2627-caso-audio-fiscalia-general-investiga-de-oficio-a-faustino-yucra-y-evo-morales-por-delitos-de-terrorismo-y-sedicion> (accessed July 26, 2020).



Frame from the video distributed by the interim government of Bolivia allegedly showing Faustino Yucra Yarwi talking to Evo Morales on November 14, 2019. Screenshot from video <https://www.youtube.com/watch?v=pXbruGHpfUQ>. Accessed on September 8, 2020

In January 2020, the interim government said it had asked Interpol to issue a Red Notice for Morales' arrest, but that Interpol had declined.¹²⁹ On April 8, police detained Faustino Yucra. At the time of writing he remained in pretrial detention, charged with "belonging to a criminal organization," "incitement to commit a crime," and "illegal manufacture of explosives" for allegedly organizing a roadblock and making Molotov cocktails.¹³⁰

¹²⁹ Beatriz Layme, "Murillo pide 'sello rojo' para capturar a Morales y éste dice que no irá a Chile," *Página Siete*, January 9, 2020, <https://www.paginasiete.bo/nacional/2020/1/9/murillo-pide-sello-rojo-para-capturar-morales-este-dice-que-no-ira-chile-242913.html> (accessed July 26, 2020); "Interpol rechazó activar el sello rojo contra Evo Morales," *La Opinión*, January 30, 2020, <https://www.opinion.com.bo/articulo/escenario-politico1/interpol-rechazo-activar-sello-rojo-evo-morales/20200130161231748578.html> (accessed July 26, 2020).

¹³⁰ Bolivian Attorney General's Office, "Faustino Y.Y. es enviado con detención preventiva a Palmasola," April 9, 2020, <https://www.fiscalia.gob.bo/index.php/noticias/3221-faustino-y-y-es-enviando-con-detencion-preventiva-a-palmasola> (accessed July 26, 2020).

On July 6, prosecutors charged Morales with terrorism and financing of terrorism and requested his pretrial detention.¹³¹ They did not file sedition charges against him. Terrorism offenses are punishable with up to 20 years in prison each.¹³²

Meanwhile, the interim government has been treating Morales as a convicted criminal. At a press conference in January, Minister Murillo showed a pair of handcuffs and said he was waiting for Morales to return to Bolivia so that he could take him to prison.¹³³ In February, Minister Murillo told Human Rights Watch, “one does not need more than that audio to send him [Morales] to prison for 500 years.”¹³⁴ The minister has also publicly called Morales “a terrorist.”¹³⁵

Morales is under criminal investigation in several other cases, including one for alleged genocide, terrorism, sedition, and other crimes for his alleged role in roadblocks that, according to the interim government, stopped medical oxygen from reaching hospitals to treat Covid-19 patients in August 2020.¹³⁶ In August, the interim government filed a criminal complaint calling for the prosecution of Morales for statutory rape and human trafficking, alleging that he sexually assaulted a girl under the age of 18.¹³⁷ The alleged victim, who is now 19, subsequently wrote a letter to Bolivia’s Ombudsperson in which she said police had subjected her and her family to illegal detention, threats, bullying, and

¹³¹ Bolivian Attorney General’s Office, “Fiscalía imputa a expresidente Morales por el caso audio,” July 6, 2020, <https://www.fiscalia.gob.bo/index.php/3652-fiscalia-imputa-a-expresidente-morales-por-el-caso-audio> (accessed July 30, 2020).

¹³² Law Number 262, July 30, 2012, <https://www.bcb.gob.bo/webdocs/normativa/2012%20-%20LEY%200262%20-%20R%C3%A9gimen%20Congelamiento%20Fondos%20Vinculados%20Terrorismo.pdf>, art. 133 and 133 bis.

¹³³ “Bolivia: El Gobierno interino se centra en encontrar corrupción durante la era Evo Morales,” *France 24*, January 9, 2020, <https://www.france24.com/es/20200109-bolivia-el-gobierno-interino-se-centra-en-encontrar-corrupci%C3%B3n-durante-la-era-evo-morales> (accessed July 30, 2020).

¹³⁴ Human Rights Watch interview with Interior Minister Arturo Murillo, La Paz, February 4, 2020.

¹³⁵ “Murillo dice que Evo miente porque su Libreta Militar no fue secuestrada,” *Erbo*, February 5, 2020, <https://erbol.com.bo/seguridad/murillo-dice-que-evo-miente-porque-su-libreta-militar-no-fue-secuestrada> (accessed July 26, 2020).

¹³⁶ “Fiscalía admite denuncia contra Evo Morales por genocidio, terrorismo y atentado a la salud pública,” *Deutsche Welle*, August 10, 2020, <https://www.dw.com/es/fiscal%ADa-admite-denuncia-contra-evo-morales-por-genocidio-terrorismo-y-atentado-a-la-salud-p%C3%ABlica/a-54520726> (accessed September 4, 2020).

¹³⁷ Paola Flores, “Gobierno de Bolivia denuncia a Evo Morales por estupro,” *AP*, August 20, 2020, [https://apnews.com/1f2d651079d549eb2279b24166aab93c#:~:text=LA%20PAZ%2C%20Bolivia%20\(AP\),trata%20y%20tr%C3%A1fico%20de%20personas](https://apnews.com/1f2d651079d549eb2279b24166aab93c#:~:text=LA%20PAZ%2C%20Bolivia%20(AP),trata%20y%20tr%C3%A1fico%20de%20personas). (accessed September 4, 2020).

physical and psychological mistreatment.¹³⁸ “They told me that if I did not say what they told me to say, they would prosecute me for sedition and terrorism,” she wrote.

The only charges announced against Morales so far are those related to the November 14, 2019 phone call.

Terrorism under Bolivian and International Law

Article 133 of Bolivia’s penal code, adopted in 2012 while Morales was president, defines terrorism as “crimes against public safety, public health and the safety of means of transportation” committed with the aim of “intimidating or keeping the population, or a segment of it, in a state of alarm or collective panic, or forcing the national government, a foreign government or an international organization to do something or refrain from doing something; subverting the constitutional order or deposing the constitutionally-elected government.”¹³⁹

The definition is overly broad on multiple fronts. First, the types of acts that can constitute terrorism are very broadly defined in Bolivia’s penal code. For instance, crimes against public health include “any act that, one way or another, affects the health of the population”;¹⁴⁰ and crimes against the safety of means of transportation include any act to “impede, alter or endanger the safety or regularity of public transportation.”¹⁴¹ That means the terrorism definition could encompass peaceful protests or other forms of freedom of expression or association that are protected under international human rights law.¹⁴² Overbroad definitions of terrorism carry the potential for “deliberate misuse of the term—including as a response to claims and social movements of indigenous peoples—as well as

¹³⁸ Letter to Ombudsperson Nadia Cruz, August 21, 2020.

¹³⁹ Law Number 262, July 30, 2012,

<https://www.bcb.gob.bo/webdocs/normativa/2012%20-%20LEY%200262%20-%20R%C3%A9gimen%20Congelamiento%20deFondos%20Vinculados%20Terrorismo.pdf>.

¹⁴⁰ Bolivia’s Penal Code, Law Number 1786, March 10, 1997, http://www.unodc.org/res/cld/document/bol/codigo-penal_html/Bolivia_Codigo_Penal.pdf, art. 216.

¹⁴¹ Bolivia’s Penal Code, Law Number 1786, March 10, 1997, http://www.unodc.org/res/cld/document/bol/codigo-penal_html/Bolivia_Codigo_Penal.pdf, art. 213.

¹⁴² The Special Rapporteur for Freedom of Expression of the Inter-American Commission for Human Rights has warned that “the criminalization of the right to protest is often the result of applying criminal definitions that, because of their vagueness or ambiguity, violate the principle of legality and inter-American standards.” He identified a set of criminal definitions used to criminalize protest in Latin American countries, including obstruction of public roads, disturbance of public peace or public order, sedition, and terrorism. Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, “Protest and human rights standards,” OEA/Ser.L/V/II CIDH/RELE/INF.22/19, September 2019, <http://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> (accessed August 27, 2020), paras. 195 and 196.

unintended human rights abuses,” the former UN special rapporteur on countering terrorism has noted.¹⁴³

Second, the definition puts an extreme label, “terrorism,” on acts which may be criminal but that fall short of any reasonable definition of terrorism. It does not exclude, for example, acts that do not cause death or serious physical harm to members of the population and are not intended to do so. As a result, it opens the door to punishment that is disproportionate to the conduct at issue and inconsistent with the basic human right to liberty, the prohibition on cruel, inhuman, and degrading treatment or punishment, and the right of detainees to be treated with respect for their inherent dignity.¹⁴⁴

¹⁴³ UN Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. Ten areas of best practices in countering terrorism” A/HRC/16/51, December 22, 2010, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-51.pdf> (accessed July 24, 2020), para. 26.

¹⁴⁴ Under international human rights standards, punishment should be proportionate to the conduct and the culpability of the individual, and it should be no greater than necessary to meet the purposes of punishment—retribution, deterrence, incapacitation, and rehabilitation. These principles reflect three basic human rights precepts: the inherent dignity of the individual; the right to be free of cruel, inhuman or degrading punishment; and the right to liberty. These rights are crystalized in the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both of which Bolivia has ratified. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Bolivia on August 12, 1982, Preamble, arts. 9, 10; UN Human Rights Committee, “The Nature of the General Legal Obligation Imposed on State Parties to the Covenant,” General Comment No. 31 (Eightieth session, 2004), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. CCPR/C/21/Rev.1/Add. 1326 (2004), para. 6; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Bolivia on April 12, 1999. Draconian prison terms may constitute arbitrary deprivations of liberty “if the manner in which the detainees are treated does not relate to the purpose for which they are ostensibly being detained.” UN Human Rights Committee, General Comment No. 35, Liberty and Security of the Person, U.N. Doc CCPR/C/GC/35(2014), art. 9, para 14. The principle of proportionality is also well established in Inter-American human rights law. Article 7(3) of the American Convention on Human Rights (ACHR) (“Pact of San Jose, Costa Rica”), O.A.S. Treaty Series No. 36, entered into force July 18, 1978, ratified by Bolivia on June 20, 1979. The Inter-American Court on Human Rights has established that “no one shall be subject to arrest or imprisonment for reasons and by methods that, although classified as legal, may be considered incompatible with respect for the fundamental rights of the individual because, among other factors, they are unreasonable, unpredictable, or disproportionate.” Inter-American Court on Human Rights, Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador, Preliminary objections, merits, reparations and costs, Judgment of November 21, 2007, Inter-Am. Ct. H.R. (Ser. C) No. 170 (2007), https://www.corteidh.or.cr/docs/casos/articulos/seriec_170_ing.pdf (accessed August 27, 2020), para. 90.

While there is no universally accepted definition of terrorism, the former UN special rapporteur on countering terrorism has set forth a model definition of terrorism that is narrow in scope to reduce the potential for deliberate or unintentional misuse:¹⁴⁵

Terrorism “is an action or attempted action where”

1. The action:

- (a) Constituted the intentional taking of hostages; or
 - (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or
 - (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it;
- and

2. The action is done or attempted with the intention of:

- (a) Provoking a state of terror in the general public or a segment of it; or
 - (b) Compelling a Government or international organization to do or abstain from doing something;
- and

3 The action corresponds to:

- (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or
- (b) All elements of a serious crime defined by national law.

¹⁴⁵ UN Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. Ten areas of best practices in countering terrorism” A/HRC/16/51, December 22, 2010, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-51.pdf> (accessed July 24, 2020), paras. 26-32.

The Evidence Against Evo Morales

The recording of the November 14 call is the key piece of evidence in the case against Morales, Heydi Gil told Human Rights Watch in February, when she was one of the prosecutors working on the case.¹⁴⁶

In the recording, the man alleged to be Morales instructs an associate to mobilize protesters to block roads and says: “Brother, don’t let the food enter cities. Let’s block, really cordon them in.”¹⁴⁷ Later in the conversation, he adds: “Fight, fight, fight, okay?” “We are going to wage a hard battle against the dictatorship,” he continues, in reference to the government headed by interim president Jeanine Áñez.

It is not unusual for protesters in Bolivia to refer to their demonstrations as “fights” and “battles.”

Forensic experts from the Colombian Attorney General’s Office examined the recording at the request of Bolivian prosecutors and concluded that the voice “very likely” belonged to Morales, the Bolivian Prosecutor’s Office said in February.¹⁴⁸ Morales has said the audio was “altered” but has neither admitted nor denied that the voice was his.¹⁴⁹ Even if it was indeed Morales speaking on the call, the content of the conversation does not show any involvement in violent acts, including any that would be appropriately categorized as terrorism.

The reference on the call to blocking access to cities echoes a speech Morales had made while still president.¹⁵⁰ In a televised appearance on October 26, 2019, Morales threatened to mobilize his supporters to block access to cities if strikes against him continued.

¹⁴⁶ Human Rights Watch interview with Heydi Gil, at the time one of the prosecutors working on the Evo Morales case, La Paz, February 5, 2020.

¹⁴⁷ The video recording, as released by the interim government, is available here: “Audio de Evo Morales - Faustino Yucra,” [n.d.], video clip, YouTube, <https://www.youtube.com/watch?v=pXbruGHpfUQ> (accessed August 10, 2020).

¹⁴⁸ Bolivian Attorney General’s Office, “Resultado de pericia del audio señala alta probabilidad de identificación de la voz de Evo Morales,” February 27, 2020, <https://www.fiscalia.gob.bo/index.php/3013-resultado-de-pericia-del-audio-senala-alta-probabilidad-de-identificacion-de-la-voz-de-evo-morales> (accessed July 24, 2020).

¹⁴⁹ Tweet by Evo Morales, July 6, 2020, <https://twitter.com/evoespueblo/status/1280268427828101122> (accessed July 24, 2020).

¹⁵⁰ During a speech on the October 26, 2019, Morales said: “If they want a strike, no problem, we are going to respond cordoning off cities to make them respect [the election results] and see if they can hold on.” “Presidente Evo Morales advierte con cercar las ciudades,” *Bolivisión*, October 27, 2019, <https://www.youtube.com/watch?v=6DCpagNQX1k> (accessed July 26, 2020); Vivian Sequera and Mitra Taj, “Morales amenaza con convocar a sus bases y cercar ciudades de

Prosecutors have obtained hundreds of so-called “pen registers,” records of calls and text messages, including metadata such as time and date of the communication, sent from phone numbers used by Morales.¹⁵¹ But the case file did not include information on the content of those communications. Gil told Human Rights Watch that prosecutors were attempting to prove that acts of violence allegedly by Morales supporters occurred after Morales spoke with specific regional leaders. But whatever the prosecutors may have been hoping to find, the evidence Human Rights Watch reviewed—after prosecutors had already sought Morales’ arrest—did not support such an allegation.

Gil said that she and her colleagues were also looking for evidence that former members of the Morales government financed the protests with government funds.¹⁵² Such actions, if proven, could point to embezzlement—which is not among the current charges against Morales. The case file does not include evidence that Morales or his associates channeled funds into organizations for the purpose of carrying out violent actions that it would be appropriate to categorize as terrorism.

Bolivia,” *Reuters*, October 26, 2019, https://lta.reuters.com/articulo/elecciones-bolivia-idLTAKBN1X5oFQ-OUULT_ (accessed July 26, 2020).

¹⁵¹ Case Number: FIS LPZ1914866, against Juan Evo Morales Ayma, Faustino Yucra Yarhui, and others, La Paz Prosecutor’s Office, opened on November 21, 2019.

¹⁵² Human Rights Watch interview with Heydi Gil, at the time one of the prosecutors working on the Evo Morales case, La Paz, February 5, 2020.

IV. Weak Judicial Institutions Enabling Abuse

Evo Morales' Reforms Undermined Judicial Independence

The Bolivian justice system has been plagued by corruption, delays, and political interference for years. As president from January 22, 2006 to November 10, 2019, Morales repeatedly rejected the idea that judicial independence is a key component of democracy.¹⁵³ In October 2018, for example, he said that judicial independence was a “doctrine of North America,” meaning the United States, and of “capitalism.”¹⁵⁴

His administration weakened judicial independence through a range of reforms to the judiciary and other actions. These included the following:

- Under the 2009 Bolivian Constitution, high court judges and members of the Magistrates Council, the body that appoints and dismisses judges, are elected by voters from lists created by the Plurinational Assembly.¹⁵⁵ The Assembly, where MAS had a majority in both houses during most of his time in government, repeatedly packed the lists they created with people linked to the government. In 2017, for instance, six of the 10 candidates for the three-member Magistrates Council had worked for the Morales administration. Of the six, two were elected to the council, including its president.¹⁵⁶
- In 2010, Morales signed a law providing that judges appointed before the 2009 Constitution would retroactively be deemed temporary, although at the time they were tenured judges.¹⁵⁷

¹⁵³ “Bolivia: Dozens of Judges Arbitrarily Dismissed,” Human Rights Watch news release, April 29, 2019, <https://www.hrw.org/news/2019/04/29/bolivia-dozens-judges-arbitrarily-dismissed>; “Discurso presidencial,” Number 1698, October 24, 2018, https://issuu.com/cambio2020/docs/discurso_presidencial_24-10-18 (accessed July 29, 2020).

¹⁵⁴ Ibid.

¹⁵⁵ Bolivia’s Political Constitution, February 7, 2009, https://www.oas.org/dil/esp/Constitucion_Bolivia.pdf, arts. 158 (5), 182 (I), 188 (I), 194 (I), 198.

¹⁵⁶ Gonzalo Alcón Aliaga, who was the commander of the Navy from December 2013 through December 2014, was elected president of the Council. See his resume here: <https://www.oep.org.bo/elecciones-judiciales-2017/gonzalo-alcon-aliaga/> (accessed July 31, 2020); “Bolivia: Dozens of Judges Arbitrarily Dismissed,” Human Rights Watch news release, April 29, 2019, <https://www.hrw.org/news/2019/04/29/bolivia-dozens-judges-arbitrarily-dismissed>.

¹⁵⁷ Law Number 3, February 13, 2010, Art. 3(I), http://www.oas.org/juridico/PDFs/mesicic4_blv_ley003.pdf. The Human Rights Committee, the body charged with interpreting the ICCPR, has held that the right to an independent and impartial tribunal under ICCPR Art. 14(1) is “absolute” and that independence refers not only to the procedure for the appointment of judges, but also to “guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office..., 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.” UN Human Rights

- In 2017, Morales signed a law creating a commission to reform the judiciary.¹⁵⁸ Five of the commission's nine members were either Morales supporters in the Assembly or government officials he had appointed. The commission had broad powers, including "controlling" the appointment of new judges and taking "other actions necessary" to reform the judiciary.¹⁵⁹
- In 2017, the Magistrates Council ruled that it had the power to summarily remove all judges appointed before the enactment of the 2009 Constitution, as the 2010 law had retroactively established that those judges' posts were temporary. In May of that year, the council summarily removed 88 judges.¹⁶⁰ It removed others in 2019.¹⁶¹ The dismissed judges received a memorandum "thanking" them for their work and telling them to leave their offices that same day. The memorandums did not indicate the cause of their dismissal, nor were the judges given an opportunity to challenge their dismissals before they were fired.¹⁶²

Bolivia's judicial system continues to suffer from the changes enacted during Morales' administration. A 2011 law allowed the Magistrates Council to appoint "provisional" judges until a school to train potential judges was established.¹⁶³ About 80 percent of the country's judges are still "provisional," creating the risk that they will issue decisions to please authorities and remain in their positions.¹⁶⁴

The Attorney General's Office was similarly vulnerable to political pressure during the Morales administration.¹⁶⁵ Fundación Construir, a civil society organization working on

Committee (HRC), General comment no. 32, Right to equality before courts and tribunals and to fair trial, CCPR/C/GC/32 (2007), <https://www.refworld.org/docid/478b2b2f2.html> (accessed August 31, 2020), art. 14, para. 19.

¹⁵⁸ Law Number 898, January 26, 2017, <https://www.lexivox.org/norms/BO-L-N898.html>, art. 2..

¹⁵⁹ Ibid., art. 3.

¹⁶⁰ "Bolivia: Dozens of Judges Arbitrarily Dismissed," Human Rights Watch news release, April 29, 2019, <https://www.hrw.org/news/2019/04/29/bolivia-dozens-judges-arbitrarily-dismissed>.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Law Number 212, December 23, 2011, <https://www.lexivox.org/norms/BO-L-N212.html>.

¹⁶⁴ Human Rights Watch telephone interview with Soraya Santiago Salame, Executive Director of the Constitutional Tribune Foundation, July 24, 2020; Fundación Construir, "Informe sobre el estado de la Justicia en Bolivia 2018," April 2019, https://www.fundacionconstruir.org/wp-content/uploads/2019/07/informe_estado_justicia_bolivia_2018.pdf, (accessed September 1, 2020), p.93. In a hearing before the Inter-American Commission on Human Rights in 2018, Bolivian officials said that only 163 of the country's 1,200 judges—roughly 13 percent—had tenure or permanent positions. "Bolivia: Independencia judicial y operadores de justicia," Inter-American Commission on Human Rights hearing, October 2, 2018, https://www.youtube.com/watch?v=5Gp3Rz45UN8&index=19&list=PL5QlapyOGhXtxcMOpg35GCazM7dJo_QVh&t=os (accessed July 31, 2020).

¹⁶⁵ Human Rights Watch telephone interview with Soraya Santiago Salame, Executive Director of the Constitutional Tribune Foundation, July 30, 2020.

justice issues, estimates that about 90 percent of prosecutors are “provisional” and subject to dismissal without clear criteria.¹⁶⁶ The Attorney General’s Office has not published data on the subject.

Cases of Political Persecution during the Evo Morales Administration

Many of Morales’ political rivals and critics were prosecuted or investigated on charges that appeared to be politically motivated. For instance:

- In March 2006, the Morales government initiated criminal prosecution of former president **Eduardo Rodríguez Veltzé** for “treason” during his term in office, for allegedly having sent obsolete Chinese-made missiles to the United States for their destruction.¹⁶⁷ Rodríguez Veltzé denied that he had authorized their hand-over, and the Plurinational Assembly, which had to decide if the case could move forward because Rodríguez Veltzé was a former president, rejected his prosecution.¹⁶⁸
- In April 2009, in what became known in Bolivia as “**the terrorism case**,” police killed two Hungarians (one of Bolivian birth) and an Irishman whom the government alleged were mercenaries involved in a plot to kill Morales.¹⁶⁹ Reports by an Irish government pathologist and an independent forensic consultant suggested that at least two of the three victims may have been extrajudicially executed. Prosecutors charged 39 people in the alleged plot to kill Morales, including leading members of the opposition in Santa Cruz. A video leaked in 2011 showed a person allegedly linked to the Morales government paying the key

¹⁶⁶ Ibid; “Informe sobre estado de la Justicia concluye que no existe independencia judicial en Bolivia,” *Opinión*, May 22, 2019, <https://www.opinion.com.bo/articulo/el-pais/informe-estado-justicia-concluye-existe-independencia-judicial-bolivia/20190522021600650146.amp.html> (accessed August 13, 2020); Fundación Construir, “Informe sobre el Estado de Situación de la Justicia en Bolivia 2019,” September 2020.

¹⁶⁷ “Bolivia. El Gobierno critica a la oposición por bloquear la celebración del juicio contra el ex presidente Rodríguez,” *Europa Press*, August 16, 2006, <https://www.notimerica.com/politica/noticia-bolivia-gobierno-critica-oposicion-bloquear-celebracion-juicio-contr-ex-presidente-rodriguez-20060816171221.html> (accessed July 29, 2020).

¹⁶⁸ “Exministro de Defensa será el único enjuiciado por los misiles chinos,” *Opinión*, January 18, 2020, <https://www.opinion.com.bo/articulo/el-pais/exministro-defensa-sera-unico-enjuiciado-misiles-chinos/20120118002900400482.html>; “Rodríguez: No autorice salida de los misiles,” *Correo del Sur*, March 16, 2017, https://correodelsur.com/seguridad/20170316_rodriguez-no-autorice-salida-de-los-misiles.html (accessed July 29, 2020); “Misiles Chinos: Fiscalía pide 30 años para acusados,” *Los Tiempos*, July 13, 2017, <https://www.lostiempos.com/actualidad/nacional/20170713/misiles-chinos-fiscalia-pide-30-anos-acusados> (accessed July 29, 2020).

¹⁶⁹ Human Rights Watch, *World Report 2015*, (New York: Human Rights Watch, 2015), Bolivia chapter, <https://www.hrw.org/world-report/2015/country-chapters/bolivia>; “Caso Terrorismo: Absuelven a acusados; estos anuncian juicio,” *Correo del Sur*, February 5, 2020, https://correodelsur.com/seguridad/20200205_caso-terrorismo-absuelven-a-acusados-estos-anuncian-juicio.html (accessed July 29, 2020).

- witness who had implicated Morales' political opponents in the alleged plot to kill him more than USD30,000 to leave the country.¹⁷⁰ In 2014, the prosecutor in the case fled to Brazil and, from there, said the evidence in the case had been planted and that the Morales government had forced him to incriminate innocent people.¹⁷¹ In February 2020, the Attorney General's Office withdrew charges against the 39 accused.¹⁷²
- In August 2012, the government filed criminal complaints against the directors of news outlets *Agencia de Noticias Fides* (ANF), *Página Siete*, and *El Diario*, accusing them of racism.¹⁷³ Morales said in a speech that in the eastern part of the country "people go hungry because they are lazy."¹⁷⁴ The news agency ANF titled its story: "Evo says that hunger in the East is caused by laziness."¹⁷⁵ The government claimed that that headline and similar ones used by the other two outlets distorted Morales' words. The outlets's directors saw the case as an attempt to intimidate them, the then director of *Página Siete* told Human Rights Watch.¹⁷⁶ Prosecutors held six hearings in which they questioned the editors and executives of the three media outlets, but they never announced charges or the official closure of the case, the director said.
 - From 2015 through 2018, the Attorney General's Office used an anti-corruption law passed in 2010 to charge opposition leaders **Jorge "Tuto" Quiroga** and **Carlos Mesa**, both former presidents of Bolivia, and **Samuel Doria Medina**, a former minister, with "anti-economic conduct" for decisions taken during their time in

¹⁷⁰ "Muere Núñez del Prado, pieza clave en el caso terrorismo," *Página Siete*, April 2, 2014, <https://www.paginasiete.bo/nacional/2014/4/3/muere-nunez-prado-pieza-clave-caso-terrorismo-17908.html> (accessed August 19, 2020); "Caso Róza: Video revela pago de 31. 500 dólares a 'El Viejo' para que fugue," *Eju TV*, January 14, 2011, <https://eju.tv/2011/01/caso-rza-video-revela-pago-de-31-500-bs-a-el-viejo-para-que-fugue/> (accessed August 19, 2020).

¹⁷¹ Mabel Azcui, "El refugio en Brasil de un exfiscal disgusta al oficialismo boliviano," *El País*, March 14, 2014, https://elpais.com/internacional/2014/03/14/actualidad/1394826839_431279.html (accessed July 29, 2020).

¹⁷² "Caso Terrorismo: Absuelven a acusados; estos anuncian juicio," *Correo del Sur*, February 5, 2020, https://correodelsur.com/seguridad/20200205_caso-terrorismo-absuelven-a-acusados-estos-anuncian-juicio.html (accessed July 29, 2020).

¹⁷³ "Bolivia: polémica demanda a medios por 'racismo'," *Voice of America*, August 28, 2012, <https://www.voanoticias.com/a/bolivia-evo-morales-demanda-racismo-flojos-medios-anf-diario/1497486.html> (accessed July 29, 2020).

¹⁷⁴ "Pdte. Evo Morales – En el oriente por 'flojos podemos hambrear'," video clip, YouTube, August 28, 2012, https://www.youtube.com/watch?v=a5bvEg_fSCE (accessed July 29, 2020).

¹⁷⁵ "Evo dice que si se hambrea en el oriente es por 'flojera'," *Agencia de Noticias Fides*, August 15, 2012, <https://www.noticiasfides.com/nacional/politica/evo-dice-que-si-se-hambrea-en-el-oriente-es-por-flojera--321136-321123> (accessed July 29, 2020).

¹⁷⁶ Human Rights Watch telephone interview with Raúl Peñaranda, March 12, 2020.

office prior to 2010.¹⁷⁷ International human rights law prohibits retroactive application of criminal law unless doing so is beneficial to the defendant.¹⁷⁸

- In May 2016, lawyer **Eduardo León** was detained and prosecuted for “human trafficking” after he represented Gabriela Zapata Montañó, a former lover of Morales who claimed she had a son with him.¹⁷⁹ Bolivian authorities said that Zapata and León had paid a boy to say he was Morales’ son. According to the Ombudsperson’s Office, León was held for seven days without seeing a judge—a violation of Bolivian law, which requires that detainees be brought to a judge within 24 hours of arrest.¹⁸⁰ Later that month, government authorities summarily withdrew León’s license to practice law, alleging he had forged his military service certificate in 1999. (Such a certificate was required to receive a university degree at the time.)¹⁸¹

¹⁷⁷ Human Rights Watch, *World Report* 2019, (New York: Human Rights Watch, 2010), Bolivia chapter, <https://www.hrw.org/world-report/2019/country-chapters/bolivia>.

¹⁷⁸ ICCPR, Art. 15(1); American Convention on Human Rights, Art 9.

¹⁷⁹ Human Rights Watch, *World Report* 2017, (New York: Human Rights Watch, 2017), Bolivia chapter, <https://www.hrw.org/world-report/2017/country-chapters/bolivia>.

¹⁸⁰ Bolivian Ombudsperson’s Office “Informe defensorial sobre violaciones al debido proceso,” June 6, 2016, <https://www.slideshare.net/benavifer/informe-de-la-defensora-del-pueblo-del-caso-len> (accessed July 29, 2020).

¹⁸¹ Human Rights Watch, *World Report* 2017, (New York: Human Rights Watch, 2017), Bolivia chapter, <https://www.hrw.org/world-report/2017/country-chapters/bolivia>.

Recommendations

To the Interim Government

- Cease all politically-motivated persecution of people with links to the Morales administration or Morales supporters, and respect prosecutorial and judicial independence.
- Cease the use of “cyberpatrolling” operations to identify people who criticize the interim government.
- Cease seeking criminal charges against judges for issuing decisions the interim government does not agree with.

To the Interim Government and the Next Government

- Overhaul Bolivia’s justice system to ensure its independence, starting by opening a participatory public process that actively seeks and includes input from all political parties, members of civil society and groups working on justice sector reform, and relevant international experts. The goal should be to ensure judicial independence, impartiality, and integrity.
- Ensure that prison conditions comply with Bolivia’s obligations under international law and with the country’s own laws, including the obligation to ensure adequate medical care for detainees.

To the Attorney General’s Office

- Drop terrorism charges against former president Evo Morales.
- Carry out an independent, thorough analysis of evidence and due process in all other cases involving former members of the Morales administration and supporters, and drop charges where the evidence does not support them.
- Cease using the penal code definition of terrorism in ways that criminalize or chill free speech and peaceful protests, or to encompass conduct that is not genuinely terrorist in nature, such as actions that do not involve the intent to deliberately kill or cause serious physical harm to members of the general population with the aim of forcing a government to act in a particular manner.

- Stop unnecessary and excessive use of pretrial detention, and comply with the law regarding categories of people who may not be placed in pre-trial detention. Prosecutors should request pretrial detention only for people accused of serious crimes who are a flight risk or when there is risk that they can interfere with the investigation, in accordance with international human rights standards and Bolivian law. Prosecutors should review the cases of Morales supporters or people with links to his administration who are in pretrial detention and seriously consider requesting their release or, if applicable, transferring them to house arrest, particularly given the grave threat that Covid-19 represents for those held in Bolivia's extremely overcrowded prisons and jails.
- Initiate a transparent process, free from political pressure, to select permanent prosecutors on the basis of clear criteria. "Temporary" prosecutors who apply should not be rejected because they were appointed during the Morales administration. Their applications should be assessed based on a genuinely independent evaluation of their qualifications, competence, and professional record.

To the Magistrates Council

- Initiate a transparent process, free from political pressure, to select permanent judges on the basis of clear criteria. "Temporary" judges who apply should not be rejected because they were appointed during the Morales administration. Their applications should be assessed based on a genuinely independent evaluation of their qualifications, competence, and professional record.

To the Plurinational Legislative Assembly

- Narrow the overbroad penal code definition of terrorism so that it cannot be used to deliberately or unintentionally criminalize or restrict the internationally protected rights to free speech, association, and assembly, including the right to peaceful protests, or to encompass acts that are not genuinely terrorist in nature, such as those that do not involve the intent to deliberately kill or cause serious physical harm to members of the general population with the aim of forcing a government to act in a particular manner.

To the Interim Government, the Next Government, and the Inter-American Commission on Human Rights (IACHR)

- Establish the Interdisciplinary Group of Independent Experts, as agreed upon by the interim government and the IACHR in December 2019 and March 2020, to investigate acts of violence and violations of human rights in the country between September 1 and December 31, 2019.

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JUSTICE AS A WEAPON

Political Persecution in Bolivia

Political interference in the justice system has been a longstanding problem in Bolivia, including during the almost 14 years Evo Morales served as president. Jeanine Áñez, who became interim president after Morales resigned in November 2019, had a chance to break with the past and ensure judicial independence. Instead, her government has publicly pressured prosecutors and judges to act to further its interests, leading to criminal investigations of more than 100 people linked to the Morales government or Morales supporters for alleged sedition and/or terrorism. Scores more are under investigation for allegedly belonging to a criminal organization, dereliction of duty, and other offenses. Many cases appear to be politically motivated.

Justice as a Weapon examines 21 of these criminal investigations and prosecutions. We found instances of baseless charges, due process violations, infringement on freedom of expression, and excessive and arbitrary use of pretrial detention.

Evo Morales is among those charged with terrorism. After examining the evidence against him, we concluded that the charges are based on an overbroad terrorism definition and that seeking a sentence of up to 20 years in prison is disproportionate to the conduct alleged by prosecutors. The charges appear to be a political attack on Morales.

This report also documents cases of arbitrary prosecutions during Morales's presidency. It finds that the Morales administration weakened the independence of the judiciary, creating a context that allowed the Morales administration then, and the Áñez administration now, to misuse the justice system against political opponents.

To uphold the rule of law and respect the basic rights of all Bolivians, regardless of their political opinions, prosecutors should drop all politically-motivated charges. Bolivia also should overhaul its justice system, prioritizing reforms that protect judges' and prosecutors' independence.



(above) Patricia Hermosa, former Bolivian President Evo Morales's attorney and former chief of staff, in police custody on January 31, 2020.
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(above) Former President of Bolivia Evo Morales attends a press conference at the journalists' club in Mexico City, Nov. 27, 2019.
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(front cover) Police present Mauricio Jara, who is facing criminal charges for sharing WhatsApp messages criticizing the interim government and in support of former president Evo Morales, at a press conference on April 22, 2020.
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