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The Language of International Human Rights Law as a Foundation for the Prevention, and Peaceful Resolution of Ethnic, and Political Conflicts in Bolivia

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THE LANGUAGE OF INTERNATIONAL HUMAN RIGHTS LAW AS A FOUNDATION FOR THE PREVENTION, AND PEACEFUL RESOLUTION OF ETHNIC, AND POLITICAL CONFLICTS IN BOLIVIA

Yuri Mantilla*

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I. INTRODUCTION

Since the Spanish conquest of the New World, the systematic dehumanization of indigenous communities has been part of a culture of economic exploitation and ethnic discrimination against indigenous peoples such as the Aymara, Quechua, and Guarani.¹ In Bolivia, indigenous people successfully resisted the efforts to undermine their cultural identities. As a result, Bolivia is one of the most indigenous countries in the world and its indigenous cultures are one of its greatest assets. Despite this reality, indigenous people have been marginalized and discriminated against in a country that has embraced ethnic stereotypes regarding the supposed “superiority” of people of Spanish descent.² This has created conditions of intense ethnic and political conflicts which have been resolved both by peaceful means and by extreme forms of violence.³

Bolivia has faced increased political and ethnic conflicts since the resignation of Bolivia’s first indigenous president, Evo Morales Ayma.⁴ The Bolivian crisis is an example of the fragility of Latin American political systems and leadership.⁵ As a result of the mediation efforts of several entities—including the United Nations; the European Union; and the Catholic Church—a peaceful resolution of the Bolivian conflict was reached by an agreement of all parties to organize new presidential elections.⁶

¹ Björn-Sören Gigler, *Poverty, inequality and human development of indigenous peoples in Bolivia* 3, 37–38 (Georgetown University Center for Latin Am. Studies, Working Paper No. 17, 2009), <http://pdpa.georgetown.edu/CLAS%20RESEARCH/Working%20Papers/WP17.pdf>.

² *Id.* at 3, 17–18.

³ Carlos Valdez, *Bolivia’s crisis exposes old racial, geographic divides*, AP NEWS (Nov. 17, 2019), <https://apnews.com/33ec1f034d6148579542eb2a427e96fb>.

⁴ *Id.*

⁵ David A. Wemer, *Bolivia reflects the deep polarization crisis in Latin America*, ATLANTIC COUNCIL (Nov. 14, 2019), <https://www.atlantic-council.org/blogs/new-atlanticist/bolivia-reflects-the-deep-polarization-crisis-in-latin-america/>.

⁶ Michael Stott, *Bolivia deal for new elections offers chance of peace*, FIN. TIMES (Nov. 25, 2019), <https://www.ft.com/content/6e9d2272-0fa5-11ea-a225-db2f231cfeae>; see Hasan Lopez, *Bolivia: UN underlines support for ‘credible, transparent and inclusive’ election*, UN NEWS (Feb. 4, 2020),

This article analyzes the historical reasoning for Bolivia's intense ethnic and political conflicts and the potential for more violent struggles. It suggests that it is essential to prevent the escalation of deeply rooted ethnic conflicts that can destabilize the Bolivian society. To accomplish this objective, this article proposes normative solutions, including the use of language from international human rights law in processes for peaceful resolutions and prevention of ethnic and political conflicts. Finally, this writing addresses the functions of international organizations—including the Organization of American States, and other entities—in current and future mediation efforts in Bolivia, while highlighting the importance of implementing human rights norms to prevent future violent ethnic conflicts.

II. THE BOLIVIAN CASE AND ETHNIC CONFLICTS AROUND THE WORLD

According to Professor Samuel P. Huntington, the most important distinctions among peoples are not ideological, political, or economic; rather they are cultural. He writes that:

Peoples and nations are attempting to answer the most basic question humans can face: Who are we? And they are answering that question in the traditional way human beings have answered it, by reference to the things that mean most to them. People define themselves in terms of ancestry, religion, language, history, values, customs, and institutions. They identify with cultural groups: tribes, ethnic groups, religious communities, nations, and, at the broadest level, civilizations.⁷

During the Cold War, conflicts around the world were influenced by political and economic ideas of capitalism and communism.⁸ Since the collapse of the communist system, ethnic

<https://news.un.org/en/story/2020/02/1056652> (discussing the roles of the UN and European Union in Bolivia's future elections).

⁷ SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* 21 (1996).

⁸ See Muzaffer Ercan Yilmaz, *Intra-State Conflicts in the Post-Cold War Era*, 24 INT'L J. WORLD PEACE 11, 11 (2007) (discussing the demise of nationalist and ethnic movements during and after the Cold War).

identity has become a more prevalent cause for political violence.⁹ There has been an increasing number of ethnic conflicts, such as the ones in the former Soviet Union, Chechnya, Nagorno Karabakh, the People's Republic of China, Tibet, the former Yugoslavia, Kosovo, India, Punjab, and many other countries.¹⁰ According to Muzaffer Ercan Yilmaz:

To be sure, from May 1988, when the Cold War was coming to its end, to the present day, there have been 47 conflicts in which the United Nations (UN) intervened and only three of them were inter-state in character (Iraqi invasion of Kuwait in 1990, Chad-Libya border dispute in 1994, and Ethiopia-Eritrea border dispute in 1998-2000). If we add the latest Iraqi invasion by the United States, the total number of inter-state conflicts during the whole post-Cold War period is only four, whereas 44 overt internal conflicts have occurred in the same period.¹¹

Regarding the consequences of ethnic conflicts, Jerome Wilson writes, "[e]thnicity is probably the major source of conflict in the world today, having caused the deaths of over ten million people since World War II."¹² For Professor Huntington, the most "dangerous conflicts will not be between social classes, rich and poor, or other economically defined groups, but between peoples belonging to different cultural entities."¹³ This has been a reality since the establishment of Bolivia as a sovereign country in which diverse ethnic groups, including the Aymara, Quechua, Guarani, other indigenous people, mestizos, and Hispanics have been engaged in political conflicts.¹⁴ The current political conflicts in Bolivia are a result of the ethnic divisions of labor and

⁹ Elaine K. Denny & Barbara F. Walter, *Ethnicity and Civil War*, 51 J. PEACE RES. 199, 199 (2014).

¹⁰ See *id.* (noting that "[s]ince 1946, 64% of all civil wars have divided along ethnic defined lines. Ethnic identity played an influential role in civil wars in Iraq, Lebanon, Congo, Burundi, Syria, Sudan, Uganda, Pakistan, Rwanda, Georgia, and Nigeria (to name a few).").

¹¹ Yilmaz, *supra* note 8, at 12.

¹² Jerome Wilson, *Ethnic Groups and the Right to Self-Determination*, 11 CONN. J. INT'L L. 433, 433 (1996).

¹³ HUNTINGTON, *supra* note 7, at 28.

¹⁴ See Juliana Ströbele-Gregor, *From Indio to Mestizo . . . to Indio: New Indianist Movements in Bolivia*, 21 LATIN AM. PERSP. 106, 108 (Bert Hoffman & Andrew Holmes trans., 1994) (describing the conflicts that arose when the state sought to assimilate peasant and ethnic groups into Western culture).

ethnic presuppositions regarding the supposed “uncivilized” nature of indigenous peoples, among other things.¹⁵

In Bolivia, structural ethnic conflicts will either be resolved either by peaceful means or by violent actions that can lead to crimes against humanity and or other extreme violations of international human rights. An example of this reality was portrayed in the violent conflicts in Senkata and Sacaba which, according to the Inter-American Commission of Human Rights, were massacres that included extrajudicial killings.¹⁶ In both places, violent confrontations between supporters of President Morales and police forces resulted in the killings of the civilian population, primarily consisting of people of indigenous backgrounds.¹⁷

To understand the Bolivian context, it is important to know that former President Morale’s party (MAS) is overwhelmingly composed of indigenous communities and mestizos that identify with its indigenous identity. This is the case because MAS has embraced and manipulated political narratives consistent with the empowerment of indigenous people.¹⁸ In the previous presidential election, there were other indigenous political leaders besides Evo Morales who ran for the presidency of Bolivia, including Felix Patzi, who is an Aymara sociology professor; governor of La Paz; and leader of his political party (Third System).¹⁹ For-

¹⁵ See Gigler, *supra* note 1, at 3, 7, 18 (describing the history of discrimination against indigenous people in Bolivia and the economic and social effects of that discrimination).

¹⁶ Press Release, Inter-American Comm’n 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 (Dec. 10, 2019) (on file with The Organization of American States).

¹⁷ *Id.*

¹⁸ See Nancy Postero, *Morales’s MAS Government: Building Indigenous Popular Hegemony in Bolivia*, 37 *LATIN AM. PERSP.* 18, 26–27 (2010) (discussing the public perspective of corruption in the Constituent Assembly stemming from the President’s office).

¹⁹ *Bolivia: Comité Cívico pro Santa Cruz intenta unidad ante intereses personales de 8 aspirantes a la presidencia*, *EL CIUDADANO* (Jan. 30, 2020), <https://www.elciudadano.com/latino-america/bolivia-comite-civico-pro-santa-cruz-intenta-unidad-ante-intereses-personales-de-8-aspirantes-a-la-presidencia/01/30/> (identifying the eight presidential candidates); *Félix Patzi creará*

mer Vice President, of Aymara background, Victor Hugo Cardenas, was also a presidential candidate representing the political party Civic Union and Solidary.²⁰ These political parties do not have a significant influence in Bolivia and they obtained a very small percentage of the vote in the recent presidential elections.²¹

The Social Democratic Movement, which is the party of Jeanine Añez, the current President of Bolivia, represents the interests of middle and upper class Bolivians, mostly people of Hispanic and mestizo backgrounds.²² Another political movement is the one of Dr. Chi Hyun Chung—a medical doctor of Bolivian-Korean background—who ran for office with the support of evangelical churches and obtained around eight percent of the vote.²³ The most significant political force against MAS was the Civic Community party, of which former President Carlos Mesa was a part of.²⁴ Neither the Social Democratic Movement nor the Civic Community party have influential leaders from indigenous backgrounds in their leadership.²⁵ Therefore, MAS remains the main political force that represents the interests of

nueva organización política, LOS TIEMPOS (Feb. 2, 2010, 2:17 PM), <https://www.lostiempos.com/actualidad/nacional/20100212/felix-patzi-creara-nueva-organizacion-politica>.

²⁰ Mia Bristol, *Bolivia's Upcoming Elections*, PANORAMAS SCHOLARLY PLATFORM (Sept. 16, 2019), <https://www.panoramas.pitt.edu/news-and-politics/bolivas-upcoming-elections>.

²¹ Marina Pasquali, *Most voted candidates in the presidential elections in Bolivia as of October 2019*, STATISTA (Nov. 13, 2019), <https://www.statista.com/statistics/1062025/most-voted-presidential-candidates-bolivia/>.

²² See Marta Rodríguez Martínez, *Who is Jeanine Añez, Bolivia's interim president?*, EURONEWS (Nov. 14, 2019), <https://www.euronews.com/2019/11/13/who-is-jeanine-anez-bolivia-s-interim-president> (discussing how Jeanine Añez became interim president of Bolivia and her support of Indigenous groups while a member of the Senate).

²³ Fernando Molina, *El factor Chi Hyun Chung en el escenario electoral boliviano*, EL PAÍS (Oct. 21, 2019, 5:47 PM), https://elpais.com/internacional/2019/10/21/america/1571629165_240801.html.

²⁴ AQ Editors, *Meet the Candidates: Bolivia*, AM. Q. (Apr. 15, 2019), <https://www.americasquarterly.org/content/meet-candidates-bolivia>.

²⁵ See Anatoly Kurmanaev & Clifford Krauss, *Ethnic Rifts in Bolivia Burst Into View With Fall of Evo Morales*, N. Y. TIMES (Nov. 17, 2019), <https://www.nytimes.com/2019/11/15/world/americas/morales-bolivia-Indigenous-racism.html> (describing how MAS was the only president and presidential candidate of Bolivia who was indigenous, and highly supported other indigenous individuals within Bolivia).

indigenous communities.²⁶

Civic movements, which have a powerful political influence in Bolivian politics, are also fragmented along regional and ethnic lines. Luis Fernando Camacho was the leader of the Civic Committee of Santa Cruz who led the uprising against former president Evo Morales.²⁷ He is now a candidate for the upcoming 2020 presidential election.²⁸ He represents the interests of the Oriental part of Bolivia, as well as the middle and upper classes of Hispanic and mestizo people.²⁹ Marcos Pumari is the leader of Potosí's Civic Committee and was also one of the main leaders in the uprising against former President Morales.³⁰ He is of indigenous Quechua origin, and he represents the mestizo and some indigenous sectors of his region (Potosí) in the Occidental part of Bolivia.³¹ He has been asked by Camacho to join him when he runs in the 2020 presidential elections and run for vice-president of Bolivia.³²

The Bolivian political division among ethnic lines makes the possibility of ethnic and political conflicts very likely in Bolivia. Because of this, there is a need to have indigenous leaders in all

²⁶ Bristol, *supra* note 20; see also *id.* (discussing how MAS was a main political figure in support and representation of indigenous peoples in Bolivia).

²⁷ Camacho, *a leader in Bolivian protests, to seek presidency*, FR. 24 (Nov. 30, 2019, 6:14 PM), <https://www.france24.com/en/20191130-camacho-a-leader-in-bolivian-protests-to-seek-presidency>.

²⁸ *Id.*

²⁹ See Ciara Nugent, *How Bolivia's Evo Morales Was Brought Down With the Help of An Obscure Conservative With a Bible*, TIME (Nov. 15, 2019), <https://time.com/5728279/luis-fernando-camacho-bolivia/> (discussing the current political divide in Bolivia and Camacho's political background).

³⁰ Alke Jenss, *Making sense of Bolivia's discontent*, OPEN DEMOCRACY (Nov. 21, 2019), <https://www.opendemocracy.net/en/oureconomy/making-sense-of-bolivias-discontent/>.

³¹ *Bolivia's authoritarian leader resigns after widespread protests triggered by election fraud*, HUM. RTS. FOUNDATION (Nov. 12, 2019), https://hrf.org/press_posts/bolivias-authoritarian-leader-resigns-after-wide-spread-protests-triggered-by-election-fraud/.

³² Betty Condori Rojas, *Marco Pumari, una visita entre el rechazo, la fama y los enfrentamientos*, OPINIÓN (Dec. 6, 2019, 12:57 AM), <https://www.opinion.com.bo/articulo/cochabamba/marco-pumari-visita-rechazo-fama-enfrentamientos/20191206005707739970.html>.

political parties and civil society movements. Doing so will ensure that the political struggle focuses on political and economic ideas, and not on ethnic representation. Bolivia should never be in similar situations such as those in Syria, Iraq, the former Yugoslavia, Rwanda, or Sudan.³³ These countries exemplify the tragic consequences of ethnic and political conflicts.³⁴ When societies reject the use of peaceful means to resolve conflicts, it can lead to violations of fundamental human rights, such as the right to life. In addition, crimes against humanity and other extreme violations of human rights law can become prevalent as a result of the rejection.

In Latin America, countries such as Guatemala, El Salvador, and Nicaragua, have experienced the devastating consequences of violent political and ethnic conflicts.³⁵ Societies have hope that they will be the exception to resolution of conflicts by violent means, despite historical evidence that proves the extreme negative economic, social, and political consequences of this form of resolution.³⁶ Often, people who are immersed in intense ethnic and political conflicts do not understand the consequences of dehumanizing their perceived enemies to justify violent actions. As a result, this creates the conditions for undermining economic systems and democratic institutions, and it is a root cause of political violence.³⁷

The killing of six million Jewish people during the Holocaust is a historical reminder of the consequences of dehumanizing human beings and using extreme violence against perceived enemies that belong to a different ethnic group.³⁸ The international legal response to Nazi crimes against the Jewish people was the

³³ See Michael E. Brown, *Causes and Implications of Ethnic Conflict*, in *ETHNIC CONFLICT AND INTERNATIONAL SECURITY* 3 (Michael E. Brown ed., 1993) (discussing the ethnic conflicts in multiple countries).

³⁴ *Id.*

³⁵ FABRICE LEHOUCQ, *THE POLITICS OF MODERN CENTRAL AMERICA: CIVIL WAR, DEMOCRATIZATION, AND UNDERDEVELOPMENT* 1, 6 (2012).

³⁶ See generally DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* 3–4 (1985) (discussing the lack of independence and ethnic resolutions after conflicts).

³⁷ *Id.* at 12.

³⁸ MICHAEL P. SCHARF, *BALKAN JUSTICE: THE STORY BEHIND THE FIRST INTERNATIONAL WAR CRIMES TRIAL SINCE NUREMBERG* xiii (1997).

prosecution of Nazi war criminals at the International War Crimes Tribunal in Nuremberg.³⁹ This was also the beginning of the recognition of international human rights law as a normative foundation for the post-World War II international normative order.⁴⁰

One of the main objectives of establishing the international human rights law system was to prevent future occurrences such as the Nazi crimes against minority groups.⁴¹ Unfortunately, this objective was not fulfilled and violations against minority ethnic groups have continued to occur around the world.⁴² Examples of this include the massacre of 200,000 people in East Timor (1975-1985); the killing of 750,000 people in Uganda (1971-1987); the murder of 100,000 Kurds in Iraq (1987-1988); the killing of more than 200,000 people in Bosnia-Herzegovina (1992); and the execution of around 800,000 Tutsis in Rwanda.⁴³

There is always the hope—such as the one in Bolivia in the current historical context—that these kinds of crimes against humanity will not happen. Unfortunately, however, history proves the existence of a human tendency to resolve ethnic and the political conflicts by the most violent means. Recently, this has been seen in the horrendous international crimes committed by ISIS against ethnic and religious minority groups in the territories under its control.⁴⁴

To prevent future episodes of violent ethnic and political conflicts, it is important to know their root causes. Many of them are the result of violations of individual human and group rights

³⁹ ANNAS GORDIN, *THE NAZI DOCTORS AND THE NUREMBERG CODE: HUMAN RIGHTS IN HUMAN EXPERIMENTATION* 4 (George J. Annas & Michael A. Gordin eds., 1992).

⁴⁰ HURST HANNUM ET AL., *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE* 46–47 (Rachel E. Barkow et al. eds., 6th ed. 2018).

⁴¹ Michael P. Scharf, *The Prosecutor v. Dusko Tadic: An Appraisal of the First International War Crimes Trial Since Nuremberg*, 60 ALB. L. REV. 861, 861 (1997).

⁴² *Id.*

⁴³ *Id.* at 861–862, 880.

⁴⁴ See Yuri Mantilla, *ISIS's International Crimes and Jus Cogens Norms: The Protection of Human Rights in Times of Global Terrorism*, 11 LIBERTY U. L. REV. 451, 456–59 (2016) (discussing the various crimes committed by ISIS).

of minority groups. In multi-ethnic societies, there is a great diversity of ethnic groups living together. This can create conditions for violent ethnic conflicts. Regarding this, Marc Holzapfel said: “[r]oughly 3,000 nations existing in the world today are constrained to live in only 184 countries. Such a huge disparity condemns each of these distinct groups to compete for equal status within the confines of a single boundary.”⁴⁵ This is the case of Bolivia, where people of Aymara, Quechua, Guarani, Mestizo, Spanish, and other ethnic backgrounds coexist in one country.⁴⁶

In the Bolivian context, it is dangerous to believe that one ethnic or political group will sustain political power for a long time. The oppressors of today can become the oppressed of the future. Because of this reality, it is essential to build up a culture of respect for human dignity of all Bolivians and avoid the establishment of any form of totalitarian regimes. It is also important to have term limits for running for the highest office of the country. Totalitarian governments increase the intensity of political conflicts and hide structural social, ethnic, and economic problems.

Considering the Bolivia’s history, it is naive to believe that violent ethnic and political conflicts will not happen again. As a result, it is essential to learn the lessons of history and take measures to prevent the escalation of ethnic conflicts.⁴⁷ For example, who could have imagined the disintegration of the Soviet Union? The collapse of the Soviet Union created new minorities, new majorities, and increased ethnic conflicts. Regarding this, Marc Holzapfel writes:

⁴⁵ Marc Holzapfel, *The Implications of Human Rights Abuses Currently Occurring in the Baltic States Against the Ethnic Russian National Minority*, 2 BUFF. J. INT’L L. 329, 329 (1995-1996).

⁴⁶ *The World Factbook: Bolivia*, CENTRAL INTELLIGENCE AGENCY, (last updated Feb. 7, 2020) <https://www.cia.gov/library/publications/the-world-factbook/geos/bl.html>.

⁴⁷ See GEORGE SANTAYANA, *THE LIFE OF REASON OR THE PHASES OF HUMAN PROGRESSION* 81–82 (1998) (discussing the origins of patriarchal worship of Israel transforming into the Bible and Church).

After the breakup of the Soviet Union, Russia inherited arguably the most complex national minority situation in the world. Its plight was exacerbated by the nearly 100 nations—more than 27 million people or “40% of the former Soviet Union’s minorities—living within its borders

Today, there are sixty-five million former Soviet citizens living outside their republic of origin. As many as one million people have been forced to migrate to and from outlying republics, primarily because of escalating ethnic conflicts.⁴⁸

These facts show the impact that the collapse of the Soviet Union had on the status of minority groups. Historically, after the end of each world war, people become optimistic about the future. The end of the cold war was not an exception. Many believed that a new international order, characterized by peaceful international relations and respect for human rights, could be established.⁴⁹ In reality, the post-cold war order has been characterized by civil wars and ethnic conflicts in many countries around the world.⁵⁰

III. CAUSES OF ETHNIC CONFLICTS IN BOLIVIA

According to the latest Bolivian census, the Quechua and Aymara are the largest indigenous groups in Bolivia.⁵¹ There are around 1,598,807 Aymaras in Bolivia. This represents 38.07% of the indigenous population of Bolivia.⁵² There are around 1,837,105 Quechuas in Bolivia. This represents 43.74% of the indigenous population of Bolivia.⁵³ There are around 145,653 Chiquitanos in Bolivia and they represent 3.47% of the

⁴⁸ Holzapfel, *supra* note 45, at 348–49.

⁴⁹ David P. Forsythe, *Human Rights After the Cold War*, 11 NETH. Q. HUM. RTS. 393, 393–94 (1993).

⁵⁰ Yilmaz, *supra* note 8, at 11–12.

⁵¹ *Proyecciones señalan que en Bolivia existe 2.610.000 jóvenes*, INSTITUTO NACIONAL DE ESTADÍSTICA (Aug. 8, 2016), <https://www.ine.gob.bo/index.php/principales-indicadores/itemlist/category/108-agosto>.

⁵² *Id.*

⁵³ *Id.*

indigenous population.⁵⁴ There are approximately 96,842 Guaranis in Bolivia, which represents 2.31% of the indigenous population.⁵⁵

Indigenous people in Bolivia have contributed to the cultural, economic, political, and social well-being of their country.⁵⁶ The economic, cultural, and political contributions of indigenous people are fundamental to the development of Bolivia and the strength of its national identity.⁵⁷ Considering this reality, it is essential for all Bolivian political forces to contribute to preserving and empowering indigenous cultures and ethnic diversity.

In Bolivia, indigenous people constitute approximately 41% of the population.⁵⁸ This population incorporates the Aymaras, the Quechuas, the Guaranis, and various other indigenous nations.⁵⁹ Considering this reality, Bolivia is an ethnically divided country between the people of Spanish-European origins; the people of mixed mestizo background; and the indigenous people.⁶⁰ This great ethnic diversity, combined with the systematic oppression of indigenous peoples, has resulted in the violent ethnic conflicts of Bolivian history.⁶¹

In the current historical context, an example of ethnic conflict is portrayed through the large number of indigenous peoples' view regarding the governmental transition to President Jeanine Añez.⁶² The indigenous people believe that President

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ HERBERT S. KLEIN, A CONCISE HISTORY OF BOLIVIA 262, 264–65, 280 (2d. ed. 2011).

⁵⁷ *Id.* at 264–96.

⁵⁸ Germán Freire et al., *Indigenous Latin America in the Twenty-First Century: The First Decade*, 1, 24 (World Bank Grp., Working Paper no. 98544, 2015).

⁵⁹ INSTITUTO NACIONAL DE ESTADÍSTICA, *supra* note 51.

⁶⁰ See KLEIN, *supra* note 56, at 14–18 (explaining the different kingdoms of various ethnicities that have existed in Bolivia).

⁶¹ *Id.* at 95.

⁶² See Kurmanaev & Krauss, *supra* note 25 (highlighting the provocative tweets of Ms. Añez which mocked Indigenous people's culture and her selection of only one Indigenous cabinet member).

Añez has usurped the legitimate government of former President Evo Morales, the first indigenous president of Bolivia.⁶³ On the other side of the conflict, there are mestizos and people of Spanish descent who believe that Bolivia needs to return to its republican past, and they reject the pluricultural state established by Evo Morales.⁶⁴ They believe that Bolivia needs to be more like the Catholic European countries and less like a country that embraces indigenous cultures and values.⁶⁵ An example of this reality was seen when the leaders of the civic movement, who were also involved with the overthrow of president Morales, symbolically took a large Bible back to the presidential palace as an expression of the importance of restoring the Catholic foundations of Bolivia, which they felt President Morales had tried to destroy by embracing pagan worldviews.⁶⁶

Since the time of the Spanish conquest and colonization of the New World, systematic racial discrimination and ethnic division of labor was established in Latin America.⁶⁷ This reality was portrayed in legal and political institutions that sustained the Spanish and Mestizo exploitation of the labor force and natural resources of indigenous communities.⁶⁸ This historical genealogy of Latin America has influenced the cultures, politics,

⁶³ See *id.* (highlighting President Morales' support of indigenous peoples and the violent outbreaks as a result of the political transition to President Añez).

⁶⁴ *Id.*; see generally Matthew Peter Casey, *Old Religious Tensions Resurge in Bolivia After President's Ouster*, U.S. NEWS (Nov. 20, 2019, 2:30 PM), <https://www.usnews.com/news/best-countries/articles/2019-11-20/old-religious-tensions-resurge-in-bolivia-after-ouster-of-longtime-indigenous-president> (noting Bolivia's former republican model).

⁶⁵ Casey, *supra* note 64.

⁶⁶ See Kevin Clarke, *Was there a coup in Bolivia? After Evo Morales, what's next?*, AMERICA MAGAZINE (Nov. 27, 2019), <https://www.americamagazine.org/politics-society/2019/11/27/was-there-coup-bolivia-after-evo-morales-whats-next> (discussing the multiple references and uses of the Bible in relation to MAS' presidency).

⁶⁷ See Donna Lee Van Cott, *Indigenous Peoples and Democracy: Issues for Policymakers*, in *INDIGENOUS PEOPLES AND DEMOCRACY IN LATIN AMERICA* 1, 1–5 (1994) (describing indigenous people as the bottom of the social, economic, and political hierarchy in early Latin America).

⁶⁸ See Thomas Duve, *Indigenous Rights in Latin America: A Legal Historical Perspective*, in *THE OXFORD HANDBOOK OF HISTORICAL LEGAL RESEARCH* 2017, at 5 (Max Planck Inst. for European Legal History, Research Paper Ser. No. 2017-02, 2017) (discussing the challenges indigenous groups still face in regards to their natural resources and labor force in spite of the development

and legal institutions of the region.⁶⁹ In countries—such as Bolivia—where a large percentage of the population is indigenous, the influence of biased cultural presuppositions and the ethnic division of labor is a powerful source of ethnic and political conflicts.⁷⁰

One of the main causes of violent ethnic conflicts is the de-humanization of perceived enemies. In Bolivia, many middle and upper-class Bolivians of Spanish-European and mestizo origins view people from indigenous backgrounds as uncivilized political enemies.⁷¹ Often, when young indigenous people protest, they are portrayed as extremist, violent, supporters of radical political ideologies.⁷² However, when young people of mixed origin, of Spanish descent, protest, they are viewed as young people and the future of the country.

Despite the progress made by indigenous peoples in Latin America, the cultures of countries such as Bolivia, Peru, and Ecuador are still characterized by ethnocentric presuppositions regarding the status of indigenous people.⁷³ This fact continues to influence the ethnic division of labor and is seen in the lack of sustainable indigenous political representation and access to other forms of power including economic and social.⁷⁴

of laws protecting them).

⁶⁹ See Magda von der Heydt-Coca, *When Worlds Collide: The Incorporation of the Andean World into the Emerging World-Economy in the Colonial Period*, 24 DIALECTICAL ANTHROPOLOGY 1, 14 (1999) (discussing how the Spaniards introduced new laws and forms of organizations to the region).

⁷⁰ Van Cott, *supra* note 67, at 4–5.

⁷¹ See Alberto Chong & Hugo Nopo, *The Mystery of Discrimination in Latin America*, 8 ECONOMÍA 79, 79 (2008) (analyzing discrimination against indigenous people in Latin America); Albert Bender, *Interim president Añez calls indigenous citizens “savages”*, PEOPLE’S WORLD (Jan. 28, 2020, 9:19 AM), <https://www.peoplesworld.org/article/interim-bolivian-president-anez-calls-indigenous-citizens-savages/> (discussing how Interim president Añez referred to Indigenous people as “savages”).

⁷² See Kurmanaev & Krauss, *supra* note 25 (describing how indigenous protesters were blocked out of the city by military and police).

⁷³ See Raúl L. Madrid, *The Rise of Ethnopolitism in Latin America*, 60 WORLD POL. 475, 484–99 (2008) (analyzing the political influence of Aymara, Quechua, and other indigenous peoples in the politics of Bolivia).

⁷⁴ Steven E. Hendrix, *Advancing Toward Privatization, Education Reform, Popular Participation, and Decentralization: Bolivia’s Innovation in Legal and Economic Reform, 1993-1997*, 14 ARIZ. J. INT’L & COMP. L. 679, 696 (1997).

To properly understand the ethnic and political conflicts in Bolivia, it is important to consider the influence of Neo-Nazism in this country.⁷⁵ In the 1980s, Bolivia was directly involved in its government of Nazi criminals such as Klauss Barbie Altman, the Butcher of Lion.⁷⁶ He and other neo-Nazi criminals were advisors to Bolivian president Garcia Meza.⁷⁷ His military dictatorship tried to use drug trafficking to sustain the economic development of Bolivia.⁷⁸ After the defeat of Garcia Meza's regime, his Minister of Interior—Luis Arce-Gómez—was extradited to the U.S. where he served a prison sentence for drug-trafficking charges.⁷⁹ It is important to remember that racist movements, including neo-Nazism, believe in social Darwinist ideas that justify the oppression and extermination of people who are considered to be of an inferior race.⁸⁰

On the other hand, there have been efforts in Bolivia to establish communist regimes inspired by totalitarian ideas of Cuba.⁸¹ For example, Ernesto Ché Guevara tried to establish a guerrilla movement in Bolivia to spread communist revolutions in the region.⁸² His efforts were defeated in Bolivia in part because of the rejection of indigenous communities of his ideas.⁸³ Another example is General Juan Jose Torres' effort to establish a left-wing government to follow the ideas of the Cuban communist revolution.⁸⁴ Despite the structural political and eco-

⁷⁵ See PETER MCFARREN & FADRIQUE IGLESIAS, *THE DEVIL'S AGENT: LIFE, TIMES AND CRIMES OF NAZI KLAUS BARBIE* 130–31 (2013) (explaining how Barbie, a Nazi war criminal, became involved in Bolivian social and political issues).

⁷⁶ See *id.* at 86–130 (discussing Bolivia's involvement, as well that of other nations, in the case of Klaus Barbie and the pursuit of other Nazi criminals).

⁷⁷ *Id.* at 309.

⁷⁸ *Id.* at 381.

⁷⁹ See *id.* at 381–93, 402–03, 406–07 (describing Arce-Gómez's power as well as his involvement in drug trafficking, and the U.S. prosecution).

⁸⁰ See Boris Barth, *Racism and Genocide*, in *RACISM IN THE MODERN WORLD: HISTORICAL PERSPECTIVES ON CULTURAL TRANSFER AND ADAPTATION* 84, 98–99 (Manfred Berg & Simon Wendt eds., 2014) (explaining Social Darwinism).

⁸¹ See KLEIN, *supra* note 56, at 224–25 (explaining the presence of Ché Guevara, a leader in the Cuban Revolution).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 226–28.

conomic failures of Cuba, Venezuela, and Nicaragua, former President Evo Morales publicly expressed his admiration for those totalitarian regimes and, in turn, they have supported him.⁸⁵

Communist and Fascist totalitarian ideologies have led to murder, torture, and other widespread human rights violations.⁸⁶ Considering that totalitarian ideologies have influenced Latin American countries such as Bolivia, it is essential to recognize the importance of democracy as the best political system to sustain respect for fundamental human rights including the rights of indigenous peoples.⁸⁷ This is also an essential condition for the peaceful resolution of ethnic and political conflicts.

The current political forces that have overthrown president Evo Morales believe that Bolivia was heading to become a communist dictatorship, much like Cuba.⁸⁸ Political leaders of Morales's party (MAS) believe that neo-fascist forces that once influenced Bolivia have regained their ideological and political strength in the country.⁸⁹ Considering the ongoing increase of ideological conflicts, Bolivia needs a systematic and efficient effort to construct a country with strong democratic values, which includes respect for the rule of law and fundamental human rights.

⁸⁵ Oliver Stuenkel, *Latin America is Too Polarized to Help Stabilize Bolivia*, FOREIGN POL'Y (Nov. 13, 2019, 4:58 PM), <https://foreignpolicy.com/2019/11/13/latin-america-polarization-bolivia-brazil-venezuela-argentina-chile/>.

⁸⁶ See generally VLADIMIR TISMANEANU, THE DEVIL IN HISTORY: COMMUNISM, FASCISM, AND SOME LESSONS OF THE TWENTIETH CENTURY (2012) (discussing the suffering, hatred, and violence brought forth by totalitarianism).

⁸⁷ See generally HANNAH ARENDT, THE ORIGINS OF TOTALITARIANISM (1973) (analyzing the dehumanizing consequences of totalitarian ideas, which applies well to the Bolivian context; neither the proposals for totalitarian neo fascist ideas nor totalitarian neo-communist ideas should prevail in Bolivia).

⁸⁸ Danny Ramos & Mitra Taj, *Explainer: Bolivia's 'Evo' - socialist icon or would-be dictator?*, REUTERS (Oct. 18, 2019, 6:10 AM), <https://www.reuters.com/article/us-bolivia-election-candidates-explainer/explainer-bolivias-evo-socialist-icon-or-would-be-dictator-idUSKBN1WX158>.

⁸⁹ *Id.*

IV. THE CURRENT BOLIVIAN HISTORICAL CONTEXT AND THE USE OF LEGAL DISCOURSE AS AN INSTRUMENT OF WARFARE

One of the most strategic uses of the language of International Law in Bolivia was highlighted in a case against Chile at the International Court of Justice.⁹⁰ In that historical context, Bolivia founded its claims through the law of unilateral promises to restore its access to the Pacific Ocean that was lost in a war with Chile.⁹¹ At that time, former President Morales; former Vice President Garcia; former Vice President Quiroga; and other former Bolivian presidents and vice presidents from diverse ideological backgrounds, were united in a common objective to defend one of the most important national interests of Bolivia.⁹² Who could have imagined that a few years later these same people would be engaged in an extreme political conflict accusing each other for crimes against humanity and becoming extreme enemies?

The current Bolivian historical context is characterized by a deep fragmentation between two main discourses regarding the sudden overthrow of President Evo Morales and the appointment of the transitional President Jeanine Añez.⁹³ For the supporters of Evo Morales, the current government is the result of a coup d'état, and it is illegitimate. They believe that Morales was forced to resign by a Police riot and a military threat against him.⁹⁴ They believe that for the restoration of democracy, there is a need to end the political persecution and imprisonment of Morales's followers and let him come back to Bolivia from his

⁹⁰ See generally Christopher R. Rossi, *A Case Ill Suited for Judgment: Constructing 'A Sovereign Access to the Sea' in the Atacama Desert*, 48 UNIV. MIAMI INTER-AM. L. REV. 28, 40–43 (2016) (describing the history and investigating the international law that determined this case at the International Court of Justice).

⁹¹ *Id.* at 42.

⁹² Christopher Woody, *Chile and Bolivia are still arguing over the outcome of a war they fought 131 years ago*, BUS. INSIDER (Oct. 4, 2015, 8:46 AM), <https://www.businessinsider.com/chile-bolivia-sea-access-land-dispute-2015-10>.

⁹³ See Clarke, *supra* note 66 (discussing how individuals feel about President Morales' fall from the presidency).

⁹⁴ *Id.*

exile in Argentina where he is a political refugee.⁹⁵

President Jeanine Añez supporters believe President Evo Morales is responsible for a fraudulent election and the manipulation of the Supreme Constitutional Tribunal to obtain a legal decision that illegitimately allowed him to run for a fourth term for the presidency of Bolivia.⁹⁶ According to these supporters, President Morales' government was corrupt, authoritarian, and was becoming like a dictatorship similar to those in Cuba and Venezuela.⁹⁷ They also accused President Morales of terrorist acts and sedition against President Añez's transitional government.⁹⁸

Besides the ideological differences and deep political conflicts in Bolivia, there are great ethnic and social-economic class differences in the composition of Morales' supporters' political party (MAS) and the current political forces that sustain the government.⁹⁹ MAS supporters include: indigenous communities; people of mestizo origin that identify more with the indigenous part of their identity; middle classes that identify with left wing political and economic ideas; and the working class.¹⁰⁰ Mean-

⁹⁵ See Tom Phillips & Uki Goñi, *Bolivia's Evo Morales lands in Argentina after being granted asylum*, GUARDIAN (Dec. 12, 2019, 11:00 AM), <https://www.theguardian.com/world/2019/dec/12/evo-morales-argentina-asylum-bolivia> (discussing Morales' exile in Argentina).

⁹⁶ Anatoly Kurmanaev, *Election Fraud Aided Evo Morales, International Panel Concludes*, N.Y. TIMES (Dec. 5, 2019), <https://www.nytimes.com/2019/12/05/world/americas/evo-morales-election.html>.

⁹⁷ *Id.*; see generally Ted Piccone & Harold Trinkunas, *The Cuba-Venezuela Alliance: The Beginning of the End?*, BROOKINGS POL'Y BRIEF (June 2014) (conducting an analysis of the influence of Cuba and Venezuela in Latin American countries), <https://www.brookings.edu/wp-content/uploads/2016/06/CubaVenezuela-Alliance-Piccone-Trinkunas.pdf>.

⁹⁸ Paola Flores, *Bolivian officials accuse Evo Morales of terrorism, sedition*, WASH. TIMES (Nov. 22, 2019), <https://www.washington-times.com/news/2019/nov/22/evo-morales-accused-of-terrorism-and-sedition/>.

⁹⁹ See KEPA ARTARAZ, *BOLIVIA: REFOUNDING THE NATION* 32–54 (2012) (analyzing political parties in Bolivia, including MAS).

¹⁰⁰ See NANCY POSTERO, *THE INDIGENOUS STATE: RACE, POLITICS, AND PERFORMANCE IN PLURINATIONAL BOLIVIA* 116–36 (2017) (discussing the different groups of people that support MAS); see also Aline-Sophia Hirsland & Oliver Strijbis, *'We were forgotten': explaining ethnic voting in Bolivia's highlands*

while, President Añez's supporters are composed of an increasingly strong middle class and the traditional ruling elites of Spanish and Mestizo backgrounds who have strongly opposed President Morales' re-election.¹⁰¹

Bolivia's current landscape has been characterized by intense political and ethnic conflicts. As a result of confrontations between President Morales' supporters—many of which are indigenous people—and President Añez's supporters, around thirty-two people have been killed.¹⁰² In part due to the mediation efforts of the United Nations, the European Union and the Catholic Church, violent conflicts are coming to an end with efforts being made to implement a new democratic process for presidential elections.¹⁰³

Regarding the analysis of Mrs. Bachelet, U.N. Commissioner for Human Rights, about the Bolivian political crisis, U.N. News stated:

Michelle Bachelet, the UN rights chief, said while earlier deaths mostly resulted from clashes between rival protestors, the latest incidents appear to be due to the disproportionate use of force by the army and police.

With the country divided, she fears the situation could worsen. "I am really concerned that the situation in Bolivia could spin out of control if the authorities do not handle it sensitively and in accordance with international norms and standards governing the use of force, and with full respect for human rights," she said in a statement issued on Saturday. "The country is split and

and lowlands, 45 J. ETHNIC & MIGRATION STUD. 2006, 2007–23 (2019) (discussing the different groups of people that support President Añez).

¹⁰¹ See Carolina Brunstein, *Bolivia: las clases medias urbanas, el sector más desencantado con Evo Morales*, CLARÍN (Oct. 22, 2019, 6:55 PM), https://www.clarin.com/mundo/clases-medias-urbanas-sector-desencantado-evo-morales_0_q-VhZNce.html (analyzing the Bolivian middle class opposition to Evo Morales).

¹⁰² Audrey Wilson, *Bolivia Debates Election Bill as Violence Surges*, FOREIGN POL'Y (Nov. 21, 2019, 6:16 AM), <https://foreignpolicy.com/2019/11/21/bolivia-debate-election-bill-violence-surges-evo-morales-jeanine-anez-protest-la-paz/>.

¹⁰³ *The Church, the UN and Brussels try mediation in Bolivia*, ARCHYDE (Nov. 19, 2019), <https://www.archyde.com/the-church-the-un-and-brussels-try-mediation-in-bolivia-international/>.

people on both sides of the political divide are extremely angry. In a situation like this, repressive actions by the authorities will simply stoke that anger even further and are likely to jeopardiz[e] any possible avenue for dialogue.”¹⁰⁴

Evo Morales is considered the first president of indigenous origins of Bolivia.¹⁰⁵ As a result, his political movement (MAS) enjoyed great popular support.¹⁰⁶ He won three national elections by large margins.¹⁰⁷ However, his effort to run for the fourth time to become president of Bolivia was characterized by political and legal controversies.¹⁰⁸ He lost a referendum which asked the Bolivian people to decide if he should be allowed to run for the presidency for a fourth time. Despite this loss, Evo Morales’ used human rights legal arguments to sustain his claim. His lawyers argued that because of the primacy of international law over Bolivian law, the American Convention of Human Rights, the Pact of San Jose, recognizes the human right to run for president of a country indefinitely.¹⁰⁹ The Bolivian Constitutional Court accepted this view and ruled in favor of Morales.¹¹⁰ However, the legitimacy of this decision has been challenged by opposition forces to Morales’ efforts.¹¹¹

In October 2019, the Bolivian crisis started with the electoral victory of Evo Morales for the presidency of his country.¹¹²

¹⁰⁴ *Repression, use of force risk worsening Bolivia crisis: UN human rights chief*, UN NEWS (Nov. 16, 2019), <https://news.un.org/en/story/2019/11/1051531>.

¹⁰⁵ *See Bolivia elects Evo Morales as president for third term*, GUARDIAN (Oct. 13, 2014, 4:08 PM), <https://www.theguardian.com/world/2014/oct/13/bolivia-evo-morales—president-third-term> (describing Morales’ third win as President in 2014).

¹⁰⁶ *Id.*

¹⁰⁷ *See id.* (describing Morales’ third win as President in 2014).

¹⁰⁸ Gram Slattery, *How Evo Morales lost control of Bolivia*, REUTERS (Nov. 14, 2019, 2:21 PM); *see* Keith Johnson, *Why Is Evo Morales Suddenly No Longer President of Bolivia?*, FOREIGN POL’Y (Nov. 11, 2019, 12:40 PM), <https://foreignpolicy.com/2019/11/11/evo-morales-resigns-president-bolivia/#> (describing the event that led Morales to resign).

¹⁰⁹ Luc Cohen, *Bolivian court clears way for Morales to run for fourth term*, REUTERS (Nov. 28, 2017, 5:37 PM), <https://www.reuters.com/article/us-bolivia-politics/bolivian-court-clears-way-for-morales-to-run-for-fourth-term-idUSKBN1DS2ZX>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *See* Johnson, *supra* note 108 (describing the event that led Morales to

Opposition forces rejected his victory which they considered to be the result of an electoral fraud.¹¹³ Organization of American States' observers of the electoral process recommended the annulment of the elections because of irregularities and manipulation of the results.¹¹⁴ After this event, Morales called for new elections with a new electoral tribunal. However, opposition political forces—including Mrs. Añez's party; civil society organizations; the military; and the police—rejected Morales' offer, and the military recommended he resign.¹¹⁵

According to Morales, he was the victim of a coup d'état and his life was threatened by military and police forces.¹¹⁶ Because of this he was forced to resign and left for Mexico, which granted him political asylum.¹¹⁷ After a short time in Mexico, Evo Morales, together with members of his former government—including Alvaro García Linera (former Vice President) and Graciela Montano (Former Secretary of Health)—were granted political asylum in Argentina.¹¹⁸

For his political opponents, Morales' resignation was the result of a popular uprising that overthrew an increasing authoritarian regime that was trying, for the fourth time and after more than thirteen years in power, to win an election by fraudulent means.¹¹⁹ Bolivia is a fragmented country that seems to evenly support Morales' political movement and anti-Morales forces.

resign).

¹¹³ *Id.*

¹¹⁴ Kurmanaev, *supra* note 96.

¹¹⁵ Anatoly Kurmanaev, Mónica Machicao & Ernesto Londoño, *Military Calls on President to Step Down After Election Dispute in Bolivia*, N.Y. TIMES (Nov. 13, 2019), <https://www.nytimes.com/2019/11/10/world/americas/bolivia-election-evo-morales.html>.

¹¹⁶ *Evo Morales leaves Bolivia to take asylum in Mexico*, REUTERS (Nov. 11, 2019, 4:14 PM), <https://www.reuters.com/article/us-bolivia-election-mexico/evo-morales-leaves-bolivia-to-take-asylum-in-mexico-idUSKBN1XL2H0>.

¹¹⁷ *Id.*

¹¹⁸ Jorgelina Do Rosario, *Bolivia's Ex-President Morales Granted Asylum in Argentina*, BLOOMBERG (Dec. 12, 2019, 2:49 PM), <https://www.bloomberg.com/news/articles/2019-12-12/bolivia-s-ex-president-morales-seeks-refugee-status-in-argentina>.

¹¹⁹ Ciara Nugent, *Bolivian President Evo Morales Has Resigned After Nearly 14 Years in Power. Here's What to Know*, TIME (Nov. 11, 2019), <https://time.com/5723753/bolivia-evo-morales-resigns/>.

After the resignation of Vice President Alvaro Garcia Linera, the president of the Bolivian Senate (Adriana Salvatierra), and the president of deputies (Mr. Borda), Mrs. Añez, the vice president of the Bolivian Senate, was elected president of Bolivia. This happened without the participation of two-thirds of members of congress from Morales' party that opposed her election.¹²⁰

The current political conflict in Bolivia is characterized by diverse views regarding the best political and economic systems for Bolivia. Evo Morales' policies were based on state control of strategic industries, the controlled industries included oil and gas, and private enterprises in other spheres of the economy.¹²¹ Even though he allowed for free elections, he also tried to keep his presidency for more than thirteen years. In his effort to seek a new term in office, he used arguments based on a supposed human right to run for the presidency of the country indefinitely.¹²² He used a decision of the Bolivian Constitutional Court to legalize his effort to run for office for a fourth time.¹²³ Because this was done against a previous decision in a referendum that rejected Morales' efforts to run for office for a fourth time, this decision was severely criticized by political parties and by civil society organizations who opposed Morales.¹²⁴

The same Constitutional Court that recognized the legality of the election of Mrs. Añez as president of Bolivia is the one that also recognized the right of Evo Morales to run for office for a fourth time.¹²⁵ The same supporters of Evo Morales who have

¹²⁰ See Dan Collyns & Jo Tuckman, *Clashes in Bolivia as Morales supporters challenge interim president's legitimacy*, GUARDIAN (Nov. 13, 2019, 6:33 PM), <https://www.theguardian.com/world/2019/nov/13/jeanine-anez-bolivia-president-promises-new-elections> (discussing how two-thirds of the MAS attempted to declare Añez's claim to presidency illegal).

¹²¹ See generally Ronn Pineo, *Progress in Bolivia: Declining the United States Influence and the Victories of Evo Morales*, 32 J. DEVELOPING SOCIETIES 421–53 (2016) (discussing the economic policies implemented by Morales).

¹²² Cohen, *supra* note 109.

¹²³ *Bolivians protest after Supreme Court allows President Evo Morales to run for fourth term*, DW NEWS (Dec. 6, 2018), <https://www.dw.com/en/bolivians-protest-after-supreme-court-allows-president-evo-morales-to-run-for-fourth-term/a-46622525>.

¹²⁴ See *id.* (discussing the strong opposition against Morales).

¹²⁵ See Clifford Krauss, *Bolivia's Interim Leader Pledges to 'Reconstruct*

praised the decision of the Constitutional Court are now accusing it of supporting Mrs. Añez who they believe has been elected president against Bolivian constitutional norms or presidential succession.¹²⁶

After the Organization of American States (OAS), observers questioned the legitimacy of the 2019 Bolivian presidential elections as an intense political and ethnic conflict that destabilized the country.¹²⁷ The lack of understanding regarding the importance of the indigenous vote was seen in the OAS observers who did not analyze the fact that the rural vote, where most indigenous people live, could determine the outcome of the Bolivian election.

Opposition parties and regional movements, such as the Civic Committee of Santa Cruz, endorsed the declaration of the OAS observers and challenged the election's result claiming there was a systematic electoral fraud.¹²⁸ This led to generalize strikes in regions such as Santa Cruz, Potosi, Tarija, and La Paz. As a reaction to the efforts to undermine the credibility of the elections and rejection of Evo Morales's victory, indigenous people's movements and others also started strikes and demonstrations to defend their candidate.¹²⁹ These actions led to political, social, and ethnic conflicts that have threatened the stability of Bolivia.

Democracy', N.Y. TIMES (Nov. 13, 2019), <https://www.nytimes.com/2019/11/13/world/americas/bolivia-morales-news.html> (discussing Ms. Añez's backing by the country's Constitutional Court).

¹²⁶ *Id.*

¹²⁷ See Cassandra Garrison, *Bolivian President Morales calls for new elections after OAS audit*, REUTERS (Nov. 10, 2019, 6:49 AM), <https://www.reuters.com/article/us-bolivia-election-morales/bolivian-president-morales-calls-for-new-elections-after-oas-audit-idUSKBN1XK0AK> (discussing widespread allegations of electoral fraud).

¹²⁸ See Paola Flores & Carlos Valdez, *Bolivia's president Evo Morales resigns amid election-fraud allegations, deadly protests*, USA TODAY (Nov. 11, 2019, 12:04 PM), <https://www.usatoday.com/story/news/world/2019/11/10/evo-morales-bolivia-president-resigns-amid-protests-allegations/2557032001/> (discussing the finding of irregularities in the October 20th election).

¹²⁹ See Michael Stott & Andres Schipani, *Evo Morales's legacy: a polarised Bolivia*, FIN. TIMES (Nov. 11, 2019), <https://www.ft.com/content/70c12778-0498-11ea-a984-fbbacad9e7dd> (discussing indigenous people's support for Morales).

General Williams Kaliman, the commander-in-chief of the Armed forces, recommended President Morales resign; Morales has claimed that the military tried to kidnap him and perhaps even kill him.¹³⁰ According to the government of Mexico, Morales was granted political asylum to protect his life that was threatened by the leaders of a coup d'état.¹³¹ Similar reasons were used by the government of Argentina to grant political asylum to Evo Morales.¹³²

Despite the transition nature of President Añez's government, there have been several significant variations in Bolivian domestic and international policies. Regarding the changes in Bolivia's foreign policy, under the new administration, the Buenos Aires Times writes:

Morales was first elected in late 2005. The first indigenous leader in the region kept close ties with Venezuela and Cuba, alongside open criticism of the United States [Secretary of State] Karen Longaric announced that Bolivia would formally pull out of ALBA, a group of leftist countries including Venezuela and Nicaragua, as well as UNASUR. La Paz also recognized Juan Guaidó as the leader of Venezuela, another move solidifying Bolivia's breaking of diplomatic ties with the Nicolás Maduro administration.¹³³

The Pluri-national Assembly—controlled by two thirds of its members who belong to Evo Morale's party—passed a bill to have new presidential elections.¹³⁴ The transition government of President Añez and the Pluri-national Assembly are leading the efforts to organize the new upcoming elections for President,

¹³⁰ Kurmanaev, Machicao & Londoño, *supra* note 115.

¹³¹ *Evo Morales leaves Bolivia to take asylum in Mexico*, *supra* note 116.

¹³² *See id.* (discussing Argentina's involvement in granting Morales asylum).

¹³³ *Bolivia crisis deepens as two sides stake out positions*, BUENOS AIRES TIMES (Nov. 16, 2019, 11:31 AM), <https://www.batimes.com.ar/news/latin-america/bolivia-crisis-deepens-as-two-sides-stake-out-positions.phtml>.

¹³⁴ Mitra Taj & Daniel Ramos, *Breakthrough in Bolivia as bill for new elections sails through Congress*, REUTERS (Nov. 23, 2019, 11:58 AM), <https://www.reuters.com/article/us-bolivia-politics/breakthrough-in-bolivia-as-bill-for-new-elections-sails-through-congress-idUSKBN1XX0J1>.

Vice-President and members of Congress.¹³⁵ Despite the peaceful resolution of the Bolivian political crisis, the interactions between all sides of the conflict has been characterized by the intense use of legal discourses to try to destroy political opponents.

Both sides of the Bolivian conflict are accusing each other of crimes against humanity.¹³⁶ International lawyers, on behalf of the Bolivian government, submitted a petition to the International Criminal Court accusing President Evo Morales for crimes against humanity.¹³⁷ The Bolivian government has issued an arrest warrant against president Morales for acts of terrorism and sedition.¹³⁸ Similarly, international lawyers who support Morales have filed lawsuits against Añez's government for international crimes, including one lawsuit accepted by a Federal Circuit Court in Argentina.¹³⁹ Añez is accused of disproportionate use of force against civilians leading to the killing of thirty-two people.¹⁴⁰ These are some examples of the use of the discourse of international law in the Bolivian conflict.¹⁴¹ In a country that once was influenced by neo-Nazi ideology and military dictatorships, it is a paradox that in the current historical context, there is an intense political use of the narrative of human rights law as an instrument to undermine political opponents.

¹³⁵ Gideon Long, *Bolivia to hold new presidential election*, FIN. TIMES (Jan. 3, 2020), <https://www.ft.com/content/51d9a77c-2e91-11ea-a126-99756bd8f45e>.

¹³⁶ ANI, *Bolivia's interim govt to file case at ICC against Morales over 'crimes against humanity'*, BUS. STANDARD (Dec. 1, 2019, 9:35 AM), https://www.business-standard.com/article/news-ani/bolivia-s-interim-govt-to-file-case-at-icc-against-morales-over-crimes-against-humanity-119120100093_1.html; *Denuncian a Camacho y Añez por terrorismo y piden su extradición*, ERBOL (Dec. 7, 2019), <https://erbol.com.bo/nacional/denuncian-camacho-y-a%C3%B1ez-por-terrorismo-y-piden-su-extradici%C3%B3n>.

¹³⁷ ANI, *supra* note 136.

¹³⁸ Gideon Long, *Bolivia issues arrest warrant for Evo Morales*, FIN. TIMES (Dec. 18, 2019), <https://www.ft.com/content/aa5ace2e-21e6-11ea-b8a1-584213ee7b2b>.

¹³⁹ *Denuncian a Camacho y Añez por terrorismo y piden su extradición*, *supra* note 136.

¹⁴⁰ Carlos Corz, *En Argentina denuncian a la presidenta Añez y al excívico Camacho; piden su extradición*, LA RAZÓN (Dec. 6, 2019, 11:04 PM), http://www.la-razon.com/nacional/Argentina-denuncia-Anez-Camacho-extradicion-bolivia_0_3270872921.html.

¹⁴¹ See generally Susan W. Tiefenbrun, *Semiotic Definition of Lawfare*, 43 CASE W. RES. J. INT'L L. 29 (2010) (providing a comprehensive analysis of the use of legal systems to destroy political opponents).

According to political leaders who oppose Evo Morales, his administration systematically and improperly used the judicial system to justify the persecution of its political opponents.¹⁴² There are also claims of diverse forms of political corruption during his government including financial influence on media networks and other institutions to favor Morales' political interests.¹⁴³ In the current political context, the discourse of law is being used to threaten Evo Morales with imprisonment if he returns to Bolivia.¹⁴⁴

Police detained members of the former electoral tribunal, including Mrs. Maria Eugenia Choque and Mr. Antonio Costas, and several government officials that were part of Morales' government are facing lawsuits and probably will end up in prison as well.¹⁴⁵ Morales' close collaborators and former members of his government, including former Secretary of Justice, Hector Arce, have been granted political asylum by the Mexican government.¹⁴⁶ However, Mrs. Añez's government refuses to grant

¹⁴² Karina Martín, *Bolivia Opposition Denounces Persecution for Questioning Evo Morales' Third Reelection Bid*, PAN. POST (Apr. 17, 2017), <https://panampost.com/karina-martin/2017/04/17/bolivia-opposition-persecution-questioning-evo-morales/?cn-reloaded=1>.

¹⁴³ See *Evo Morales: Bolivian leader's turbulent presidency*, BBC NEWS (Nov. 10, 2019), <https://www.bbc.com/news/world-latin-america-12166905> (discussing "highs and lows" of Morales' political decisions while in office).

¹⁴⁴ Tom Phillips, *New Bolivian interior minister vows to jail Evo Morales for rest of his life*, GUARDIAN (Nov. 24, 2019, 7:56 AM), <https://www.theguardian.com/world/2019/nov/24/bolivia-evo-morales-vow-jail-rest-life-arturo-murillo>; Daniel Ramos, *Bolivia prosecutors probing Morales over accusations he encouraged unrest*, REUTERS (Nov. 22, 2019, 2:39 PM), <https://www.reuters.com/article/us-bolivia-politics/bolivia-prosecutors-probing-morales-over-accusations-he-encouraged-unrest-idUSKBN1XW26Y>.

¹⁴⁵ Luis Andres Henao & Carlos Valdez, *Morales says he's headed for Mexico as clashes rock Bolivia*, AP NEWS (Nov. 11, 2019), <https://apnews.com/cb787cf89f674d4683ff808e0ad64711>; Anthony Faiola & Rachelle Krygier, *After Morales resignation, a question for Bolivia: Was this the democratic will or a coup?*, WASH. POST (Nov. 11, 2019, 5:15 PM), https://www.washingtonpost.com/world/the_americas/after-morales-resignation-a-question-for-bolivia-was-this-the-democratic-will-or-a-coup/2019/11/11/ff36ce9a-040c-11ea-9118-25d6bd37dfb1_story.html.

¹⁴⁶ See María Verza, *Mexico: Bolivian agents surround ambassador's residence*, AP NEWS (Dec. 23, 2019), <https://apnews.com/b8acb8932524a4d5b5105e290a9e5f34> (stating those who received political asylum status in Mexico).

them safe passage documents allowing them to leave the country because of accusations of sedition and terrorism.¹⁴⁷ Evo Morales' party has announced a lawsuit against president Añez for the massacres of Senkata and Sacaba.¹⁴⁸ The current Bolivian government uses legal discourses and the legal procedures to accuse members of MAS of drug trafficking, sedition and terrorism.¹⁴⁹ The MAS uses legal narratives to accuse the transitional government of racism and the illegal use of force against innocent civilians.¹⁵⁰

All sides of the Bolivian conflict are using legal discourses to dehumanize each other and to promote political and ethic agendas that could eventually lead to new outbreaks of violence. In this context, it is imperative to empower social and political forces that believe in the use of legal discourses to establish long lasting processes of ethnic reconciliation, forgiveness, and respect for democratic institutions. Doing so will contribute to the peaceful resolution of conflicts and the prevention of potential civil wars of unpredictable consequences. To achieve this objective, a proper use of legal discourse must be implemented to protect the right to life of all Bolivians and to construct a pluralistic society where all political views can be freely expressed. Bolivia has a historical opportunity to build up a society that respects the rule of law and resolve its conflicts by peaceful means.

¹⁴⁷ Dave Graham & Daniel Ramos, *Mexico appeals to international court as diplomatic row with Bolivia intensifies*, REUTERS (Dec. 25, 2019, 9:18 PM), <https://www.reuters.com/article/us-mexico-bolivia/mexico-appeals-to-international-court-as-diplomatic-row-with-bolivia-intensifies-idUSKBN1YU028>.

¹⁴⁸ See Amy Booth, *IACHR calls for int'l probe of alleged rights abuses in Bolivia*, AL-JAZEERA (Dec. 11, 2019), <https://www.aljazeera.com/news/2019/12/iachr-calls-int-probe-alleged-rights-abuses-bolivia-191211221839977.html> (stating the IACHR found "strong indications of human rights violations, with profound repercussions for the life of Bolivian society"); *Denuncian a Camacho y Añez por terrorismo y piden su extradición*, *supra* note 136.

¹⁴⁹ Emily Achtenberg & Rebel Currents, *MAS Party Under Threat as Bolivia Moves Towards New Elections (Without Evo)*, NACLA (Jan. 10, 2020), <https://nacla.org/blog/2020/01/10/mas-party-under-threat-bolivia-new-elections-without-evo>.

¹⁵⁰ *Id.*

V. INTERNATIONAL LEGAL DISCOURSE AND THE IMPORTANCE
OF CONSTRUCTING A CULTURE OF RESPECT FOR HUMAN
RIGHTS IN BOLIVIA

Steven Ratner believes that international law matters significantly in the prevention of ethnic conflicts. Regarding this, he writes:

[I]n the hands of a normative intermediary, international law, defined to include norms of a variety of valences, has eased tensions within states. It has done so because the intermediary has devised strategies—translation, elevation, mobilization of support, development of norms, and education—to influence and persuade actors in situations of ethnic conflict to solve their dispute in a norm-based way. As the framework of mediation theory helps clarify, these processes make international norms meaningful and relevant to domestic actors . . . Norms are hardly the only influence on domestic actors, and the strategies above acknowledge the role of political factors. However, the data suggest that norms can affect these situations, where actors have readily shown themselves prepared to solve their disputes through violence.¹⁵¹

Considering the extreme contradictions between the main political actors in Bolivia and the ethnic divisions of the country, it is difficult for Bolivians to find a common language of understanding to construct a lasting peaceful social coexistence. The lack of use of a common language reflects not only the historical contradiction of Bolivian society, but also can create the conditions for violent ethnic and political conflicts. In this context, the universal language of respect for international human rights norms and human dignity should be one of the foundations for national reconciliation efforts and the peaceful resolution of ethnic and political conflicts.

The discourse of human rights, including individual and group rights, should become mainstream in Bolivia. All sides of the conflicts, including indigenous people and citizens of all Bolivian geographic regions, should make a commitment to respect

¹⁵¹ Steven R. Ratner, *Colloquy: Does International Law Matter in Preventing Ethnic Conflict?*, 32 N.Y.U. J. INT'L L. & POL. 591, 693–94 (2000).

universal human rights norms. Among the international normative agreements that express the language of human rights are the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; International Convention on the Elimination of all Forms of Racial Discrimination; Inter-American Convention against Racism and against Discrimination and Intolerance; American Declaration on the Rights of Indigenous Peoples; U.N. Declaration on the Rights of Indigenous Peoples; and other international human rights law instruments ratified by Bolivia.¹⁵²

It is in the best national interest of Bolivia to ensure the implementation of human rights norms, including the ones regarding minority rights, to prevent violent conflicts that can undermine the national security of the country. The case of the former Yugoslavia, for example, shows that systematic discrimination against minority groups can lead to war and disintegration of states.¹⁵³ If Bolivia does not resolve issues of structural racial discrimination against indigenous peoples, conditions for the existence of radical political movements and the increased possibility of violent ethnic conflicts may arise. All political parties and institutions should include indigenous leaders and should consider the interests of indigenous people in their political and economic platforms.

In the current political context of Bolivia, some influential political actors have used narratives to dehumanize political opponents. This often happens based on ethnic stereotypes that diminish the human dignity of human beings from a different ethnic background or a different geographical region. This reality is seen in the discourses of political leaders who accuse each other for the responsibility of the violence, social and economic

¹⁵² See *Human Rights by Country, Bolivia*, U.N. HUM. RTS. OFF. HIGH COMMISSIONER, <https://www.ohchr.org/EN/Countries/LACRegion/Pages/BOIndex.aspx> (discussing Bolivia's international obligations in the field of human rights and ratified treaties) (last visited Mar. 1, 2020).

¹⁵³ See generally Bruno Dallago & Milica Uvalic, *The Distributive Consequences of Nationalism: The Case of Former Yugoslavia*, 50 EUR.-ASIA STUD. 71, 79–81 (1998) (discussing nationalism and the economic rationale of disintegration of the Former Yugoslavia).

problems of the country.

Current prevalent narratives in Bolivia focus on the ideological differences between the MAS, Citizenship Community, other political parties, civic committees, social movements, and other political actors. It also focuses on the differences between regions such as Santa Cruz, La Paz, Potosi, and Chuquisaca. Considering the increasing influence of regionalist discourses, it is essential to respect the fundamental human rights of minority groups who live in diverse regions of Bolivia. Extreme regionalism without respect for individual human rights and group rights of ethnic minorities can create the conditions for increasing violence and the fragmentation of Bolivia.

In Bolivia, there are conscious and subconscious ethnic biases that dehumanize the other, especially indigenous people.¹⁵⁴ This creates a dangerous situation that can lead to violent ethnic and political conflicts.¹⁵⁵ To prevent this result, a narrative of respect of individual and group human rights can aid in building up a culture which respects cultural diversity, democratic values, and promotes nondiscrimination.¹⁵⁶

The norms of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention against Racism, and other international human rights agreements are the foundation for building up a culture of respect for human dignity, which is a prerequisite for the peaceful resolution of political conflicts in Bolivia. This includes the recognition of the importance of implementing international norms regarding the protection of indigenous people's rights. This is true because a significant segment of the Bolivian population is indigenous, and another significant sector is of mixed indigenous and European origins. All political parties, civic committees, and other civil society organizations should recognize this reality and make a commitment to ensure

¹⁵⁴ See, e.g., Kurmanaev & Krauss, *supra* note 25 (discussing the religious and racial divide in Bolivia in response to Evo Morales' difficulty in maintaining power).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

the implementation of international human rights law in general, and indigenous people's right law in particular.

To build up a culture of dialogue for the resolution of political disputes in Bolivia, it is essential to end narratives that promote the dehumanization of the other and sustain extreme ideologies and violent political actions. International human rights law is a narrative that should be embraced by all actors in the Bolivian conflict, including the media, government leaders, political parties, and others.

To avoid violent ethnic and political conflicts of tragic consequences, Bolivia needs to build up a culture of respect for its international commitments in the field of human rights. Bolivia is a party to most international human rights treaties. Therefore, Bolivia has a legal obligation to implement international human rights law that are part of positive international law and customary international law. Bolivia should also implement the norms of "soft" law that facilitate the peaceful resolution of ethnic and political conflicts, such as the U.N. Declaration on Minorities, the U.N. Declaration on the Rights of Indigenous People, and the Inter American Declaration on the Rights of Indigenous People.¹⁵⁷

All sides of the Bolivian conflict—including civic committees, social movements, and political parties—should make a commitment to contribute in the process of implementation of international human rights norms, and more importantly in an effort to build up a culture of respect for human dignity and the peaceful resolution of ethnic and political conflicts. Regarding the importance of constructing cultural identities for the peaceful resolution of ethnic conflicts, Steven Ratner writes:

Constructivists, with their notion that norms help constitute the identity of states and actors within states, should find the insights of mediation theory beneficial. Constructivism already recognizes a role for individual agents in changing state identities

¹⁵⁷ See Dinah Shelton, *Compliance with International Human Rights Soft Law*, 29 STUD. TRANSNAT'L LEGAL POL'Y 119, 120–27 (1997) (analyzing how soft law may address non-state actors, including business entities, international organizations, non-governmental organizations, and individuals).

through persuasion, and this would presumably include both the broad category of normative agents and the smaller category of normative intermediaries. The intermediary may, for instance, be able to develop new tools that focus on changing identities as well as interests. Constructivists should examine the tools of intermediaries for altering these identities and consider how mediation theory can help to explain why certain norm entrepreneurs have succeeded at norm promotion.¹⁵⁸

Bolivia should embrace a narrative of respect for human dignity that will enable the Bolivian people to construct a culture that respects human rights norms, which includes the right to life, nondiscrimination, freedom of expression, and freedom of religion. By mainstreaming a legal narrative as an instrument of reconciliation and of sustaining peaceful relations between Bolivians from diverse ethnic and geographical regions, the country can prevent violent ethnic and political conflicts.

VI. THE SOURCES OF INTERNATIONAL HUMAN RIGHTS LEGAL OBLIGATIONS

A central element in the prevention of ethnic conflicts in multiethnic societies, such as Bolivia, is to ensure respect for fundamental human rights of all ethnic groups. For Bolivia, this means respect for the individual and collective rights of Aymaras, Quechuas, Hispanics, Guaranis, and all other groups. This is especially important regarding respect for human rights of ethnic groups that have historically been denied access to political, social, and economic power such as the indigenous people of Bolivia. It is also important for groups that live in certain regions of Bolivia be considered minorities—such as immigrants from the department of Santa Cruz that live in the city of La Paz, or immigrants from cities such as La Paz, Oruro, and Potosi that live in Santa Cruz.¹⁵⁹

¹⁵⁸ Ratner, *supra* note 151, at 690.

¹⁵⁹ Angela Davis et. al., *Repressive violence is sweeping Bolivia. The Áñez regime must be held to account*, GUARDIAN (Nov. 24, 2019, 3:04 PM), <https://www.theguardian.com/commentisfree/2019/nov/24/bolivia-anez-regime-violence>.

Bolivia is a member of the United Nations, and on November 14, 1945, it ratified the U.N. Charter.¹⁶⁰ What are the main normative provision of this legal instrument that can enable Bolivia to protect the rights of all its population including minority groups? The U.N. Charter guarantees the protection of minority rights through the principle of non-discrimination and equality for all human beings.¹⁶¹ The U.N. does not mention minority rights directly, but the principles of non-discrimination and equality that the U.N. Charter establishes applies to persons that belong to minority groups.¹⁶² The preamble of the U.N. Charter stipulates that the goal of the U.N. is “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”¹⁶³ In Articles 1.2 and 1.3, the U.N. Charter says:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.¹⁶⁴

Despite the generality of the principles mentioned above, they represent a strong foundation for the international legal protection of fundamental human rights including the rights of minority groups. All members of the international community have a legal obligation to respect the principle of non-discrimination of persons and self-determination of peoples.¹⁶⁵ In the

¹⁶⁰ United Nations Organization, *United Nations Treaty Collection*, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-1&chapter=1&clang=_en.

¹⁶¹ G.A. Res. 47/135, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Dec. 18, 1992).

¹⁶² *Id.*

¹⁶³ U.N. Charter preamble.

¹⁶⁴ U.N. Charter art. 1 ¶¶ 2, 3.

¹⁶⁵ World Conference on Human Rights, Vienna Declaration and Program of Action, Part I, U.N. Doc. A/CONF.157/23 (June 25, 1993).

case of Bolivia, this means the recognition of the consequences of hundreds of years of systematic racial discrimination against indigenous peoples and the importance of ending all forms of systematic racial discrimination.

Like Germany during the Nazi Regime, Bolivia has also faced the influence of Nazi ideology during the military dictatorship of Luis Garcia Meza.¹⁶⁶ As a result, political leaders, peasants, students, intellectuals, workers, and others were assassinated, tortured, and imprisoned.¹⁶⁷ In reaction to the atrocities committed by the Nazi regime, the Universal Declaration of Human Rights (UDHR) was promulgated as a recognition of the fundamental importance of the global protection of human rights and human dignity.¹⁶⁸ The UDHR is an essential source for building a culture of respect of human dignity in Bolivia against the threats of totalitarian ideas and actions.

According to Professor P.R. Ghandhi, although the UDHR was adopted as a non-binding U.N. resolution, leading scholars recognize that it now has become customary international law.¹⁶⁹ Therefore, it is a normative instrument which creates legal obligations on all members of the international community.¹⁷⁰ Bolivia should implement the norms of the UDHR and it should educate government officials, civil leaders, political leaders, church leaders, academics, students, and the population in general about the norms of the UDHR as a foundation for the peaceful coexistence of diverse ethnic groups and people of diverse ideologies.

The UDHR recognizes two categories of rights: civil and political rights; and economic, social, and cultural rights. Those

¹⁶⁶ *Former Dictator Garcia Meza Extradited to Bolivia*, AP NEWS (Mar. 14, 1995), <https://apnews.com/974690c0f2e9a6bc58f4f61c83950919>.

¹⁶⁷ *Id.*

¹⁶⁸ See *History of the Document*, UNITED NATIONS <https://www.un.org/en/sections/universal-declaration/history-document/index.html> (describing the history behind the adoption of the Universal Declaration of Human Rights).

¹⁶⁹ P. R. Ghandhi, *The Universal Declaration of Human Rights at Fifty Years: Its Origins, Significance and Impact*, 41 GERMAN Y.B. INT'L L. 206, 242–50 (1998).

¹⁷⁰ *Id.*

rights have direct relevance for minority groups because they give everyone the same type of legal protection and they prohibit discrimination based on race, religion, or sex. Among the most important civil and political rights are the right to life, liberty, and security of persons; the prohibition of slavery, of torture, and cruel, inhuman or degrading treatment, the right not to be subjected to arbitrary arrest, detention or exile; the right to a fair trial, the presumption of innocence, and the prohibition against the application of ex post facto laws.¹⁷¹

In the UDHR, there is a limited direct mention of the situation of minorities in the context of education. According to Article 26.2:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.¹⁷²

The UDHR is a fundamental normative instrument that contains customary international law norms and imperative norms, *jus cogens*, of international law including respect for the right to life.¹⁷³ Considering the great ethnic diversity of Bolivia,¹⁷⁴ which is one of its greatest strengths, the observance of Article 2 of the UDHR is very important. In Bolivia, everyone's human rights, including the ones of the Aymaras, Quechuas, Guaranis, and Hispanics, should be respected "without distinction of any kind, such as race, colo[r], sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹⁷⁵ Aymaras, Quechuas, Guaranis, and Hispanics

¹⁷¹ See generally H. Lauterpacht, *The Universal Declaration of Human Rights*, 25 BRIT. Y.B. INT'L L. 354 (1948) (providing a historical, normative and doctrinal analysis of the Universal Declaration of Human Rights).

¹⁷² G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 26 ¶ 2 (Dec. 10, 1948) [hereinafter UDHR].

¹⁷³ See *id.* art. 3 ("Everyone has the right to life, liberty and security of person.").

¹⁷⁴ Gigler, *supra* note 1.

¹⁷⁵ UDHR, *supra* note 172, art. 2.

have the “right to life, liberty and security of person.”¹⁷⁶

In Bolivia, “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁷⁷ Consistent with Article 7 of the UDHR, in Bolivia, indigenous people and other Bolivians are entitled to equal protection against any form of discrimination and against any incitement to such discrimination.¹⁷⁸ If human rights norms are not respected in Bolivia, it will create conditions that may result in the increase of ethnic and political conflicts between the Aymaras, Quechuas, Mestizos, Hispanics, and other ethnic groups in Bolivia. As a result (besides the legal and moral reasons to fulfill international human rights norms), there is also a pragmatic necessity. Respect for fundamental human rights is the foundation for the peaceful coexistence of diverse ethnic groups and for the peaceful resolution of its conflicts.

Historically in Bolivia, there has been systematic violations of fundamental human rights, especially during military dictatorships,¹⁷⁹ which includes the systematic imprisonment of political opponents.¹⁸⁰ This is contrary to Article 9 of the UDHR which states that “[n]o one shall be subjected to arbitrary arrest, detention or exile.”¹⁸¹ In Bolivia, there have been several political leaders and activists that have been arrested because of accusations of diverse types of crimes including sedition against the government.¹⁸² According to Article 11.1 of the UDHR, “[e]veryone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for this

¹⁷⁶ *Id.* art. 3.

¹⁷⁷ *Id.* art. 5.

¹⁷⁸ *Id.* art. 7.

¹⁷⁹ Gabriel Hetland, *Bolivia Is Descending Into a Full-Blown Far-Right Military Dictatorship*, JACOBIN (Nov. 21, 2019), <https://jacobin-mag.com/2019/11/bolivia-coup-evo-morales-mas-jeanine-anez>.

¹⁸⁰ *Bolivia: Events of 2018*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2019/country-chapters/bolivia> (last visited Feb. 12, 2020).

¹⁸¹ UDHR, *supra* note 172, art. 9.

¹⁸² See *Bolivia opens probe into 600 former Morales officials*, FRANCE 24 NEWS (Jan. 8, 2020, 7:54 PM), <https://www.france24.com/en/20200108-bolivia-opens-probe-into-600-former-morales-officials> (announcing investigations against 592 former officials).

defen[s]e.”¹⁸³ Bolivia should implement human rights norms including due process and the presumption of innocence.

The implementation of Article 18 of the UDHR is important for the peaceful resolution of ethnic and political conflicts in Bolivia. This Article recognizes that “[e]veryone has the right to freedom of thought, conscience and religion.”¹⁸⁴ All political parties, government leaders, civil leaders, the media, and other actors should embrace a culture of respect of diverse political ideas and religious worldviews. A culture of tolerance is essential for the peaceful coexistence of diverse sectors of the Bolivian society.

The Covenant on Civil and Political Rights (ICCPR),¹⁸⁵ and the Covenant on Economic, Social and Cultural Rights¹⁸⁶ were adopted by the UN General Assembly in 1966, and entered into force in 1976. The two Covenants are both interdependent and interrelated; they both contain a provision that affects the situation of minority groups. Bolivia is a party to both Covenants.¹⁸⁷ According to Article 1.1 of both Covenants “all people have the right of self-determination.”¹⁸⁸ Both Covenants prohibit any type of discrimination based on race, color, sex, language, religion, political or other opinion.¹⁸⁹

When the 1948 Universal Declaration of Human Rights was drafted, proposals for the inclusion of an article on minority rights were rejected.¹⁹⁰ Later in the ICCPR, the issue of minority rights was addressed in Article 27 which says “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to

¹⁸³ UDHR, *supra* note 172, art. 11 ¶ 1.

¹⁸⁴ *Id.* art. 18.

¹⁸⁵ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

¹⁸⁶ International Covenant on Economic Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]

¹⁸⁷ *Status of Ratification Interactive Dashboard - Bolivia*, U.N. HUM. RTS. OFF. HIGH COMM’R <https://indicators.ohchr.org/> (last visited Mar. 1, 2020).

¹⁸⁸ ICESCR, *supra* note 186, art. 1 ¶ 1; ICCPR, *supra* note 185, art. 1 ¶ 1.

¹⁸⁹ ICCPR, *supra* note 185, art. 2; ICESCR, *supra* note 186, art. 2.

¹⁹⁰ Johannes Morsink, *Cultural Genocide, the Universal Declaration, and Minority Rights*, 21 HUM. RTS. Q. 1009, 1012 (1999).

enjoy their own culture, to profess and practi[c]e their own religion, or to use their own language.”¹⁹¹ This Article embodies the idea of individual rights by stating that “persons belonging to minorities” are the ones that have the rights.¹⁹² There is also a limited recognition of collective rights because the Article recognizes that the persons belonging to minorities, such as the Aymara, Quechua and Guarani, shall not be denied their rights in community with the other members of their group.¹⁹³ Article 26, of the ICCPR, is one of the foundations for the international legal protection of minority rights.¹⁹⁴

The violations of the right to life in Senkata, Sakaba, Montero, and other places during violent political and ethnic conflicts are contrary to Bolivia’s international legal obligations.¹⁹⁵ Of special concern is a government decree that exonerated the military and police forces from responsibility in using disproportionate force that resulted in the death of around thirty-two people.¹⁹⁶ The government of President Añez claims that there were terrorist threats against the national security of Bolivia.¹⁹⁷ Article 4 of the ICCPR allows a government to derogate from their international legal obligations in cases of public emergency.¹⁹⁸ If the claims were true, the Bolivian government could have taken special measures.

Because of this exceptional situation, the military could have legally used proportional force.¹⁹⁹ Opposition movements

¹⁹¹ ICCPR *supra* note 185, art 27.

¹⁹² *Id.* art. 27.

¹⁹³ *Id.*

¹⁹⁴ *Id.* art. 26.

¹⁹⁵ See *Human Rights Watch Takes Bolivia to Court over NGO Restrictions*, PANAM POST (Aug. 6, 2015), <https://panampost.com/panam-staff/2015/08/06/human-rights-watch-takes-bolivia-to-court-over-ngo-restrictions/?cn-reloaded=1> (describing how Bolivia is obligated by norms of international law, incorporated into Bolivian law by its Constitution, to protect human rights within its jurisdiction, including the right of freedom of association).

¹⁹⁶ *Bolivia: Interim Government Adopts Abusive Measures*, HUM. RTS. WATCH (Nov. 19, 2019), <https://www.hrw.org/news/2019/11/19/bolivia-interim-government-adopts-abusive-measures>.

¹⁹⁷ *Id.*

¹⁹⁸ ICCPR, *supra* note 185, art. 4.

¹⁹⁹ *Bolivia: Interim Government Adopts Abusive Measures*, *supra* note

claim that the military and police use of force was disproportionate and resulted in the killing of innocent civilian victims.²⁰⁰ When international human rights norms are disregarded, this creates the condition for the increase of violent ethnic and political conflicts that can lead to widespread violence and to tragic outcomes that are difficult to predict.

The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) has a direct impact on the status of minorities in international law.²⁰¹ One of the biggest problems in countries like Bolivia is racial discrimination.²⁰² Conscious and subconscious beliefs in the racial superiority of one group of people are one of the main sources of ethnic and political hate as well as mutual social distrust in Bolivia.²⁰³

By recognizing that all necessary measures should be adopted for the elimination of all forms of racial discriminations, the convention requires concrete actions in the struggle against racial discrimination for countries which are parties to the treaty.²⁰⁴ This has a direct relation to the situation regarding minority groups (such as Guarani, Quechua and Aymara) in Bolivia.²⁰⁵ Historically, indigenous peoples in Bolivia have been looked down upon by the ruling economic and political elites of Spanish white or mestizo ancestry because of the color of their skin.²⁰⁶

The Convention, in Article 1, defines racial discrimination

196.

²⁰⁰ *Id.*

²⁰¹ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD].

²⁰² *Bolivia: "Significant progress, but important challenges remain in the fight against racism", says UN expert*, U.N. HUM. RTS. OFF. HIGH COMM'R (Sept. 10, 2012), <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12495&LangID=E>

²⁰³ *Id.*

²⁰⁴ ICERD, *supra* note 203, art. 2 ¶ 2.

²⁰⁵ See Andres Schipani & Benedict Mander, *Bolivia's indigenous groups must preserve their identity*, FIN. TIMES (Oct. 26, 2015), <https://www.ft.com/content/b7b723cc-50d2-11e5-b029-b9d50a74fd14>.

²⁰⁶ Maral Shoaie, *MAS and the Indigenous People of Bolivia*, U. SOUTH FLA. 1, 13–14 (Oct. 16, 2012).

as:

[A]ny distinction, exclusion, restriction or preference based on race, colo[r], descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.²⁰⁷

Article 1.4 of the Convention recognizes the importance of taking special measures to secure the advancement of racial groups that have been subjected to discrimination.²⁰⁸ Consistent with this norm, any Bolivian government should take actions to remedy the situation of political and economic marginalization of indigenous peoples. This should be part of the strategic policy of Bolivia and should not belong to only one political party. It should also not depend on economic or political worldviews.

The language of Article 1.4 of the ICERD recognizes affirmative action as a temporary measure to help certain groups achieve equality with the rest of the population.²⁰⁹ This is imperative in countries in which indigenous people have been discriminated against by a history of segregation and racism.²¹⁰ Article 3 of the ICERD prohibits and eradicates all practices of racial segregation and apartheid in territories under its jurisdiction.²¹¹ Article 4 of the ICERD rejects any propaganda based on ideas of racial superiority.²¹² The Article 5 of the Convention recognizes the principle of equality before the law—including voting rights—for every human being without distinction as to race, color, national origin, or ethnic origin.²¹³ The ICERD also recognizes civil rights for everybody, such as the right to freedom of movement; the right to nationality; the right to marriage; the

²⁰⁷ ICERD, *supra* note 201, art 1 ¶ 1.

²⁰⁸ *Id.* art. 1 ¶ 4.

²⁰⁹ *Id.*

²¹⁰ Nate Singham, *Bolivian Race Relations and the Struggle for Ethnic Equality*, TELESUR (Mar. 20, 2015), <https://www.telesurenglish.net/analysis/Bolivian-Race-Relations-and-the-Struggle-for-Ethnic-Equality-20150320-0015.html>.

²¹¹ ICERD, *supra* note 201, art. 3.

²¹² *Id.* art. 4.

²¹³ *Id.* art. 5.

right to own property; the right to freedom of thought, conscience, and religion; the right to freedom of association; and the right to freedom of opinion.²¹⁴

The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations is an important document because it reflects the status of customary international law.²¹⁵ According to the Declaration:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence.²¹⁶

Even though the above-mentioned document promotes the right to self-determination, the principle of territorial integrity still is considered more important. The Declaration states that “[n]othing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples.”²¹⁷ In Bolivia, all ethnic groups should continue to preserve the territorial integrity and sovereignty of the country.

The Declaration on the Elimination of all Forms of Intoler-

²¹⁴ *Id.*

²¹⁵ G.A. Res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Oct. 24, 1970).

²¹⁶ *Id.*

²¹⁷ *Id.*

ance and of Discrimination Based on Religion or Belief is important for the status of religious minorities.²¹⁸ Even though there is not a specific article on minority rights, the Declaration states the right of every human being to have freedom of thought, conscience, and religion.²¹⁹ According to Article 1 of the Declaration, “[t]his right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”²²⁰ The government of President Añez and the leadership of the Civic Committee of Santa Cruz has highlighted the primacy of the Catholic faith.²²¹ Although this view represents an important sector of Bolivia society, it should not be used to discriminate against other worldviews consistent with the right to freedom of religion.

The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted by the U.N. General Assembly in its 47th session.²²² The Declaration reaffirms the principle of nondiscrimination and equality among human beings.²²³ The objective of the Declaration is to promote the principles of the U.N. Charter; the Universal Declaration of Human Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief; and the Convention on the Rights of the Child.²²⁴ The Declaration is an interpretation of Article 27 of the International Covenant on Civil and Political

²¹⁸ See generally G.A. Res. 36/55, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Nov. 25, 1981) (describing the importance for the status of religious minorities).

²¹⁹ *Id.* preamble.

²²⁰ *Id.* art. 1 ¶ 1.

²²¹ Ciara Nugent, *How Bolivia's Evo Morales Was Brought Down With the Help of an Obscure Conservative With a Bible*, TIME (Nov. 15, 2019), <https://time.com/5728279/luis-fernando-camacho-bolivia/>.

²²² G.A. Res. 47/135, annex, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Dec. 18, 1992).

²²³ *Id.* preamble.

²²⁴ *Id.*

Rights.²²⁵ The document considers that the protection of minority groups contributes to the political stability of countries with minority populations and is a source of stability in relations among different countries.²²⁶ The document points out the importance of the rule of law and democracy in the fulfillment of minority rights.²²⁷ All of these norms should be implemented in Bolivia to ensure that the rights of indigenous people and internal migrants that live in diverse regions of Bolivia (such as La Paz and Santa Cruz) are respected.

Article 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states the obligation of States to respect the ethnic, cultural, religious and linguistic identity of minority groups.²²⁸ Article 2 protects the right of minority groups to enjoy their own culture, religion and language.²²⁹ The right to association is established in Article 2.4.²³⁰ Article 3 is important for the Aymara, Quechua, Guaraní, and other indigenous people because it recognizes the collective rights of minority groups.²³¹ Article 3 states that “[p]ersons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.”²³²

The great ethnic diversity of Bolivia is a unique and powerful foundation for its culture.²³³ To ensure the success of Bolivia’s diversity, despite efforts to undermine and denigrate its minority groups’ history and culture, it is important to implement norms regarding the full participation of minority groups in the economic development and political leadership of the

²²⁵ ICCPR *supra* note 185, art. 27.

²²⁶ G.A. Res. 47/135, *supra* note 222.

²²⁷ *Id.*

²²⁸ *Id.* art. 1 ¶ 1.

²²⁹ *Id.* art. 2.

²³⁰ *Id.* art. 2 ¶ 4.

²³¹ *Id.* art. 3.

²³² G.A. Res. 47/135, *supra* note 222 art. 3.

²³³ Gigler, *supra* note 1.

country.²³⁴ The norms of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities help accomplish these objectives. For example, Article 4 states a limited principle of affirmative action by requiring that “[s]tates shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.”²³⁵ The Declaration also establishes the right of minority groups to learn their native language, culture, history, and traditions.²³⁶ The participation of minorities in the economic development of their country is found in Article 4.5.²³⁷ In Article 8 the Declaration recognizes the primacy of international human rights.²³⁸ The priority of the principle of sovereign equality, territorial integrity, and political independence of States is found in Article 8.4.²³⁹

VII. THE IMPORTANCE OF MINORITY RIGHTS

As a reaction to the atrocities committed by the Nazi regime against minority groups, mainly the Jewish community, the legal protection of human rights became one of the cornerstones of the Post-World War II international normative order.²⁴⁰ The provisions of the UDHR, the ICCPR, and the International Covenant on Economic, Social and Cultural Rights (ICESR) focus on the protection of individual human rights. However, the ICCPR and the ICESCR also recognize the collective right to self-determination of minority groups.²⁴¹ According to Article 1.1 of the

²³⁴ See generally, *UNESCO World Report: Investing in Cultural Diversity and Intercultural Dialogue* (2009), https://www.un.org/en/events/cultural-diversityday/pdf/Investing_in_cultural_diversity.pdf.

²³⁵ G.A. Res. 47/135, *supra* note 222, art. 4 ¶ 2.

²³⁶ *Id.* art. 4 ¶ 3.

²³⁷ *Id.* art. 4 ¶ 5.

²³⁸ *Id.* art. 8.

²³⁹ *Id.* art. 8 ¶ 4.

²⁴⁰ See Paul Gordon Lauren, *The Evolution of International Human Rights and International Law*, 13 FINNISH Y.B. INT'L L. 95, 101–05 (2002) (providing an analysis of the historical development of international human rights law).

²⁴¹ See ICCPR, *supra* note 185, art. 1 (showing the importance on self-

ICCPR “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”²⁴²

According to Francesco Capotorti, who is the special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the term minority means:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.²⁴³

Even though the Bolivian Constitution guarantees equal protection and recognizes the pluricultural character of the country, there still is a situation of *de facto* discrimination against the indigenous people of Bolivia. This is apparent in the lack of sustainable political and socio-economic power of persons of Aymara, Quechua, Guarani, and other indigenous origins, and it creates conditions for political and economic instability, as well as ethnic conflicts. The Preamble of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities addresses these types of situations, stating that “[t]he promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live.”²⁴⁴

Article 2.3 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minori-

determination); see ICESR, *supra* note 186, art. 1 ¶ 1 (stating “[a]ll peoples have the right of self-determination.”).

²⁴² ICCPR, *supra* note 185, art. 1 ¶ 1.

²⁴³ FRANCESCO CAPOTORTI, STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES 96 (1991).

²⁴⁴ G.A. Res. 47/135, *supra* note 222 preamble.

ties recognizes the rights of ethnic minority groups to “participate effectively in decisions on the national . . . level”²⁴⁵ The Declaration also recognizes that indigenous people have the right to enjoy their culture, profess their religions, and use their languages.²⁴⁶ It is essential for diverse Bolivian indigenous peoples to participate in the governmental decision-making process.²⁴⁷ Their participation should include indigenous people taking on leadership positions of all political parties and civil society movements. Their participation in leadership will ensure the integration of indigenous people in the leadership of the country and will fortify the ethnic diversity of Bolivia, which is one of the greatest strengths of the country. Regarding Nathan Lerner’s identification of the most important group rights, B. G. Ramcharan states the following:

The right to life and physical security. . . . The right to effective equality, including the prohibition of discrimination and incitement to group violence and hatred. . . . The right to identity and to be different, without being forced to assimilate. . . . The right to affirmative action or special measures. . . . The right to determination of the scope and membership of the group, with due regard to individual rights and liberties. . . . The right to establish and maintain institutions. . . . The right to communicate, federate and co-operate nationally and internationally. . . . The right to representation in Government. . . . The right to impose duties on members of the group. . . . The right, when appropriate, to have recognized some form of legal personality, at the national and international levels, including *locus standi* at the judicial or quasi judicial bodies.²⁴⁸

Totalitarian ideologies, including extreme ethno-nationalism and communism, have systematically undermined the ideas that sustain respect for fundamental human rights including the rights of minority groups.²⁴⁹ These ideologies have contributed

²⁴⁵ *Id.* art. 2 ¶ 3.

²⁴⁶ *Id.* art. 2 ¶ 1.

²⁴⁷ *See supra* Section C.

²⁴⁸ B. G. Ramcharan, *Individual, Collective and Group Rights: History, Theory, Practice and Contemporary Evolution*, 1 INT’L J. GROUP RTS. 27, 35 (1993).

²⁴⁹ *See generally* TISMANEANU, *supra* note 86, at 1–17 (describing how various totalitarian regimes have formed).

to creating conditions that have led to genocide, segregation, displacement, and other crimes against national minorities.²⁵⁰ These ideologies have spread around the world.²⁵¹ For example, in the name of international communist solidarity, the Soviet Union used its ideological and military power to interfere, disregarding respect for human rights, in the internal affairs of countries such as Afghanistan, Vietnam, Angola, and others.²⁵²

Stalin killed millions of his own people using defending the Bolshevik communist revolution as an excuse, and Adolph Hitler believed he found the “final solution” that would allow the German race to rule the world by exterminating the Jewish community.²⁵³ The actions of extreme political evil of dictators such as Hitler and Stalin, are an accurate depiction of a world in which crimes against humanity and genocide have been committed to impose the will of one political, ethnic, or religious group against its perceived enemies.²⁵⁴ In Bolivia there have been efforts by pro-communist and pro-fascist forces to build up totalitarian regimes.²⁵⁵ These types of efforts contributed to increase the root causes of ethnic conflicts. Contrary to this, democratic values including respect for fundamental minority rights should contribute to resolve ethnic conflicts by peaceful means.

Bolivia should prevent the possibility of ever having to deal with one of the worst crimes against minority groups, genocide. A belief that it cannot or that it will not happen in Bolivia is not enough for its prevention. As a multiethnic country with deep-rooted conflicts, Bolivia should needs to actively work to prevent any possibility of violent armed conflicts that can create the condition for genocide. One of the most effective mechanisms to prevent it is to construct a culture of respect for international human rights law founded on the idea of respect for the inherent

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² See generally Emile B. Ader, *Soviet Imperialism or Communist Ideology—The Real Threat*, 38 SOCIAL SCIENCE 75, 75–82 (1963) (providing an analysis of the Soviet Union’s imperialistic strategies).

²⁵³ See TISMANEANU, *supra* note 86, at 41 (discussing totalitarian regimes).

²⁵⁴ See ARENDT, *supra* note 87 (analyzing totalitarian movements).

²⁵⁵ See generally, VICTOR ANDRADE, *MY MISSIONS FOR REVOLUTIONARY BOLIVIA, 1944-1962* (Cole Blaiser, ed. 1976) (discussing communism, fascism, and totalitarianism in Bolivia during wartime).

dignity of all human beings.

According to the well-known definition of Ralph Lemkin, genocide is:

“[A] coordinated plan of different actions aiming at the destruction of essential foundations of life of national groups The objectives of such a plan would be the disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of personal security, liberty, health, dignity, and even lives of the individuals belonging to such groups.”²⁵⁶

Throughout the history of humankind, different ethnic groups have claimed their inherent racial superiority. One of the most shocking examples of this mindset was seen in Nazi Germany.²⁵⁷ Using the absurd theory of “eugenics,” German Nazis wanted to prove the superiority of their race.²⁵⁸ Unfortunately, in the 21st century there are still people and groups of people that either consciously or subconsciously believe that there are ethnic groups in existence that are superior to others.²⁵⁹ These groups often promote segregation and discrimination against minorities and indigenous people.²⁶⁰ If the intensity of ethnic conflicts increases in Bolivia as a result of its political struggles, it can potentially lead to international crimes against ethnic groups.²⁶¹ When political actors dehumanize each other to justify their ideologies through the reinforcement of ethnic

²⁵⁶ *Lemkin Was Tireless Advocate for Defining Genocide as a Crime: Expert*, POLAND IN (Dec. 7, 2019, 8:05 pm), <https://polandin.com/45669007/lemkin-was-tireless-advocate-for-defining-genocide-as-a-crime-expert>.

²⁵⁷ *Eugenics*, HISTORY, <https://www.history.com/topics/germany/eugenics> (last updated Oct. 28, 2019).

²⁵⁸ *Id.*

²⁵⁹ Emanuela Campanella & Elizabeth Palmieri, *The rise of white supremacy and its new face in the 21st century*, GLOBAL NEWS (June 13, 2019, 1:00 PM), <https://globalnews.ca/news/5329174/white-supremacy-white-nationalist/>.

²⁶⁰ Elizabeth Thomas, *White supremacy and white nationalism have re-entered our political conversation. But what do they mean?*, ABC NEWS (Aug. 19, 2019, 1:55 PM), <https://abcnews.go.com/Politics/white-supremacy-white-nationalism-entered-political-conversation/story?id=64998396>.

²⁶¹ Bryan Wood, *Could Bolivia's current politics be fueling indigenous discrimination?*, PBS (Nov. 25, 2019, 5:46 PM), <https://www.pbs.org/news-hour/world/could-bolivias-current-politics-be-fueling-indigenous-discrimination>.

stereotypes, they create conditions for crimes against humanity.²⁶²

The Declaration on the Rights of Indigenous Peoples recognizes the right to self-determination.²⁶³ It is interesting to note that in the Declaration the principle of non-discrimination is applied to the particular origin and identity of indigenous peoples.²⁶⁴ This is important because in many Latin American countries the word Indian (Indio), which refers to indigenous peoples, is considered an insult.²⁶⁵ Article 4 states the right of indigenous peoples to maintain their distinct characteristics.²⁶⁶ This is very important in countries like Bolivia where, despite policies of assimilation, the Aymara and Quechua people have maintained their identity, and in some cases, have been able to influence the general culture by peaceful means. For example, it used to be a shame to listen to native music or play native Aymara or Quechua instruments, but today many Bolivians are proud of their cultural heritage.

VIII. THE IMPORTANCE OF A HUMAN RIGHTS DISCOURSE IN MEDIATION EFFORTS FOR THE PEACEFUL RESOLUTION OF ETHNIC AND POLITICAL CONFLICTS IN BOLIVIA

Historically in Bolivia, the Catholic Church has had a deep influence in the country's culture and politics. Since the conquest of the New World, the Catholic Church has served both as an instrument of political influence and social reconciliation.²⁶⁷

²⁶² Paul Bloom, *The Root of All Cruelty?*, NEW YORKER (Nov. 20, 2017), <https://www.newyorker.com/magazine/2017/11/27/the-root-of-all-cruelty>.

²⁶³ G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

²⁶⁴ *Id.*

²⁶⁵ See Tim Padgett, *Bolivia's Brutal Past – And Potentially Brutal Future – Emerge In Miami Court This Week*, WLRN MIAMI (Nov. 20, 2019), <https://www.wlrn.org/post/bolivias-brutal-past-and-potentially-brutal-future-emerge-miami-court-week#stream/0>.

²⁶⁶ G.A. Res. 61/295, *supra* note 263, art. 4.

²⁶⁷ See generally Aurelio Alonso, *The Catholic Church, Politics and Society*, 25 ESTUDOS AVANÇADOS 107 (discussing the impact the Catholic Church has had on politics and society of Latin America).

Despite the good relations between Pope Francis and Evo Morales, the influence of the Catholic Church in Bolivia has greatly diminished under his government.²⁶⁸ For example, the constitutional recognition of the Catholic Church as the official church of Bolivia was abolished by the new Bolivian constitution, which now does not recognize any official religion.²⁶⁹

Among the main civil society movements that were instrumental in overthrowing the Morales's regime was the Civic Committee of Santa Cruz, which often uses Catholic narratives to justify its actions.²⁷⁰ For example, one of its main leaders and its former president, Luis Fernando Camacho (who led the opposition against Evo Morales), indicated that his objective was to restore the Catholic faith to the government of Bolivia.²⁷¹ Despite the fact that Morales claims to be Catholic, Mr. Camacho believes that Evo Morales represents pagan indigenous worldviews that are contrary to the Catholic foundations of Bolivia.²⁷²

There are other sectors of the Catholic Church that have been supportive of indigenous people's movements and have supported Morales' government; this includes Cardinal Toribio Ticona, who is of Aymara indigenous background.²⁷³ For the Bolivian crisis, the Catholic Church has used its influence to

²⁶⁸ See Jeffrey Klaiber, *The Catholic Church and the Leftist Populist Regimes of Latin America: Venezuela, Ecuador, and Bolivia*, in DEMOCRACY, CULTURE, CATHOLICISM: VOICES FROM FOUR CONTINENTS 219–32 (Michael J. Schuck & John Crowley-Buck eds., 2016) (discussing relations between the Catholic church and Evo Morales).

²⁶⁹ See generally José María Monzón, *The Constitution as a Post-Colonial Discourse: An Insight into the Constitution of Bolivia*, 12 SEATTLE J. SOC. JUST. 821 (2014) (discussing the ideological influences of the Bolivian Constitution).

²⁷⁰ Max Blumenthal & Ben Norton, *Bolivia coup led by Christian fascist paramilitary leader and millionaire - with foreign support*, GRAY ZONE (Nov. 11, 2019), <https://thegrayzone.com/2019/11/11/bolivia-coup-fascist-foreign-support-fernando-camacho/>.

²⁷¹ Clarke, *supra* note 66.

²⁷² *Old Religious Tensions Resurge in Bolivia After President's Ouster*, U.S. NEWS (Nov. 20, 2019), <https://www.usnews.com/news/best-countries/articles/2019-11-20/old-religious-tensions-resurge-in-bolivia-after-ouster-of-long-time-indigenous-president>.

²⁷³ Inés San Martín, *Bolivian cardinal causes controversy after supporting Morales re-election bid*, CRUX (May 1, 2019), <https://cruxnow.com/church-in->

promote the peaceful resolution of the conflict and mediated negotiations between pro-Morales and pro-Añez forces.²⁷⁴ Regarding the mediating efforts of the Catholic Church in Bolivia, Alice Campaignolle writes:

The Catholic Church therefore considers it has a role to play in pacifying the country. “The best way to overcome the differences between Bolivians is dialogue. Organizing new transparent elections will allow all Bolivians to get along again, in a democratic and peaceful spirit,” said Aurelio Pesoa Ribero, Secretary General of the Bishops’ Conference of Bolivia. With the European Union and the UN Special Envoy Jean Arnault, the Church claims to gather at the same table deputies of the MAS, the party of Mr. Morales, representatives of the current government and organizations [and] social groups that are mobilizing in recent days.²⁷⁵

In a historical context of extreme political violence, the Episcopal Conference played a crucial role in the peaceful resolution of Bolivia’s political conflict. In calling for a mediated solution, the Episcopal Conference stated: “[t]he dialogue is the appropriate way to overcome the differences between Bolivians, so we call to attend this call. Holding new elections, transparent and reliable, is the best way to overcome differences in a democratic and peaceful way.”²⁷⁶

Another essential mediator for the Bolivian conflict has been the European Union (E.U.). Federica Mogherini, the High Representative of the Union for Foreign Affairs and Security Policy at the European Parliament, said:

the-americas/2019/05/bolivian-cardinal-causes-controversy-after-supporting-morales-re-election-bid/.

²⁷⁴ Manuel Rueda, *Bolivia’s Catholic bishops organize talks as protests become deadly*, AMERICA MAGAZINE (Nov. 19, 2019), <https://www.americamagazine.org/politics-society/2019/11/19/bolivias-catholic-bishops-organize-talks-protests-become-deadly>.

²⁷⁵ Alice Campaignolle, *Crisis in Bolivia: the Catholic Church poses as a mediator*, TELLER REPORT (Nov. 18, 2019, 5:04 AM), https://www.tellerreport.com/news/2019-11-19—crisis-in-bolivia—the-catholic-church-poses-as-a-mediator-.Sk_VrRVbnB.html.

²⁷⁶ The Church, the UN and Brussels try mediation in Bolivia, *supra* note 103.

In these very days and hours, we have been active through our Delegation in La Paz . . . to create a space where the government, opposition and civil society could meet and discuss a way out of this situation. We are actively supporting the mediation organised by the local Catholic Church, to help the Bolivian parties agree on a peaceful path that can lead to new elections. This mediation has already produced some first results in partially easing tensions and avoiding a worse escalation of violence . . . We are assessing the possibility of a new EU mission to the country, and of assistance in the election of a new Supreme Electoral Court. Bolivia is a very important partner for the European Union.²⁷⁷

The E.U. supported the Bolivian elections and the work of civil society organizations. Regarding the economic situation in Bolivia, Federica Mogherini said:

In the last 14 years, Bolivia has certainly changed for the better. Poverty has dropped, access to basic services has improved, and indigenous people have increasingly been included in the country's public life. All these successes must be preserved, and this can only happen through a peaceful political solution that respects the Constitution and the rule of law, and that can bring the country to new, timely and credible elections, which faithfully reflect the will of the Bolivian people.²⁷⁸

The U.N. has also been instrumental in mediating the resolution of the Bolivian conflict and preventing the possibility of a violent civil war. After President Morales was ousted from his position, Mr. António Guterres, Secretary General of the United Nations, appointed Mr. Arnault as his personal envoy to facilitate mediation efforts between pro-Evo Morales and pro-Mrs. Añez forces. Mr. Arnault is a former Special U.N. Representative to Colombia, Georgia, Afghanistan, Burundi, and Guatemala.²⁷⁹

²⁷⁷ Federica Mogherini, High Representative of the Union for Foreign Affairs and Sec. Policy and Vice-President of the European Comm'n, Speech on the Situation in Bolivia at the European Parliament Plenary Session (Nov. 14, 2019), https://eeas.europa.eu/headquarters/headquarters-homepage/70443/node/70443_lt.

²⁷⁸ *Id.*

²⁷⁹ U.N. Secretary-General, Statements on Mr. Jean Arnault of France-Personal Envoy of the Secretary-General for Bolivia (Nov. 14, 2019), <https://www.un.org/sg/en/content/sg/personnel-appointments/2019-11-14/mr->

The mediation efforts of the U.N., the E.U., and the Catholic Church facilitated a negotiated solution for the Bolivian crisis.²⁸⁰ This solution included the adoption of new legislation for the establishment of a new Supreme Electoral Tribunal and the calling of new general elections for President and Vice President of Bolivia.²⁸¹ Regarding the resolution of the Bolivian crisis, Stéphane Dujarric, Spokesman for the U.N. Secretary-General, made the following statement:

This latest development demonstrates the political will to end the crisis. To consolidate these gains and prevent further violence, more steps are, however, needed, such as curbing the rhetoric of intolerance, increasing cooperation among all political forces, and restoring trust and confidence amongst all those affected by the violent events of the past month. The Secretary-General strongly urges the pursuit of peaceful and constructive dialogue. His Personal Envoy will continue to work with the facilitators to support efforts in this regard.²⁸²

Despite the resolution of the Bolivian conflict between forces that support Mrs. Añez and the forces that support the Evo Morales party, there is an essential need to continue the mediation efforts in Bolivia.²⁸³ Mainstreaming the discourse of respect for the norms of international human rights law and the use of all means for the peaceful settlement of conflicts including negotiation, mediation, and good offices should be an essential component of the current and future processes of ethnic and political reconciliation in Bolivia.²⁸⁴ To achieve this objective, it is important to develop short, medium, and long-term strategies for

jean-arnault-of-france-personal-envoy-of-the-secretary-general-for-bolivia.

²⁸⁰ Campaignolle, *supra* note 275.

²⁸¹ See Ángel Guarachi, *UN envoy highlights ruling on extension of mandate and calls to avoid acts of violence*, LA RAZÓN (Jan. 15, 2020, 7:25 PM), https://translate.google.com/translate?hl=en&sl=es&u=http://www.la-razon.com/nacional/nnuu-fallo-tep-bolivia-violencia-prorroga-mandato_0_3294870531.html&prev=search., (discussing the U.N. Secretary General's representative in Bolivia, Jean Arnault, support of the new presidential elections).

²⁸² U.N. Secretary-General, Statement Attributable to the Spokesman for the Secretary-General on Bolivia (Nov. 25, 2019), <https://www.un.org/sg/en/content/sg/statement/2019-11-25/statement-attributable-the-spokesman-for-the-secretary-general-bolivia-%28scroll-down-for-spanish%29>.

²⁸³ *Id.*

²⁸⁴ *Id.*

the peaceful resolution of conflicts considering the specific historical, ethnic, economic, social, and political reasons for the disputes in Bolivia.²⁸⁵

It is also important for countries that have interests in Bolivia to support its mediation efforts.²⁸⁶ However, for the long-term success of efforts to resolve political and ethnic disputes by peaceful means, it is essential for the Bolivian government and civil society entities to contribute to build up a culture of respect for fundamental human rights and human dignity.²⁸⁷ To further this objective, there should be the creation of a Bolivian entity that specifically focuses on the prevention of ethnic conflicts. This entity should systematically concentrate on the prevention and resolution of ethnic conflicts and political conflicts that can reach a level of extreme violence.

Also, the Bolivian judicial branch and the Human Rights Ombudsman have a great opportunity and responsibility to establish mediation programs for the resolution of ethnic and political conflicts based on the implementation of international human rights standards.²⁸⁸ Bolivia should construct a culture and national discourse of respect to the human dignity of all Bolivians, including indigenous people. The discourse of human rights

²⁸⁵ *Id.*

²⁸⁶ See generally, Alejandra Saravia López & Adam Rua Quiroga, *An Assessment of the Environmental and Social Impacts of Chinese Trade and FDI in Bolivia*, in CHINA AND SUSTAINABLE DEVELOPMENT IN LATIN AMERICA: THE SOCIAL AND ENVIRONMENTAL DIMENSION (Rebecca Ray et al. eds., 2017) (analyzing the People's Republic of China's interest in Bolivia).

²⁸⁷ Press Release, The Permanent Council of the Organization of American States, Resolution Rejecting Violence in Bolivia and Calling for Full Respect of the Rights of the Indigenous Peoples in the Plurinational State of Bolivia (Dec. 18, 2019) (underscoring the need for the authorities of the Plurinational State of Bolivia to fulfil their inherent responsibility as a part of the community of nations to protect all human rights for everyone in Bolivia), https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-032/19.

²⁸⁸ See Erika Moreno, *The Contributions of the Ombudsman to Human Rights in Latin America, 1982–2011*, 58 LATIN AM. POL. & SOC'Y, 98, 98–120 (analyzing of the contributions of the Ombudsman in Latin American countries, including Bolivia).

including individual and group rights should become mainstream in Bolivia.

All sides of the conflicts (including indigenous peoples and all geographic regions) should make a commitment to embrace human rights norms as part of the culture of the nation. All sides of the conflict (including civic committees, social movements, and political parties) should engage in a national dialogue regarding the best mechanism for the implementation of international human rights norms and for constructing a culture of respect for human dignity. It is also important to remember that Bolivia has acquired international legal obligations by accepting the mandatory nature of international human rights law treaties.²⁸⁹ The following chart shows the international human rights treaties that Bolivia has ratified.²⁹⁰

International Convention on the Elimination of All Forms of Racial Discrimination	Ratification/Accession: 1970
International Covenant on Civil and Political Rights	Ratification/Accession: 1982
Optional Protocol to the International Covenant on Civil and Political Rights	Ratification/Accession: 1982
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Ratification/Accession: 2013
International Covenant on Economic, Social and Cultural Rights	Ratification/Accession: 1982
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	Ratification/Accession: 2012
Convention on the Elimination of All Forms of Discrimination against Women	Ratification/Accession: 1990
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	Ratification/Accession: 2000
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Ratification/Accession: 1999
Optional Protocol to the Convention against Torture	Ratification/Accession: 2006

²⁸⁹ Status of Ratification Interactive Dashboard – Bolivia, *supra* note 187.

²⁹⁰ *Id.*

and Other Cruel, Inhuman or Degrading Treatment or Punishment	
Convention on the Rights of the Child	Ratification/Accession: 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Ratification/Accession: 2004
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	Ratification/Accession: 2003
Optional Protocol to the Convention on the Rights of the Child on a communications procedure	Ratification/Accession: 2013
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	Ratification/Accession: 2000
International Convention for the Protection of all Persons from Enforced Disappearance	Ratification/Accession: 2008
Convention on the Rights of Persons with Disabilities	Ratification/Accession: 2009
Optional Protocol to the Convention on the Rights of Persons with Disabilities	Ratification/Accession: 2009

Current and future mediating efforts in Bolivia should use the language of human rights as a tool to build up a country that embraces a culture of respect for human dignity. This will not only help resolve the current ethnic and political conflicts, but it will build up institutional and normative frameworks for the long-term peaceful resolution of Bolivia's historical ethnic conflicts. The establishment of an institution that focuses on mediation efforts in Bolivia, like the High Commissioner of Organization for Security and Co-operation in Europe (OSEC), could be a great contribution to the international community to preserve one of the most diverse countries in the world with one of the largest indigenous populations. The international human rights discourse should be a foundation for negotiations to prevent violent conflicts in Bolivia. It is not only the implementation of human rights norms, but also building up of a culture that respects human dignity of all. This is essential in Bolivia because of the great cultural and regional diversity.²⁹¹ The diversity in Bolivia

²⁹¹ See *Bolivia Cultures: Diversity in Bolivia*, BOLIVIABELLA, <https://www.boliviabella.com/bolivia-cultures.html> (last visited Mar. 1, 2020).

can be a source of great strength, but also can be a source of violent ethnic and political conflicts.²⁹²

For the long-term success of mediating efforts in Bolivia, it is essential that institutions that are engaged in mediation efforts not only use the language of respect for human rights and human dignity of all Bolivians, but that they also properly explain the objectives of international human rights norms.²⁹³ These explanations should include the development of ethnic reconciliation efforts based on human rights principles to ensure respect and empowerment of the languages, cultures, and religious beliefs of all Bolivians (including indigenous communities). The furtherance of this objective can be seen in the “translating” of human rights norms from the OSCE’s High Commissioner. Regarding this, Steven Ratner writes “it entails taking each of the various norms, whether from an OSCE document, a U.N. declaration, or a treaty, and offering detailed guidance to governments and minorities on the sorts of actions that these instruments contemplate, regardless of whether they create traditional, legal obligations upon states.”²⁹⁴

Similarly, mediating institutions in Bolivia should explain and contextualize human rights norms regarding respect for the right to life, freedom of expression, non-discrimination, and others to Bolivian decision makers at all levels of society including governmental, civic organizations, and social movements.

It is important for mediation institutions in Bolivia to understand that the application of human rights norms does not limit options in the negotiation process.²⁹⁵ Instead, it provides a framework for the application of just principles as foundation for

²⁹² See Carlos Valdez, *Bolivia’s crisis exposes old racial, geographic divides*, AP NEWS (Nov. 17, 2019), <https://ap-news.com/33ec1f034d6148579542eb2a427e96fb>.

²⁹³ See *The Future of Human Rights in Bolivia*, ATD FOURTH WORLD (May 8, 2017), <https://www.atd-fourthworld.org/future-human-rights-bolivia/> (exploring solutions to human rights issues including raising awareness of human rights’ principles).

²⁹⁴ Ratner, *supra* note 151, at 625.

²⁹⁵ *Id.* at 629.

constructing creative solutions consistent with all sectors of Bolivian society including indigenous communities.²⁹⁶ In a country that is very sensitive to the issue of racial discrimination, human rights norms provide a powerful language for the peaceful resolution of conflicts based on negotiations that have national and international legitimacy because of the use of globally recognized normative standards.²⁹⁷

For Bolivia, this requires a careful balance between the protection of individual and collective rights. Many people of the middle class can reject human rights norms that require respect for indigenous people's rights as a group.²⁹⁸ However, they can understand and accept individual rights, such as the one of non-discrimination, that are part of international human rights law.²⁹⁹ Applying this norm can guarantee respect for indigenous people's rights who have been historically and systematically discriminated against in Bolivia.

Regarding the process of explaining to the parties of a conflict the importance of implementing international human rights norms, Professor Ratner writes "the High Commissioner has signaled to the parties the possible consequences of their acceptance or rejection of his norm-based recommendations. Here, he engages in what I term the mobilization of support, using his position to convince influential actors outside the state to back up his proposals."³⁰⁰

For Bolivia, a potential High Commission for Ethnic Reconciliation can use the influence of international actors, including the U.N., to persuade the parties of a conflict to resolve their issues by peaceful means, rejecting any use of armed force. Also, it is important for a potential High Commission in Bolivia to seek financial support from members of the international com-

²⁹⁶ *Id.*

²⁹⁷ *Id.* ("The two aspects of the High Commissioner's translation function—norm clarification and policy recommendation—help make the move from the abstract to the concrete possible.")

²⁹⁸ Kurmanaev & Krauss, *supra* note 25.

²⁹⁹ UDHR, *supra* note 172, art. 2.

³⁰⁰ Ratner, *supra* note 151, at 638.

munity to sustain processes of national reconciliation and peaceful resolution of conflicts.³⁰¹

Bolivia should use educational functions and the dissemination of international human rights norms as a key component in building up a foundation that prevents violent ethnic conflicts and a respect for human dignity. This should be done in all official languages of the Plurinational State of Bolivia including Spanish, Guarani, Aymara, and Quechua. This educational strategy should include topics such as the importance of respect for human dignity, the peaceful resolution of conflicts, national reconciliation, political forgiveness, and the value of ethnic diversity.

Experts on the field of human rights and ethnic reconciliation (including university professors and schoolteachers) should be the ones to educate on human rights and peaceful resolution of conflicts. This education should be done in diverse languages and consider the cultural values of indigenous communities. In a very ethnically diverse country, such as Bolivia, educational efforts on human rights norms and ethnic reconciliation are essential components in constructing a common language of understanding.³⁰²

Regarding mediators of ethnic conflicts that use the international human rights discourse, Professor Ratner provides the following definition:

A normative intermediary is a party, authorized by states or an international organization seeking to promote observance of a norm, who involves himself or herself in a particular compliance shortcoming of a state and seeks to induce compliance through a hands-on process of communication and persuasion with relevant decision-makers.³⁰³

³⁰¹ *Id.* (highlighting this aspect in the work of the High Commissioner of the OSCE).

³⁰² *Id.* at 646 (“The need to imbue decision-makers with the importance of respect for international norms lies at the core of any strategy for protection of minority rights and prevention of conflict. Thus, the OSCE’s High Commissioner has engaged in a fifth function—disseminating and educating others about relevant norms.”).

³⁰³ *Id.* at 668.

There were three key normative intermediaries that enabled a successful mediation effort for Bolivia. The mediators were Mr. León de la Torre, ambassador of the E.U. in Bolivia, Mr. Jean Arnault, representative of the U.N. Secretary General,³⁰⁴ and Monsignor Eugenio Scarpellini, delegate of the Bolivian Catholic Church.³⁰⁵ Despite the great success of the mediation efforts by these three entities in preventing a civil war in Bolivia, there is still a need for long-term strategies to prevent future violent conflicts.

A well-established entity for mediating ethnic and political disputes in Bolivia should be established for the long-term. This entity should be composed of people with proper academic and practical knowledge in the field of mediation who possess a deep understanding of the diverse ethnic groups and regions of Bolivia. It is also important for some of the mediators to know native languages (such as Aymara, Quechua, and Guarani). Regarding the qualities of a successful normative intermediary, Steven de la Torre writes:

First, scholars agree on the influence of certain rather obvious personal characteristics, such as intelligence, knowledge of the dispute, patience, perseverance, and political acumen. Second, the parties must perceive mediators as legitimate, that is, entitled to serve as intermediary and trusted to carry out that role well. This attribute stems principally from the mediator's status and stature; it fosters an environment where the parties treat the mediation process seriously and enhances the likelihood of their openness to the mediator's ideas and their willingness eventually to make concessions. Third, greater debate has ensued on the necessity or desirability of the mediator's impartiality. Some students of international mediation hold that an intermediary must be impartial to gain the trust of the sides. An alternative perspective views other factors as more significant, such as the mediator's ability to exert leverage through access to various resources.³⁰⁶

The mediators for Bolivia should understand Bolivia's ethnic diversity as one of its greatest strengths. They should know the way diverse ethnic groups, including indigenous communi-

³⁰⁴ Press Release, Secretary-General Appoints Jean Arnault of France Special Representative, Head of United Nations Mission in Colombia, SG/A/1642-BIO/4821 (Mar. 9, 2016).

³⁰⁵ Martín, *supra* note 273.

³⁰⁶ Ratner, *supra* note 151, at 681–82.

ties, communicate. They should understand the diversity of regions and its interests.

The current Bolivian process demonstrates that despite huge conflicts of interests, there is a willingness of all parties of the conflict to find negotiated solutions to the Bolivian situation. Despite this positive element that was recognized by the U.N., E.U., and Catholic Church mediators, the Bolivian process is fragile. This is the case, among other reasons, because of the historical ethnic division of labor that has undermined the social, economic and political status of indigenous people. To ensure the continued willingness of the parties to the Bolivian conflict to find solutions by peaceful means, it is essential to highlight the importance of democratic values and institutions and respect of human dignity, consistent with the recognition of the interests of all sectors of Bolivian society including indigenous people.

Regarding the importance of the willingness of the parties to engage in negotiated resolution of conflicts, Steven Ratner writes “[p]ut simply, the normative intermediary’s ability to make any kind of difference depends initially upon the willingness of the parties to take his views into account and to make relevant concessions, both of which are a function of the issues and the parties’ makeup.”³⁰⁷

Historically in Bolivia, there is a willingness to resolve the ethnic and political conflicts by peaceful means, which enables normative intermediaries the possibility to contribute to build up a culture of respect for human dignity in Bolivia. The parties to the dispute in Bolivia are diverse ethnic groups including white elites; mestizos that support the current government; mestizos that support the MAS; indigenous people that support the MAS; indigenous people that support the new government; and indigenous people that support movements that are independent from the current political actors.

Regarding how the concept of the “normative intermediary” integrates elements of international law and mediation theory,

³⁰⁷ *Id.* at 673.

Steven Rather writes:

As the description of the High Commissioner's work reveals, he has served as an intermediary in the sense understood by students of third party intervention, for he has a mandate from the OSCE to prevent conflict by persuading parties to solve their inter-ethnic problems. He relies upon tools similar to those used by other intermediaries who have been studied, although his techniques may differ. But he also has a normative component to his work in making arguments based upon, and attempting to ensure respect for, international norms. Thus, for international lawyers, mediation theory offers a new analytical framework to gauge the extent to which individuals charged with promoting international norms can help induce compliance. That framework helps to transform the descriptions of the High Commissioner's method of invoking and applying norms into an explanation, or at least a theory, of the causal pathways by which the intermediary can bring about compliance or is limited in doing so. Moreover, and of special interest for students of mediation, it shows the extent to which normative arguments play a role in the work of intermediaries.³⁰⁸

With the use of international human rights law, this type of integration of mediation process could be very effective in Bolivia. Current and future mediation efforts in Bolivia should consider adopting an approach that uses international human rights law discourses in the mediation of ethnic and political conflicts. The adoption of this approach will help contribute not only to resolving conflicts, but also to constructing a culture of respect for human rights and human dignity that prevents the dehumanization of the other. This approach should also be used as a foundation to establish a new permanent institution that focuses on the peaceful resolution of ethnic and political conflicts in Bolivia. The Organization of American States, the Inter-American Commissions of Human Rights, and the Bolivian Human Rights Ombudsman should contribute to build a culture of respect for international human rights law in Bolivia. Bolivia should systematically support efforts that seek to mainstream discourses regarding respect for human dignity as a foundation of a vibrant democracy to fulfill its international human rights legal obligations.

³⁰⁸ *Id.* at 687.

IX. THE ORGANIZATION OF AMERICAN STATES AND THE BOLIVIAN CRISIS

The OAS has been a central actor in the Bolivian conflict that led to the resignation of President Evo Morales. To understand the influence of the OAS in Latin American countries, it is important to know the objectives of this international organization.³⁰⁹ Regarding this, Article 1 of the Charter of the Organization of American States says that its objectives for its members are to establish “an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence.”³¹⁰ In the Bolivian political conflict, Mr. Almagro, the OAS Secretary General, had a direct involvement and influence in the Bolivian electoral process.³¹¹ Regarding the functions of the Secretary General, Article 110 of the OAS Charter says:

The Secretary General, or his representative, may participate with voice but without vote in all meetings of the Organization. The Secretary General may bring to the attention of the General Assembly or the Permanent Council any matter which in his opinion might threaten the peace and security of the Hemisphere or the development of the Member States. The authority to which the preceding paragraph refers shall be exercised in accordance with the present Charter.³¹²

As a Secretary General of the OAS, Mr. Almagro has brought to the attention of the OAS the Bolivian electoral process and the post-election violent crisis.³¹³ Almagro’s work has been characterized for his political activist speeches and his unpredictable political views regarding Bolivia. He has been a controversial figure that has been praised and criticized by both

³⁰⁹ See DIANA L. SHELTON & PAOLO G. CAROZZA, *REGIONAL PROTECTION OF HUMAN RIGHTS* 52-73 (2d ed. 2013).

³¹⁰ Charter of the Organization of American States, art. 1, Apr. 30, 1948, 119 U.N.T.S. 48 [hereinafter OAS Charter].

³¹¹ *Bolivia’s Morales to call fresh election after OAS audit*, BBC NEWS (Nov. 10, 2019), <https://www.bbc.com/news/world-latin-america-50365340>.

³¹² OAS Charter, *supra* note 310, art. 110.

³¹³ See *Bolivia’s Morales to call fresh election after OAS audit*, *supra* note 311 (discussing Mr. Almagro’s involvement).

sides of the Bolivian conflict. Regarding Almagro's initial support for Evo Morales, Mr. Andres Oppenheimer, a journalist and analyst of Latin American politics, wrote:

Almagro, who is running for a new term as OAS chief, visited Bolivia on May 17 [2019] and, surprisingly, backed authoritarian President Evo Morales' unconstitutional bid for a fourth term in office. Until recently, Almagro had strongly criticized the Bolivian president's illegal re-election bid. But now, during his latest visit to Bolivia, Almagro accompanied Morales to his stronghold in the coca rich Chapare province and, essentially, helped the Bolivian president launch his re-election campaign. Standing close to the Bolivian ruler, Almagro said that, 'It would be absolutely discriminatory' to deny Morales' right to run for a fourth term. A day later, Morales officially launched his campaign for the Oct. 20 presidential elections, amid front-page headlines announcing that Almagro had OK'd Morales' re-election bid.³¹⁴

Because of Almagro's support of Evo Morales' re-election efforts, Bolivian opposition forces accused him of supporting illegal efforts based on unjust normative arguments. Political forces that supported Evo Morales praised Almagro's statements (including his recognition of the existence of a human right to run for office indefinitely).³¹⁵ It is interesting that the focus of the arguments were not on the right of indigenous people to be represented at the highest levels of office, such as the presidency of a country. After hundreds of years of exclusion of indigenous people in the Bolivian government (similar as the situation of Black people under apartheid in South Africa), it is just to ensure that indigenous leaders run for the highest office of the country.

Each presidential election process in Bolivia should ensure a meaningful participation of candidates from indigenous back-

³¹⁴ Andres Oppenheimer, *OAS chief gives a boost to Bolivia's dictatorship. What does he stand to gain?*, MIAMI HERALD (May 21, 2019), <https://www.miamiherald.com/news/local/news-columns-blogs/andres-oppenheimer/article230643599.html>.

³¹⁵ See Daniel Ramos, *Bolivia's Morales defies term limits, launches bid for fourth term*, REUTERS (May 18, 2019), <https://www.reuters.com/article/us-bolivia-election/bolivias-morales-defies-term-limits-launches-bid-for-fourth-term-idUSKCN1SO0R3>.

grounds from all ideological perspectives and in all political parties. There is no reason why indigenous people of Bolivia should not aspire to become presidents or vice-presidents of the country given their significant population. This is completely different than making arguments for the existence of a human right to run for presidential office indefinitely. To sustain a properly functioning democratic system, it is essential to have term limits at the highest levels of government.

Another intervention of the OAS in the Bolivian process was to monitor the October 2019 presidential election and to audit it. Regarding its final report on the Bolivian election, the OAS made the following statement:

The General Secretariat of the Organization of American States (OAS) presented today the final report of the audit conducted on the general elections held on October 20 in Bolivia. The conclusion is that there was ‘intentional manipulation’ and ‘serious irregularities’ that make it impossible to validate the results originally issued by the Bolivian electoral authorities.³¹⁶

The OAS engagement in Bolivia and its report have been challenged by Evo Morales’ supporters. The supporters have accused the OAS of being instrumental in providing a discourse and an excuse for a coup d’état against Morales.³¹⁷ A number of leading university professors from around the world also criticized the OAS actions in Bolivia.³¹⁸ They believe that the OAS has interfered in the domestic affairs of a sovereign state and has enabled a coup d’état against Evo Morales.³¹⁹

Contrary to this viewpoint, the political forces that control the government in Bolivia, including President Añez, believe

³¹⁶ Press Release, Final Report of the Audit of the Elections in Bolivia: Intentional Manipulation and Serious Irregularities Made it Impossible to Validate the Results (Dec. 4, 2019), https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-109/19.

³¹⁷ Ha-Joon Chang et. al., *The OAS has to answer for its role in the Bolivian coup*, GUARDIAN (Dec. 2, 2019 12:59 PM), <https://www.theguardian.com/commentisfree/2019/dec/02/the-oas-has-to-answer-for-its-role-in-the-bolivian-coup>.

³¹⁸ *Id.*

³¹⁹ *Id.*

that the OAS has properly found evidence of a well-planned electoral fraud that benefited Evo Morales.³²⁰ In an official OAS meeting, Mr. Almagro blamed Evo Morales for the Bolivian crisis and accused him of electoral fraud saying “[t]he ones who carried out a coup are those who committed fraud and said they won in the first round.”³²¹

As was mentioned before, as a result of the resignation of President Evo Morales, which according to him was taken under pressure of the military and policy forces, its supporters decided to oppose and protest the new government of President Añez. This led to violent conflicts and President Añez used the military and police to control the social unrest.³²² In this context, another entity of the OAS got involved in the Bolivian conflict. This time the Inter-American Commission on Human Rights (IACHR) played a key role in finding facts regarding violations of human rights in the conflict.³²³ Regarding the situation in Bolivia, the IACHR stated:

The Inter-American Commission on Human Rights (IACHR) strongly condemns the excessive use of force in combined raids by the National Police and the Armed Forces to repress recent demonstrations in Bolivia.

The tough repressive response adopted by the security forces—including the use of firearms—has led to an increase in the number of people killed or injured since former president Evo Morales left office. The Commission is particularly concerned about the fact that the National Police is conducting combined raids with

³²⁰ See, e.g., *Evo Morales: Overwhelming evidence of election fraud in Bolivia, monitors say*, BBC NEWS (Dec. 6, 2019), <https://www.bbc.com/news/world-latin-america-50685335> (according to the OAS, the “intentional manipulation” and “serious irregularities” included “changes in the minutes and the falsification of the signatures of poll officials”, making it impossible to validate the official results of the 20 October vote).

³²¹ Andres Schipan, *Opposition senator takes office as Bolivia’s interim president*, FIN. TIMES (Nov. 12, 2019), <https://www.ft.com/content/95b7cf6c-05a3-11ea-a984-fbbacad9e7dd>.

³²² *Id.*

³²³ See Mitra Taj, *Human rights violations in Bolivia merit outside probe: Americas commission head*, REUTERS (Nov. 26, 2019, 3:29 PM), <https://www.reuters.com/article/us-bolivia-politics/human-rights-violations-in-bolivia-merit-outside-probe-americas-commission-head-idUSKBN1Y02FS> (recommending Bolivia coordinate with an international panel of experts similar to one formed to investigate the disappearance of 43 students in Mexico).

the Armed Forces on law enforcement tasks, without adequate legal justification.³²⁴

Despite the controversies surrounding the actions of Secretary General, Mr. Almagro, the OAS can still contribute to build up a culture of respect for human rights and the peaceful resolution of ethnic and political conflicts in Bolivia. This can happen because the OAS has had some successful experiences in addressing ethnic and political conflicts in Latin America. Perhaps one of the most important examples is PROPAZ, a peace building effort in Guatemala, a country with a similar ethnic composition as Bolivia.³²⁵ Describing this effort, Yasmine Shamsie writes:

OAS/PROPAZ was established in 1995 as a pilot program to support Guatemala's fledgling peace process. It was expanded after the accords were signed to help build the capacity of both government and civil society to pursue dialogue during the implementation phase of the accords. The program carved up its work into three areas: intersectoral work that supported government and civil society actors involved in the commissions; a zonal component aimed at strengthening the capacity of local community actors to manage and resolve conflicts at the municipal level; and a training component to ensure that PROPAZ staff were themselves appropriately trained and to develop a national capacity in conflict prevention.³²⁶

Guatemala was divided into two main factions before and during its ethnic and political conflict. Similarly, in Bolivia,

³²⁴ Press Release, OAS, IACHR Warns about the Risk of Impunity for Human Rights Violations in Bolivia, Calls for a National Dialogue to Reach a Constitutional Solution to the Crisis (Nov. 19, 2019), http://www.oas.org/en/iachr/media_center/PReleases/2019/296.asp.

³²⁵ See Orion Kriegman & Sofia Clark d'Escoto, *Building Peace Through 3rd Party Impartial Facilitation: The Story of OAS-PROPAZ in Guatemala*, COLLABORATIVE LEARNING PROJECTS (Sept. 2001), <https://www.cdacollaborative.org/wp-content/uploads/2016/02/Building-Peace-through-Third-Party-Impartial-Facilitation.pdf> (discussing how the OAS/PROPAZ program has prepared and fielded a pool of well-trained and committed individuals to work in various sectors in the promotion of dialogue, the establishment of mechanisms for cross-sector collaboration and third-party facilitation).

³²⁶ Yasmine Shamsie, *Moving Beyond Mediation: The OAS Transforming Conflict in Guatemala*, 13 GLOBAL GOVERNANCE 409, 413 (2007).

there are two main political forces which are expressed in electoral coalitions for the May 2020 presidential elections. Luis Arce Catacora is the candidate for the presidency of Bolivia representing the Movement towards Socialism (*MAS*). Two main candidates represent the social and political movements that have opposed Evo Morales. These candidates are President Jeanine Áñez, who is candidate to the presidency for the coalition *Juntos*, and Carlos Mesa, who is the candidate for *Civic Community*.³²⁷

As in Guatemala, Bolivia has demonstrated an emerging political will for the peaceful resolution of current ethnic and political conflicts. In Bolivia, there are some institutions with the knowledge and expertise, such as the Human Rights Ombudsman and the Catholic Church, capable of promoting respect for international human rights norms and mediating disputes.³²⁸

Moreover, Bolivia and Guatemala have significant indigenous populations and their ethnic conflicts have some similarities.³²⁹ Guatemala, similarly to Bolivia, did not have a well-constructed culture for embracing the peaceful resolution of ethnic and political conflicts even in extreme situations. Regarding this aspect of the situation in Guatemala, Orion Kriegman and Sofia Clark d'Escoto wrote:

Guatemalan society was so polarized that it lacked individuals or NGOs (with the necessary profile) capable of facilitating dialogue. Essentially, what Guatemala needed were trained professionals who had the trust of different groups and who possessed the necessary technical and social skills to facilitate dialogue among various sectors in conflict.³³⁰

³²⁷ Daniel Ramos, *Bolivian Political Camps Struck as Election Race Begins*, U.S. NEWS (Feb. 4, 2020), <https://www.usnews.com/news/world/articles/2020-02-04/bolivian-political-camps-struck-as-election-race-begins>.

³²⁸ See Moreno, *supra* note 288, at 101 (explaining how ombudsmen are required to provide an array of citizen outreach programs, from human rights training sessions to conferences and festivals).

³²⁹ See Roger Plant, *Indigenous Identity and Rights in the Guatemalan Peace Process*, in *COMPARATIVE PEACE PROCESSES IN LATIN AMERICA* 319, 321–23 (Cynthia J. Arnson ed., 1999) (discussing how indigenous peoples constitute a majority in Guatemala and Bolivia).

³³⁰ Kriegman & d'Escoto, *supra* note 326, at 13.

Bolivia needs trained experts to facilitate mediation and reconciliation efforts that will help resolve current conflicts and prevent future ones. The OAS helped Guatemala acquire the necessary tools to establish processes for the peaceful resolution of ethnic and political conflicts. Regarding this effort, Orion Kriegman and Sofia Clark d'Escoto wrote:

To assist Guatemalans in preparing for the new and emerging challenges represented by the forthcoming National Peace Accords, the OAS decided the most strategic role it could play in the immediate political context would be to: provide technical assistance and accompaniment to government and civil society institutions involved in promoting, developing or implementing dialogue or negotiation processes; when appropriate, to serve as a third-party facilitator, and; to build and strengthen the human resource capacity in Guatemala in conflict transformation and peacebuilding.³³¹

A similar OAS mediation and capacity building project could help Bolivia build up a culture of respect for human rights. This type of culture should include governmental institutions and civil society organizations with the capacity to effectively help prevent and mediate ethnic and political conflicts. In Guatemala, the main objective of the OAS was to reduce the intensity of ethnic and political conflicts. Regarding this Orion Kriegman and Sofia Clark d'Escoto wrote:

The new coordinator felt the OAS program could have a more *strategic* impact by concentrating on building 'national' capacity *within* Guatemala for dealing with the root causes of conflict and by transforming the relationships among national leaders in various spheres, polarized from years of confrontation and/or exclusion.³³²

One of the key components of the Guatemalan effort was to promote ethnic reconciliation at diverse levels of society to decrease the violence of the conflicts. Likewise, Bolivia needs diverse efforts to focus on different aspects of the structural causes

³³¹ *Id.*

³³² *Id.* at 12.

of its conflicts and address the importance of the systematic discrimination against indigenous peoples.³³³ This objective can be accomplished by having multiethnic committees for building up trust and reconciliation of diverse social and political actors. Regarding the work of commissions in Guatemala, Yasmine Shamsie writes “[c]ommission participants were expected to work collaboratively to shape proposals, which would be forwarded for legislative reform. This required the parties to develop a common perspective on the causes of the conflict and to build a shared plan for addressing them.”³³⁴

In Bolivia, there is a need for a common understanding by all sectors of society of the historical, economic, social, cultural, and political origins of current ethnic and political conflicts. As in the PROPAZ effort, Bolivia can use technical instruments, such as a national survey,³³⁵ to determine the structural and historical reasons for its conflicts.

For the peaceful resolution of conflicts, there are diverse methodological approaches. For Bolivia, as in Guatemala, the transformative approach could be effective.³³⁶ This approach recognizes the importance of considering social justice issues for the peaceful resolution of ethnic and political conflicts, as explained by Shamsie:

This statement by the former general coordinator of PROPAZ, Sandra Dunsmore, is revealing: ‘PROPAZ has always been based on principles of social justice, fairness, dignity, and respect. We are impartial but not neutral. That means that if one of the partners in the intersectoral work is weak, we need to see how they can be strengthened. It would be unethical to mediate a formal process

³³³ See Rosemary Thorp, et al., *Inequality, Ethnicity, Political Mobilization and Political Violence in Latin America: The Cases of Bolivia, Guatemala and Peru*, 25 BULLETIN LATIN AM. RESEARCH, 453, 453 (2006), (arguing that ethnicity is today rarely a mobilizing factor in violence in the Latin American cases, but the degree of inequality based on ethnicity is shown to be highly relevant to the degree of violence which results once conflict is instigated).

³³⁴ Shamsie, *supra* note 327, at 413.

³³⁵ *Id.* at 414.

³³⁶ *Id.* at 415 (“[I]t is telling that one of the scholars who most influenced the program’s development was Lederach, a leading theorist in the field of conflict transformation.”).

where the differences are so great.’³³⁷ This view is in keeping with the transformation approach and the commitment to capacity building where weaker parties are concerned.³³⁸

The statement applies well to the Bolivian case. Considering the historical disenfranchisement, ethnic division of labor, and systematic discrimination against indigenous people, it would be unjust not to consider the importance of empowering indigenous communities. In order to understand the importance of understanding national cultures for an effective resolution of conflicts, Shamsie writes:

Another element of PROPAZ that drew inspiration from the conflict transformation approach, and especially Lederach’s work, was its commitment to supporting indigenous or local resources for dealing with conflict. In his writings, Lederach challenges three assumptions about culture and conflict. First, he questions the assumption that culture barely matters, or that current conflict management programs are applicable across cultures, requiring only minor tweaking; second, that culture can be accommodated by adopting particular techniques; and third, that these techniques can be added to the skills set that conflict staff already have. Lederach argues instead that “social conflict emerges and develops on the basis of the meaning and interpretation people involved attach to action and events. . . . From this starting point, conflict is connected to meaning, meaning to knowledge, and knowledge is rooted in culture.”³³⁹

The following elements should be considered in the resolution of conflicts in Bolivia: Bolivia has a very strong influence of indigenous peoples including the Aymara, Quechua, and Guarani; most Bolivians have demonstrated that they can resolve the most difficult conflicts by peaceful means; Bolivians are proud of their diversity and cultural heritage; they recognize the systematic and unjust discrimination against indigenous peoples and are willing to overcome it; and acknowledge that they have some indigenous ancestry.³⁴⁰ Furthermore, most Bolivians

³³⁷ *Id.* at 416.

³³⁸ *Id.*

³³⁹ Shamsie, *supra* note 327 at 417, citing JOHN PAUL LAUDERACH, PREPARING FOR PEACE: CONFLICT TRANSFORMATION ACROSS CULTURES 8 (1995).

³⁴⁰ *See infra* Section B.

recognize their common future and their common national identity. These elements are a foundation for the construction a culture of respect of human dignity and the peaceful resolution of conflicts in Bolivia.³⁴¹

The Bolivian Aymara, Quechua, and Guarani indigenous people have a different view on the ethic and political conflicts than the people of Spanish origins. Regarding the complexities of addressing conflicts between groups of people with different cultural backgrounds in Guatemala, Shamsie writes:

Dunsmore recognizes that creating processes among actors with such different worldviews is extremely challenging. 'You are dealing with a majority population that by force of history and circumstance has to interface with a dominant culture'... The contribution of a program like PROPAZ, she suggests, is in helping both sides see the other's perspective, rather than in mediating some sort of solution, a role the program has avoided.³⁴²

The conquest and colonization of the New World created a system of racial discrimination and ethnic division of labor to sustain the power of elites of Spanish and mestizo origins.³⁴³ This has shaped legal and political institutions of Bolivia and other countries. Despite the progress of indigenous communities, the history of unjust political and economic institutions disproportionately and negatively affects indigenous communities.³⁴⁴ As in Guatemala, Bolivia's indigenous people had to accept and adapt to the dominant political and economic structure. People of Hispanic and Mestizo backgrounds should recognize this fact and make efforts to understand the indigenous perspective and the consequences of hundreds of years of oppression against indigenous communities.

The IACHR can serve to construct a culture of respect for

³⁴¹ See *infra* Section C.

³⁴² Shamsie, *supra* note 327, at 420, *citing* Interview with Sandra Dunsmore, General Coordinator, OAS/PROPAZ, in Toronto, Can. (May 13, 2003) (notes on file with author).

³⁴³ See AARON M. SHATZMAN, *THE OLD WORLD, THE NEW WORLD, AND THE CREATION OF THE MODERN WORLD, 1400–1650* 106 (2013) (analyzing the Spanish conquest and colonization of indigenous people).

³⁴⁴ See *infra* note 1.

human dignity of all Bolivians. Bolivia should fulfill its international legal obligations consistent with its ratification of international instruments such as the American Convention on Human Rights; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; Inter-American Convention to Prevent and Punish Torture; Inter-American Convention on Forced Disappearance of Persons; Inter-American Convention against All Forms of Discrimination and Intolerance; Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance; Inter-American Convention on Protecting the Human Rights of Older Persons; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities.³⁴⁵

To construct a culture of respect for human dignity, Bolivia should also implement the norms and principles of American Declaration of the Rights and Duties of Man,³⁴⁶ the Declaration of Principles on Freedom of Expression,³⁴⁷ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas,³⁴⁸ and Inter-American Democratic Charter.³⁴⁹

The civil and political rights that Bolivia should implement include the rights to life, humane treatment, personal liberty, privacy, free assembly, participate in government, equal protection, judicial protection, private property, and a fair trial. They should also implement rights of the family and children. More-

³⁴⁵ See HURST HANNUM ET AL., *INTERNATIONAL HUMAN RIGHTS PROBLEMS OF LAW, POLICY AND PRACTICE* 862-863 (6th ed. 2018).

³⁴⁶ Organization of American States, American Declaration of the Rights and Duties of Man adopted by the Ninth International Conference of American States, O.A.T.S.

³⁴⁷ Afr. Comm'n on Human & Peoples' Rights Res. ACHPR/62(XXXII)02, Declaration of Principles on Freedom of Expression in Africa (Oct. 23, 2002).

³⁴⁸ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas adopted by Inter-American Commission on Human Rights, 131st Regular Session, Mar. 3—14, 2008, Wash., D.C., Res. 1/08.

³⁴⁹ The Inter-American Democratic Charter adopted by the General Assembly, Organization of American States, Special Session, Sept. 11, 2001, Lima.

over, Bolivia should further include freedom of conscience, religion, thought, expression, association, movement, and residence.³⁵⁰

Because of the importance of indigenous people in Bolivia, it is essential to implement the norms of the American Declaration on the Rights of Indigenous People. In its preamble, this normative instrument recognizes:

The important presence in the Americas of indigenous peoples and their immense contribution to development, plurality, and cultural diversity, and reiterating our commitment to their economic and social well-being, as well as the obligation to respect their rights and cultural identity.³⁵¹

One of the main objectives for implementing human right law norms in Bolivia is to construct a country where there is tolerance and respect for one another. As members of an ethnically diverse country, Bolivians should learn to respect and value of their differences. Bolivia should implement the norms of the Inter-American system of human rights that it has legally promised to follow.

International organizations, like the OAS, can contribute to the process of building up a culture of respect for human dignity in Bolivia. To contribute justly and efficiently, the OAS needs to recognize its own limitations and cultural biases. These biases stem from an overwhelming Hispanic perspective of issues that affect the political, economic, and culture well-being of countries with significant indigenous populations, such as Bolivia. The OAS should recognize the historical, political, and normative importance of indigenous peoples in Latin America. This should include the reform of the current IACHR and the creation of a project that focuses on the resolution of conflicts that specifically affect the interest of indigenous communities. It is also essential to include people of indigenous origins at the Inter-American

³⁵⁰ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978.

³⁵¹ American Declaration on the Rights of Indigenous Peoples adopted by the General Assembly, Organization of American States, 46th Regular Session, June 15, 2016, Santo Domingo, AG/Res. 2888.

Court of Human Rights, the Inter American Commission of Human Rights, the General Secretariat, and other OAS entities. Furthermore, when the OAS sends election observers to countries with a substantial percentage of indigenous people, they should include people of indigenous origins and people with substantial knowledge of indigenous people's cultures.

X. CONCLUSION

Historically in Bolivia, normative discourses and legal mechanisms have been used as an instrument to fight against political opponents disregarding the merits and justice of the cases. Contrary to this type of strategy, there is a just and important use of legal discourse and mechanisms to ensure the peaceful resolution of ethnic and political conflicts. The language of international human rights law should become a foundation for mediating ethnic and political disputes in Bolivia. To do so requires constructing a culture of respect for human dignity of all Bolivians, including indigenous people.

There are two main options regarding resolving the Bolivian situation. One option is to trust that the current political system will sustain a peaceful democratic society without the need for preventive measures to avoid potential violent ethnic and political conflicts. This first option is risky because there is a historic human tendency to resolve ethnic conflicts by violent means. The second option is to construct normative and other peaceful mechanisms for the prevention of civil wars and violent ethnic conflicts in Bolivia. This includes the timely resolution of any potential threats to the peaceful coexistence and national security of Bolivia. This second option can be accomplished by building a culture of respect for fundamental international human rights and human dignity as the foundation for the peaceful resolution of conflicts. This should include embracing ideas of political forgiveness and ethnic reconciliation.

In the current historical context, if Bolivia chooses the path of violence for the resolution of its deep rooted ethnic and political conflicts, the consequences will be crimes against humanity; destruction of its economic system and social structures; and an

increase in its structural ethnic divisions. Considering this reality, it is important for the Bolivian people to embrace a normative and political culture of resolving ethnic, social, and political conflicts by peaceful means. Bolivia should learn the lessons of history and prevent violent conflicts by avoiding dehumanizing political opponents and people of different ethnic backgrounds.³⁵²

Considering the complexity of the Bolivian crisis, there is a need to establish systematic reconciliation and mediation processes to preserve a peaceful coexistence between diverse ethnic groups. The mediation efforts of the U.N., the E.U., and the Catholic Church should serve as an example of the effectiveness and importance of the role of neutral parties in contributing to the resolution of ethnic and political conflicts.³⁵³ The Bolivian people should establish and sustain a powerful movement of mediators and conciliators that systematically focus on efforts for the prevention and peaceful resolution of ethnic conflicts. The international community should support those efforts. However, it is up to Bolivians; Bolivia's political leaders; political parties; civil society organizations; social movements; and media networks, among others, to ensure the success of a culture of national reconciliation that recognizes the importance of respect for human dignity as the foundation for their peaceful coexistence.

³⁵² See *infra* Section B.

³⁵³ See *infra* note 6.