

Overall Score:

69 - Weak

Legal Framework Score:

78 - Moderate

Actual Implementation Score:

56 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁷⁷Anti-Corruption Non-Governmental Organizations

1. Are anti-corruption/good governance NGOs legally protected?

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

Supreme Decree 22409 formally recognized nongovernmental organizations (NGOs), which are defined in Article 1 as "private non-profit institutions or associations, domestic or foreign, religious or secular, undertaking development activities and or care activities with State funds and or external cooperation in the national territory."

Article 3 defines the requirements for inclusion in the National NGOs Registry. As for the aims and objectives recognized in law for NGOs or any other association or nonprofit foundation, the Civil Code (Decree Law 12760) has left the power to define with whom they involve themselves, with the only limitation that to be lawful.

Supreme Decree 26140 establishes the incompatibility of belonging to an NGO working with farmers, indigenous peoples and settlers, to members of the Executive, Legislative or Judicial Branches, Mayors, Councilors and other public officials. There is also a prohibition against spouses of staff and authorities with national or departmental jurisdiction, in addition to their ancestors and descendants to the second degree of consanguinity.

References:

"Norma sobre Organizaciones No Gubernamentales, Decreto Supremo 22409 de 11 de enero de 1990. Articles 1 and 3"
"Reglamento sobre el Funcionamiento de Organizaciones no Gubernamentales que Trabajan con Campesinos, Pueblos Indígenas, Originario y Colonizadores, Decreto Supremo 26140 de 6 de abril de 2001"
"Código Civil, decreto Ley 12760 de 6 de agosto de 1975 en vigencia desde el 2 de abril de 1976. Chapter 1 of Title II: Paragraph 2 of Article 52; Paragraph 1 of Article 58; Paragraph 1 of Article 59"

Yes: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

No: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

Supreme Decree No. 22409 establishes no restrictions on sources of funding for nongovernmental organizations (NGOs); however, Article 2 creates the National Registry of NGOs, and its main purpose is to disseminate information, swiftly and reliably, on the geographic areas covered by NGOs: work fields, target populations benefited, projects implemented, sources of financing; those are among the most relevant data.

To register and/or renew their registration, NGOs must complete a form for the Information System that allows the data to be systemized. All of the information provided, according to Supreme Decree No. 22409, requires a sworn statement and is the responsibility of each NGO.

References:

"Normas sobre Organizaciones No Gubernamentales, Decreto Supremo 22409 de 11 de enero de 1990"

Yes: A YES score is earned if anti-corruption/good governance NGOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

No: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

Supreme Decree No. 22409 establishes no restrictions on sources of funding for nongovernmental organizations (NGOs); however, Article 2 creates the National Registry of NGOs, and its main purpose is to disseminate information, swiftly and reliably, on the geographic areas covered by NGOs: work fields, target populations benefited, projects implemented, sources of financing; those are among the most relevant data.

To register and/or renew their registration, NGOs must complete a form for the Information System that allows the data to be systemized. All of the information provided, according to Supreme Decree No. 22409, requires a sworn statement and is the responsibility of each NGO.

References:

"Normas sobre Organizaciones No Gubernamentales, Decreto Supremo 22409 de 11 de enero de 1990"

Yes: A YES score is earned if anti-corruption/good governance NGOs are required to publicly disclose their sources of funding.

No: A NO score is earned if no such public disclosure requirement exists.

2. Are anti-corruption/good governance NGOs able to operate freely?

75

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

"There are deliberate actions taken to delay or complicate the approval process for NGOs if the Ministry of the Presidency or the Ministry of Government or Movimiento al Socialismo (MAS) Prefecture perceives that they will affect the interests of the revolutionary process and the interests of the MAS" — Interview with Government Official, Oct. 13, 2010.

"If any local authority does not like what we do, if we do not respond to requests for information from union leaders or politicians, if we do not employ suggested personal, if we do not implement a project requested by the community, we begin to be pressured by the government, which asks for information of all kinds" — Interview with NGO Executive Director, Oct. 13, 2010.

References:

Interview with Government Official, 13 October 2010.

Interview with NGO Executive Director, 13 October 2010.

Noticiasbo. "Según Legisladores Oficialistas USAID y ONGs "Malean" a Dirigentes Campesinos e Indígenas de Pando". Noticiasbo. 12 de julio de 2010. Accessed October 13, 2010. http://www.noticiasbo.com/hemeroteca/edicion/6-6ta_edicion_julio_de_2010/seccion/1-politica/noticia/736-usaid_y_ong_s_malean_a_dirigentes_campesinos_e_indigenas_de_pando

Agencia Boliviana de Informaciones (ABI). "Cinco ONG de USAID Conminadas a Salir de Pando". ABI. 9 de julio de 2010. Golinger, Eva. "Municipios en Bolivia Expulsan la USAID por Desestabilización". Centro de Alerta para la Defensa de los Pueblos. 8 de julio de 2010. Accessed October 13, 2010. http://www.centrodealerta.org/noticias/municipios_en_bolivia_expul.html

Siles, Claudia. "Ataque del Gobierno a las ONG es Visto como un Error". El Deber. 5 de julio de 2010. Accessed October 13, 2010. <http://www.eldeber.com.bo/2010/2010-07-05/vernotaahora.php?id=100704185341>

Ortiz Antelo, Oscar. "Las ONGs y el MAS". El Deber. 30 de junio de 2010.

Arias, Álvaro. "El MAS Alista una Norma para Regular a las ONG". La Razón. 8 de junio de 2010. Accessed October 13, 2010. <http://www.la-razon.com/version.php?EditionId=100&ArticleId=3126&a=1>

La Prensa. "Siete ONG del Ámbito Político son Financiadas por USAID". La Prensa. 12 de marzo de 2008.

100: NGOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: NGOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, NGOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

References:

Diario Hispano Boliviano. "Siete Nuevos Ministros son Posesionados por Evo Morales". Diario Hispano Boliviano. 24 de enero de 2007. Accessed October 13, 2010. <http://www.diariocritico.com/bolivia/2007/Enero/noticias/7951/cambio-ministros.html>

Patana, Edgar; De la Cruz, Roberto y Quispe, Felipe. "Transnacionales y ONGs en el Gobierno de Evo". Programa Diálogo: Radio Panamericana. 15 de julio de 2009. Accessed October 13, 2010. <http://eju.tv/2009/06/transnacionales-y-ong-s-en-bolivia/>

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

During the term of this study, there is no evidence that the government has taken any action against nongovernmental organizations involved in the field of corruption.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

Yes: A YES score is earned if there were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

No: A NO score is earned if any NGO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

During the term of this study, there is no evidence that the government has taken action against any NGO activists working on corruption.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

No: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

Comments:

During the term of this study, there is no evidence that the government has taken action against any NGO activists working on corruption.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

Yes: A YES score is earned if there were no documented cases of NGO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

100

04a. In law, citizens have a right to organize into trade unions.

Yes | No

References:

Political Constitution of the State. Capitulo V (Derechos Sociales y Económicos). Sección III (Derecho al Trabajo y al Empleo). Artículo 51.

* Artículo 51: I. Todas las trabajadoras y los trabajadores tienen derecho a organizarse en sindicatos de acuerdo con la ley.

II. El Estado respetará los principios sindicales de unidad, democracia sindical, pluralismo político, autosostenimiento, solidaridad e internacionalismo.

III. Se reconoce y garantiza la sindicalización como medio de defensa, representación, asistencia, educación y cultura de las trabajadoras y los trabajadores del campo y de la ciudad.

IV. El Estado respetará la independencia ideológica y organizativa de los sindicatos. Los sindicatos gozarán de personalidad jurídica por el solo hecho de organizarse y ser reconocidos por sus entidades matrices.

V. El patrimonio tangible e intangible de las organizaciones sindicales es inviolable, inembargable e indelegable.

VI. Las dirigentas y los dirigentes sindicales gozan de fuero sindical, no se les despedirá hasta un año después de la finalización de su gestión y no se les disminuirán sus derechos sociales, ni se les someterá a persecución ni privación de libertad por actos realizados en el cumplimiento de su labor sindical.

VII. Las trabajadoras y los trabajadores por cuenta propia tienen el derecho a organizarse para la defensa de sus intereses.

Yes: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

No: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

References:

Political Constitution of the State, Chapter Three, Civil and Political Rights, Section 1, Civil Rights, Article 21, paragraphs 3 and 5:

* "Article 21: The Bolivians have the following rights:

3. Freedom of thought, spirituality, religion and worship, expressed individually or collectively, in public or private and with lawful purposes.

5. To freely express and disseminate thoughts or opinions by any means of communication, oral, written or visual, individual or collective".

<http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/36208>

Yes: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

There are some recently approved laws that, referring to social issues such as the Law Against Racism and Discrimination, limit freedom of expression because statements gathered by journalists are subject to official interpretation. Its sanctions (which include the closure of the media outlet) may lead to a tacit censorship — Interview with Mario Castro, General Director at Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010.

Article 16 indicates that the media outlet that authorizes or posts racist and discriminatory ideas will be liable to financial penalties and suspension of their license.

References:

Press Law, Article 1. "Everyone has the right to publish his thoughts in the press without prior censorship, except restrictions established by this law". Press Law dated January 19, 1925.

http://www.lostiempos.com/media_pdf/2010/10/05/178909_pdf.pdf

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

63

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

"There are often lengthy procedures, but they exist to the same extent as they do at any company."

References:

Interview with Luis René Baptista, Chief Editor at Los Tiempos Newspaper, November 2010.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may

occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | **No**

Comments:

No license is required to open a press outlet.

References:

Interview with Luis René Baptista, Chief Editor at Los Tiempos Newspaper, November 2010

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

No: A NO score is earned if there is no appeal process for print media licenses.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Interview with Luis René Baptista, Chief Editor at Los Tiempos Newspaper, November 2010

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No license is required to open a press outlet.

References:

Interview with Luis René Baptista, Chief Editor at Los Tiempos Newspaper, November 2010

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

25

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

The license is granted by the State, but because of the concentration and politicization of institutions, political criteria in the selection and licensing might be applied — Interview with Juan Carlos Rocha.

“In theory there is no explicit prohibition, but as in all parts of the world, if media owners are in open opposition to the government, barriers will be presented — Interview with Mario Castro.

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL, Private TV Company, November 2010.

Interview with Mario Castro, General Director at Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

There is no appeal mechanism.

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL, Private TV Company, November 2010

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

No: A NO score is earned if there is no appeal process for broadcast media licenses.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It takes more than one year.

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL, Private TV Company, November 2010

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL, Private TV Company, November 2010

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

There are no legal restrictions in this regard.

References:

Interview with Mario Castro, General Director at Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

There are no legal restrictions in this regard.

References:

Interview with Mario Castro, General Director at Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

83

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

There is no such prohibition. The right to information is stated in the Political Constitution of the State.

Political Constitution of the State, Chapter Three, Civil and Political Rights, Section 1, Civil Rights, Article 21, paragraph 6:

*"Article 21: The Bolivians have the following rights:

6. To access information, to interpret, to analyze and communicate freely individually or collectively".

References:

<http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/36208>

Yes: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

No: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In some cases, restriction is attempted, usually through pressure or accusations against journalists; or by withdrawing state advertising from the media — Interview with Mario Castro, General Director at Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010.

However, Juan Carlos Rocha, Director of News at Unitel TV Company, disagrees in this regard. For TV outlet, he says, there are no restrictions at all.

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL TV Private Company, November 2010.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL TV Private Company, November 2010

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

20

10a. In law, print media companies are required to publicly disclose their ownership.

Yes | **No**

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL TV Private Company, November 2010

Yes: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes | **No**

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL TV Private Company, November 2010

Yes: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

Comments:

"In Bolivia, the practice of journalism is free; anyone can practice journalism without training and without an ethical base — Interview with Juan Carlos Rocha.

"In general, the journalists do their work in the service of society with adherence to ethical principles. However, there are cases of bribery. As for private media, there are also cases of tipping the balance in order to benefit their interests as businesses, but it is not that common" — Interview with Mario Castro.

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL TV Private Company, November 2010

Interview with Mario Castro, General Director at Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to "sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

Some media owners are more-or-less openly identified with political parties or ideologies that suit their positions and their interests.

References:

Interview with Mario Castro, General Director at Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

"The state-owned media do not serve everyone the same, as it should be. It is always at the service of the government and gives preferences to the ruling party. It also has orders to that effect — Interview with Mario Castro.

“The government routinely uses state-owned media to discriminate against candidates and opposition parties” — Interview with Luis René Baptista, Chief Editor at Los Tiempos Newspaper, November 2010.

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL TV Private Company, November 2010.

Interview with Mario Castro, General Director of Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010.

Interview with Luis René Baptista, Chief Editor at Los Tiempos Newspaper, November 2010.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes | No

Comments:

In the past year, during the term of this study, there is no evidence that any journalists who were investigating corruption have been imprisoned.

References:

Interview with Luis René Baptista, Chief Editor at Los Tiempos Newspaper, November 2010

Yes: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

No: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes | No

Comments:

In the past year, during the term of this study, there is no evidence that any journalists who were investigating corruption have been harmed.

References:

Interview with Luis René Baptista, Chief Editor at Los Tiempos Newspaper, November 2010

Yes: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

No: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes | No

Comments:

In the past year, during the term of this study, there is no evidence that any journalists who were investigating corruption have been killed.

References:

Interview with Luis René Baptista, Chief Editor at Los Tiempos Newspaper, November 2010

Yes: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

No: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

70
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

12a. In law, citizens have a right to request government information and basic government records.

Yes | No

References:

Supreme Decree N° 28168, May 17, 2005.

http://info.worldbank.org/etools/docs/library/211219/DECRETO_SUPREMO_N28168formatoimpres%5B2%5D.doc

A draft law on access to public information is still under discussion in the Congress. (Draft Link:

<http://www.redipd.org/documentacion/legislacion/common/legislacion/Bolivia/LeyAccesoInformacion09Abr.pdf>)

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

No: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes | No

References:

I. In cases of negative, ineffective or illegal restrictions on the right to information, the petitioner may file a complaint with the competent higher authority or the Ombudsman, or make use of constitutional, judicial and administrative proceedings.

II. The competent higher authority that receives the complaint will resolve it within the next five (5) working days of submission. If the complaint is considered correct, the information requested will be provided within the next fifteen days."

http://info.worldbank.org/etools/docs/library/211219/DECRETO_SUPREMO_N28168formatoimpres%5B2%5D.doc

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes | No

References:

Supreme Decree N° 28168, May 17, 2005. Article 11:

"II. The public servant shall keep a register of all applications submitted. The information will be made available to the applicant within a maximum of fifteen (15) working days, except in cases of refusal justified on grounds set forth in this Supreme Decree."

http://info.worldbank.org/etools/docs/library/211219/DECRETO_SUPREMO_N28168formatoimpres%5B2%5D.doc

Yes: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

No: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right to information requests effective?

33

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

"There are no high-profile cases of citizens who have requested public information; and for journalists, who make little use of that resource, there are delays in the delivery of information broadly known" — Interview with Juan Carlos Rocha.

"Today, despite a prosecutor's application, Bolivia's army still does not make public information regarding the García Meza dictatorship, which could lead to a clearing up of issues regarding missing political figures. For other cases, delays and elusive pretexts that seem valid are largely known" — Interview with Mario Castro.

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL TV Private Company, November 2010.

Interview with Mario Castro, General Director at Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL TV Private Company, November 2010

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

I do not know if you can get complete documentation in an orderly and timely fashion.

References:

Interview with Mario Castro, General Director at Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Mario Castro, General Director at Radio Cristal and Opinion Columnist at Semanario Pulso, November 2010.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No high-profile cases are known regarding appeals.

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL TV Private Company, November 2010.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

On a daily basis, the government repeatedly denies journalists access to sources of information or discriminates by choosing whom to inform; generally, they inform only those journalists with a clear pro-government editorial policy.

References:

Interview with Juan Carlos Rocha, Director of News at UNITEL TV Private Company, November 2010

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category 2. Elections

2.1. ⁴⁷Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes | No

References:

Political Constitution of the State. Title II (Fundamental Rights and Guarantees). Chapter Three (Civil and Political Rights). Section II (Political Rights). Article 26 Part II, paragraph 2:

"The right to vote is equal, universal, direct, individual, secret, free, compulsory, and publicly scrutinized. Suffrage shall be exercised after eighteen years of age".

<http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/36208>

Law of the Electoral System N° 026, June 30, 2010. Title I (General Provisions). Chapter II (Citizenship and Political Rights). Article 4 (Political Rights), subparagraphs a, b, c.

* Article 4 (Political Rights): The exercise of political rights in the context of intercultural democracy and equal conditions between women and men, including:

- a) The organization for political participation, according to the Constitution and the Law.
- b) The turnout as voters and voters in elections, by universal suffrage.
- c) The concurrence as candidates in elections, suffrage universal..."

<http://pdba.georgetown.edu/Electoral/Bolivia/Ley26-2010.pdf>

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

No: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes | No

References:

Law of the Electoral System N° 026. June 30, 2010. Title III, Chapter III (Election of Officers and Representatives). Section I (Of the President and Vice President). Article 52 (Form of Election). Part III:

III. The mandate of the President and Vice President is five (5) years and they may be reelected or reappointed for a one-time continuously.

<http://pdba.georgetown.edu/Electoral/Bolivia/Ley26-2010.pdf>

Yes: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

67

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

There are very few farmers and indigenous people who do not have an identity card and cannot vote.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Since the election of Mr. Evo Morales to the presidency of Bolivia, there are large rural areas and areas in western Bolivia where residents hinder electoral observation. Coincidentally, those areas are where Movimiento al Socialismo (MAS), Mr. Morales' party,

gets 100 percent support in elections, 100 percent of adults are registered to vote and 100 percent of the votes are valid. There have been cases where even dead people or migrants who are absent on the day of the election have voted for him.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

The first constitutional mandate of Evo Morales should have finished in 2010, but 13 months before new elections were held. We also conducted a recall referendum in 2008, when there was no such process provided for in any law or in the Constitution. Similar cases are occurring at local level elections and at the Judicial Branch.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

70

16a. In law, all citizens have a right to form political parties.

Yes | No

References:

Law of Electoral System N° 026. June 30, 2010. Title III (Representative Democracy). Chapter I (Suffrage and Political Representation). Articles 47 (Political Representation) and 48 (Organizations):

Article 47:

In representative democracy, citizens participate in government and in the decision making process through democratically elected representatives and through political organizations.

Article 48: Political parties, groups of citizens and organizations of indigenous and aboriginal nations and farmers with legal registry at the electoral administration are entitled to intermediate popular elections for the shaping of public authorities.

<http://pdba.georgetown.edu/Electoral/Bolivia/Ley26-2010.pdf>

Yes: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

No: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

Yes | No

References:

Political Constitution of the State. Title II (Fundamental Rights and Guarantees). Chapter Three (Civil and Political Rights). Section II (Political Rights). Article 26 part I:

I. All citizens have the right freely to participate in training, exercise and control of political power, directly or through their representatives, and individually or collectively. Participation will be fair and equal for men and women.

<http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/36208>

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

No: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Rather than intimidation, there are operative and administrative obstacles (barriers) erected by the Electoral Body and usually conducted with the consent of the government. These barriers consist of scrupulous review of the records submitted by the applicants, which are unusual (or not applied equally). These reviews seem intended to seek the disqualification of candidates or delay their registration using reasons of form as an excuse, rather than substance.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Since 2006, the state-owned media has been placed at the service of official candidates and ministry budgets for communications have been used for propaganda. The ruling party also uses official transportation for its candidates; this puts any opposition groups or individual candidate at a huge disadvantage.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

Noticias-bolivia.com. 2010. "New scandal in MAS: Money of the State served to campaigns" <http://www.noticias-bolivia.com/2010/04/nuevo-escandalo-en-el-mas-dineros-del.html> (visited in November 2010)

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Carlos Toranzo: The opposition slightly influences government decisions.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

Newspaper El Mundo, 2010: "Opposition denounces the abuse of MAS majority at the Congress" <http://www.elmundo.com.bo/Secundarianew.asp?edicion=30/01/2010&Tipo=Nacional&Cod=9974> (visited in November 2010).

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes | No

References:

Law of Electoral System N° 026. June 30, 2010.

Empowers Pluri-national Electoral Court (Tribunal Electoral Plurinacional) to oversee the integrity of elections. Such undesired behavior or faults and their penalties are extensively described in articles 228, 229, 230, 231, 232 and 233.

Criminal offenses are described in article 238 and are referred to the ordinary courts in article 239.

<http://pdba.georgetown.edu/Electoral/Bolivia/Ley26-2010.pdf>

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

35

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes | No

References:

Law of Electoral System N° 026. June 30, 2010.

The Law notes in article 255 the principle of Independence only for Electoral Support Missions.

<http://pdba.georgetown.edu/Electoral/Bolivia/Ley26-2010.pdf>

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

There is no institutional monitoring mechanism, although there are private organizations and support missions, in accordance with the Electoral Body, which help supervise the elections.

However, during this year, these organizations have faced restrictions on their observation work. Furthermore, the Legislature designates Plurinational Vocals during "restricted session," even though the law requires that these designations to be a public event.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

Elections results and some statistical figures can be seen at the Electoral Body website

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There have been no penalties.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

38

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

There have been dozens of public complaints about irregularities in both the standard registration manual that was used until 2008, and in the standard manual that has been used since 2009. For example, after scrubbing the registry for the presidential election in December 2009, the registry increased by more than 50,000 voters. This was the first case where scrubbing increased the number of entries. There are proven accusations of "ghost votes" that were reported by several journalists and political parties.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

Lapatriaenlinea.com, "Convergencia Nacional pide depurar a observados para evitar fraude electoral", <http://www.lapatriaenlinea.com/index.php?nota=9894> (Visited, November 2010).

Eju.tv, "PPB-CN denuncia fraude electoral; habría 522.000 inscritos fantasma", <http://eju.tv/2009/12/ppb-cn-denuncia-fraude-electoral-habran-522-000-inscritos-fantasma/#ixzz16jaMLWVj> (Visited, November 2010).

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes | **No**

Comments:

There are no examples of contested election results that were resolved by a judicial court, as the Electoral Supreme Court resolutions are res judicata.

References:

Law of Electoral System N° 026. June 30, 2010. Title VII (Social Control and Transparency). Chapter III (Processing of Faults). Section II (Proceedings against the Election Judges). Article 250 (Appeals/Recourses). Part II and section c):

Article 250: The appeal must be filed in fatal within three (3) days computable from its legal notice. The appeal and/or annulment must be filed in fatal within eight (8) days counting from the notice to the Departmental Electoral Court's decision. These resources will be processed as follows:

C) The Electoral Supreme Court resolutions are res judicata".

<http://pdba.georgetown.edu/Electoral/Bolivia/Ley26-2010.pdf>

Yes: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

No: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | **0**

Comments:

There are no examples of contested election results that were resolved by a judicial court, as the Electoral Supreme Court's resolutions are res judicata.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

There is a fundamental alliance between the Army and the Police with the current government, to the extent that their own doctrine and institutional principles have been declared revolutionary and anti-imperialist. There is a significant penetration by the pro-Chavez doctrine, and several authorities of those two institutions have been appointed ambassadors, senators, etc.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

References:

Law of Electoral System N° 026, June 30, 2010, Articles 253 to 262.

<http://pdba.georgetown.edu/Electoral/Bolivia/Ley26-2010.pdf>

Pluri National Electoral Body N° 018. June 16, 2010. Article 24.

<http://www.cedib.org/leyes/ley18OEP.pdf>

Yes: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

No: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

Comments:

The government criticized the presence of NGOs or external bodies that do not support its administration or their intentions to be impartial.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

58 2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

33

20a. In law, there are limits on individual donations to political parties.

Yes | No

References:

All restrictions are given in the Article 51 of the Political Parties Law N° 1983, June 25, 1999.

http://www.cne.org.bo/centro_doc/normas_virtual/leydepartidospoliticos.pdf

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

References:

There is no limit on corporate donations, although there is an obligation to register those donations in the political parties' accounts.

Political Parties Law N°1983. June 25, 1999. Article 51. Part II.

http://www.cne.org.bo/centro_doc/normas_virtual/leydepartidospoliticos.pdf

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

Yes | **No**

Comments:

According to Pluri National Electoral Body Law N° 018, June 16, 2010, Articles 21 and 22, monitoring and regulations of campaigns expenditure are the responsibility of the Supreme Electoral Tribunal; however, there are not yet any regulations in that sense.

References:

Pluri National Electoral Body Law N° 018. June 16, 2010. Articles 21 and 22.

Article 21: Monitor, according to the regulations of the Supreme Electoral Tribunal, the costs of propaganda of the political organizations at local and national level in elections, referendums and recalls.

Article 22: Monitor, according to the regulations of the Supreme Electoral Tribunal, the advertising expenditures of civil society organizations and organizations of nations and peasant indigenous peoples, registered to advertise in referendums and recalls at the local and regional level.

<http://www.cedib.org/leyes/ley18OEP.pdf>

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | **No**

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

Comments:

According to Pluri National Electoral Body Law N° 018, June 16, 2010, Articles 21 and 22, monitoring and regulations of campaigns expenditure are the responsibility of the Supreme Electoral Tribunal.

References:

Pluri National Electoral Body Law N° 018. June 16, 2010. Articles 21 and 22.

Article 21: Monitor, according to the regulations of the Supreme Electoral Tribunal, the costs of propaganda of the political organizations at local and national level in elections, referendums and recalls.

Article 22: Monitor, according to the regulations of the Supreme Electoral Tribunal, the advertising expenditures of civil society organizations and organizations of nations and peasant indigenous peoples, registered to advertise in referendums and recalls at the local and regional level.

<http://www.cedib.org/leyes/ley18OEP.pdf>

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES- ILDIS, November 2010.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are limits on individual donations to political candidates.

Yes | No

Comments:

Electoral Body Law regulations are not yet under discussion in Parliament.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | **No**

Comments:

Electoral Body Law regulations are not yet under discussion in Parliament.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | **No**

Comments:

Electoral Body Law regulations are not yet under discussion in Parliament.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | **No**

Comments:

According to Electoral Law Body, the auditing is a prerogative of the Supreme Electoral Tribunal.

References:

Pluri National Electoral Body Law N° 018. June 16, 2010.

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | **No**

Comments:

According to the Electoral Law Body, monitoring is a prerogative of the Supreme Electoral Tribunal.

References:

Pluri National Electoral Body Law N° 018. June 16, 2010.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | **0**

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010).

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010).

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no entity that is regularly engaged in controlling donations for political parties or candidates for campaigns.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no mechanism that allows access to this information, or to compel its publication; nor is there a process for citizens to request access to this information.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no mechanism that allows access to this information, or to compel its publication; nor is there a process for citizens to request access to this information.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no mechanism that allows access to this information, or to compel its publication; nor is there a process for citizens to request access to this information.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There are no such records, much less records that are open to citizens.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no mechanism that allows access to this information, or to compel its publication; nor is there a process for citizens to request access to this information.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no mechanism that allows access to this information, or to compel its publication; nor is there a process for citizens to request access to this information.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no mechanism that allows access to this information, or to compel its publication; nor is there a process for citizens to request access to this information.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There are no such records, much less records that are open to citizens.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES-ILDIS, November 2010.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁶⁹Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

References:

The "Acción de Amparo Constitucional" will be held against unlawful or misuse acts or omissions of public servants, or individual or collective bodies, that restrict, deny or threaten to restrict or deny the rights conferred by the Constitution and the law.

Constitución Política del Estado. Capítulo Segundo. Sección II. Artículo 128 (Acción de Amparo Constitucional).

Ley N° 027 de 6 de julio de 2010, del Tribunal Constitucional Plurinacional del Estado Plurinacional de Bolivia. Artículo 73 (Acción de Amparo Constitucional).

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

No: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

27. Can the chief executive be held accountable for his/her actions?

56

27a. In practice, the chief executive gives reasons for his/her policy decisions.

Comments:

Once a year, the President gives a speech to Congress explaining the country's policies and actions that have been implemented and their results; however, this explanation is not subject to further discussion.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

References:

Ley N° 027 de 6 de julio de 2010, del Tribunal Constitucional Plurinacional del Estado Plurinacional de Bolivia.

Constitutional justice is exercised by the Plurinational Constitutional Court and is intended to ensure the supremacy of the Political Constitution of the State, to exercise its preemptive control of constitutionality and respect for and observance of rights and constitutional guarantees. Artículo 2 (Ejercicio y Finalidad de la Justicia Constitucional).

The constitutionality of all laws, decrees, resolutions and acts of state bodies is presumed at all levels, until the Constitutional Court resolves and declares its unconstitutionality. Artículo 5 (Presunción de Constitucionalidad).

The powers of the Plurinational Constitutional Court, is to hear and decide: i) Direct actions of unconstitutionality or abstract nature of laws, autonomy statutes, charters, decrees and ordinances and all sorts of non-judicial acts; and ii) Indirect actions of unconstitutionality or the precise nature of the unconstitutionality of laws, autonomy statutes, charters, decrees and ordinances and all sorts of non-judicial acts. Artículo 12 (Atribuciones).

Ley N° 2341 de 23 de abril de 2002 de Procedimiento Administrativo. Artículo 4.

Administrative activity is governed by the following principles:

i) Principle of judicial control: the judiciary controls the activity of the Public Administration under the State Constitution and applicable laws.

Yes: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

Comments:

The Constitutional Court is empowered to determine the constitutionality of executive actions; however, for the past three years, the Constitutional Court was without the required quorum and stopped holding sessions. There was much evidence of its involvement with the current government, which has generated serious doubts about its impartiality and willingness to act against the hotly debated decisions of the executive.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:

In practice, the President exceeds the limits on the use of Presidential Decrees, revoking or amending legislation, directly contravening constitutional or legal requirements for legislative action or approval.

Because the Plurinational Constitutional Court had no quorum, there was no judiciary control; now the Plurinational Constitutional Court has been appointed by the President and there will be no judiciary control for most of presidential decisions.

For example, the Supreme Decree N° 28699 of May , 2006, amending Law N° 1182 of Sept. 17, 1992 of Investments; and,

The Supreme Decree N° 048 of March 18, 2009, amending the Political Constitution of the State and changing the name of Bolivia to Plurinational State of Bolivia.

References:

Revista Lex. 2009. Bolivia cambia de nombre por orden del Presidente Morales. <http://www.revistalex.com/bolivia-cambia-de-nombre-por-orden-el-presidente-morales/>. La Paz, Bolivia.

Bolivia Democrática. 2009. Leyes sociales de nueva CPE serán aplicadas por decreto. <http://boliviademocratica.net/prensa.php?idArticle=148167>. La Paz, Bolivia.

Carlos Cordero, political analyst and academic.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

Comments:

The legal framework for prosecuting the President, Vice President and other high authorities has been modernized often, as has happened in this administration (Ley N° 044 de 8 de octubre de 2010); however, there is no evidence since the return to democracy in 1982 that any proceedings against a Constitutional President of the Republic has gone forward.

References:

Ley 044 de 8 de Octubre de 2010 de Juzgamiento de la Presidenta o Presidente y/o de la Vicepresidenta o Vicepresidente, de Altas Autoridades del Tribunal Supremo de Justicia, Tribunal Agroambiental, Consejo de la Magistratura, Tribunal Constitucional Plurinacional y del Ministerio Público. Título Segundo (Del Juzgamiento de la Presidenta o Presidente y/o de la Vicepresidenta o Vicepresidente). Artículo 12 (Del Ámbito de Aplicación y de los Delitos).

The President and/or the Vice President of the Plurinational State will be prosecuted when exercising their functions for committing one or more of the crimes listed below:

- i) Treason and submission of all or part of the nation to foreign domination (También en el Artículo 124 de la Constitución Política del Estado);
- ii) Violation of rights and individual guarantees in the Constitución Política del Estado (Título II y Título IV);
- iii) Misuse of influences;
- iv) Incompatible negotiations within the exercise of public functions;
- v) Decisions contrary to the Constitution;
- vi) Advance or extension of functions;
- vii) Concussion;
- viii) Exactions;
- ix) Genocide;
- x) Bribery;
- xi) Any other offense committed in the exercise of their functions.

Constitución Política del Estado. Título IV. Capítulo Primero (Garantías Jurisdiccionales).

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

References:

Ley N° 004 de 31 de marzo de 2010 de Lucha Contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas "Marcelo Quiroga Santa Cruz". Artículo 1 (Objeto).

The present Law has as its object of establishing mechanisms and procedures in the framework of the Political Constitution of the State, laws, agreements and international conventions, and is designed to anticipate, investigate, process and sanction acts of corruption committed by public servants and public ex-servants, in the exercise of their functions, along with natural or juridical persons and legal representatives of legal, public or private, national or foreign persons who compromise or affect the resources of the State, as well as recover the affected heritage of the State across the jurisdictional competent organs. Artículo 1 (Objeto).

Constitución Política del Estado. Título IV. Capítulo Primero (Garantías Jurisdiccionales).

Yes: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

No: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

63

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

References:

Constitución Política del Estado. Capítulo Cuarto (Servidoras Públicas y Servidores Públicos). Artículo 235, Numeral 3:

The obligations of the servants and public servants are:

3. Sworn statement of income and assets before, during and after exercise office.

Ley N° 2027 del Estatuto del Funcionario Público. Título V (Declaración de Bienes y Rentas). Artículo 53:

All public servants, whatever their status, rank, status or category are required to provide explicit statements on the property and income they had at the time of starting their employment with the administration. During the term of the employment relationship with the administration and even at the end of it, whatever the cause of termination, the statements of their assets and income may be, at any time, subject to verification. In effect, public servants, provide periodic statements in accordance with specific regulation. Artículo 53.

Yes: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

References:

Constitución Política del Estado. Capítulo Cuarto (Servidoras Públicas y Servidores Públicos). Artículo 235, Numeral 3.

The obligations of the servants and public servants are:

3. Sworn statement of income and assets before, during and after exercise office.

Ley N° 2027 del Estatuto del Funcionario Público. Título V (Declaración de Bienes y Rentas). Artículo 53.

All public servants, whatever their status, rank, status or category are required to provide explicit statements on the property and income they had at the time of starting their employment with the administration. During the term of the employment relationship with the administration and even at the end of it, whatever the cause of termination, the statements of their assets and income

may be, at any time, subject to verification. In effect, public servants, provide periodic statements in accordance with specific regulation. Artículo 53.

Yes: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

References:

Ley 2027 de 27 de octubre de 1999 del Estatuto del Funcionario Público. Capítulo III (Ética Pública).

Public servants are forbidden to accept any individual or collective, public or private, domestic or foreign, gifts, benefits or other presents, designed to directly or indirectly promote efforts to assert his position or influence on other public servants with similar purposes, subject to criminal penalties. Artículo 14 (Regalos y Dádivas).

Public servants are not prevented from receiving gifts, ceremonial gifts or awards from governments or international organizations, under conditions in which the law or custom officially support it. Artículo 15 (Excepciones).

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Yes | No

Comments:

The General Comptroller of the Republic is currently appointed by the President on a temporary basis; consequently, its independence is in question.

References:

Ley 2027 de 27 de octubre de 1999 del Estatuto del Funcionario Público. Título V (Declaración de Bienes y Rentas). Artículo 55 (Delegación y Reglamentación).

The General Comptroller of the Republic, as the Governing Body of Government Control System, will exercise command and control of the Statement of Assets and Revenue System for the entire public sector. The General Comptroller of the Republic will propose to the Executive, for its validity by Supreme Decree, the regulations governing the Statement of Assets and Revenue System and the powers that, under the power conferred by this statute, will be appropriate to exercise. Artículo 55 (Delegación y Reglamentación).

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | No

References:

Their roles are limited, but not for the private sector:

Decreto Supremo N° 29038 de 10 de septiembre de 2007. Artículo 20 (Incompatibilidades). Parágrafo I.

I. The Ministers and Vice-Ministers are barred from providing services in aid agencies, multilateral agencies, foreign governments and nongovernmental organizations up to two (2) years after leaving public office, either as direct employees or as consultants.

Yes: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no specific laws prohibiting work in the private sector for heads of state and government and ministers.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

“The regulations governing gifts and hospitality are systematically ignored and not enforced” — Interview with Jorge Dulón.

“Small gifts are customary, not big ones; there is a deeply rooted culture of gifts we are trying to change” — Interview with Carlos Camargo.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosures are audited in full, but yet have not been revealed in full. However, this year will be the first time they are revealed.

References:

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency; November 2010

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

94

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

References:

Ley N° 2027 de 27 de octubre de 1999 del Estatuto del Funcionario Público. Título V (Declaración de Bienes y Rentas). Artículo 54 (Principios).

The sworn statements of assets and income shall observe the principles of universality, binding, regularity and transparency. The sworn statements of assets and income of public officials elected, appointed, freely appointed and career, especially those determined in accordance with Regulation, shall be further subject to the principle of publicity [...]. Artículo 54 (Principios).

Yes: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:
Accessing the following website:

<https://www.cge-djbr.gob.bo/page7.html>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:
Accessing the following website:

<https://www.cge-djbr.gob.bo/page7.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

"There are reasonable restrictions for detailed information for security reasons; however, the relevant information is available to anyone at anytime" – Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010.

References:

Accessing the following websites:

<https://www.cge-djbr.gob.bo/guadellenado.pdf>

<https://www.cge-djbr.gob.bo/formulariodjbr.pdf>

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Evo Morales is not only the President of Bolivia, but also the Political Chief of the governing party Movimiento al Socialismo (MAS) and top leader of the six federations of coca growers of the Chapare region.

References:

Corte Nacional Electoral. 2010. Partidos Políticos y Agrupaciones Ciudadanas con personalidad jurídica a nivel nacional. Movimiento al Socialismo (MAS). http://www.cne.org.bo/org_politica/partidos.aspx?idDocumento=par0537

Diario Crítico de Bolivia. 2010. Evo es reelegido como líder cocalero. 08-06-2010. <http://www.diariocritico.com/bolivia/2010/Junio/noticias/212262/evo-cocalero.html>

La Nación. 2010. Evo Morales es reelegido líder de los cocaleros. 07/06/2010. <http://www.nacion.com/2010-06-07/Mundo/UltimaHora/Mundo2400861.aspx>

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

75

32a. In law, the judiciary can review laws passed by the legislature.

Yes | No

References:

Ley N° 027 de 6 de julio de 2010, del Tribunal Constitucional Plurinacional del Estado Plurinacional de Bolivia.

Constitutional justice is exercised by the Plurinational Constitutional Court and is intended to ensure the supremacy of the Political Constitution of the State; the court exercises its preemptive control of constitutionality and respect for and observance of rights and constitutional guarantees. Artículo 2 (Ejercicio y Finalidad de la Justicia Constitucional).

The constitutionality of all laws, decrees, resolutions and acts of state bodies at all levels is presumed until the Constitutional Court resolve and declare its unconstitutionality. Artículo 5 (Presunción de Constitucionalidad).

The powers of the Plurinational Constitutional Court is to hear and decide:

i) Direct actions of unconstitutionality or abstract nature of laws, autonomy statutes, charters, decrees and ordinances and all sorts of non-judicial acts; and

ii) Indirect actions of unconstitutionality or the precise nature of unconstitutionality of laws, autonomy statutes, charters, decrees and ordinances and all sorts of non-judicial acts. Artículo 12 (Atribuciones).

Yes: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

In practice, the Constitutional Court has not declared any law Unconstitutional since Jan. 17, 2007.

Source: Page of the constitutional Court
<http://www.tribunalconstitucional.gob.bo/gpwtc.php?Name=Inconstitucionales>

Mauricio Ochoa Urioste. La Politización del Tribunal Constitucional de Bolivia. [katari.org. http://www.katari.org/la-politizacion-del-tribunal-constitucional/](http://www.katari.org/la-politizacion-del-tribunal-constitucional/) or <http://www.bolpress.com/art.php?Cod=2006111710&PHPSESSID=>

FM Bolivia. 2010. ONU: justicia boliviana sufre por politización y corrupción. 25 de Marzo de 2010. <http://www.fmbolivia.com.bo/noticia24922-onu-justicia-boliviana-sufre-por-politizacion-y-corrupcion.html>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | No

References:

Constitución Política del Estado de 7 de febrero de 2009. Título I (Órgano Legislativo). Capítulo I (Composición y Atribuciones de la Asamblea Legislativa Plurinacional). Artículo 152.

The assembly will not enjoy immunity. During its tenure, in criminal proceedings, it shall not apply the precautionary measure of preventive detention, except in flagrante delicto. Artículo 152.

Ley N° 004 de 31 de marzo de 2010 de Lucha contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas "Marcelo Quiroga Santa Cruz". Capítulo I (Disposiciones Generales). Artículo 1 (Objeto).

This Act is to establish mechanisms and procedures under the Political State Constitution, laws, treaties and conventions that are designed to prevent, investigate, prosecute and punish acts of corruption committed by public servants and former public servants in the exercise of their functions, and natural or legal persons and legal representatives of legal persons, public or private, domestic or foreign, that compromise or affect state resources and to recover the assets of the State through the competent courts. Artículo 1 (Objeto).

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

29

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

References:

Jaime Navarro, Congressman for Unidad Nacional Party (UN). November 4, 2010.

Reglamento General de la Cámara de Diputados N° 026/2010 – 2011 de 29 de enero de 2010. Título II (Derechos y Obligaciones de los Diputados). Capítulo II (Deberes e Impedimentos). Artículo 25 (Deberes Generales)

Article 25 (General Duties): Members in office shall have, in addition to those established by the Political Constitution of the State, the following general duties:

h) Declare to the Comptroller General of the state, before taking office and at his conclusion, a sworn statement about his assets.

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | **No**

References:

Jaime Navarro, Congressman for Unidad Nacional Party (UN). November 4, 2010.

Reglamento General de la Cámara de Diputados N° 026/2010 – 2011 de 29 de enero de 2010.

Yes: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | **No**

References:

Reglamento General de la Cámara de Diputados N° 026/2010 – 2011 de 29 de enero de 2010.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | **No**

References:

Reglamento General de la Cámara de Diputados N° 026/2010 – 2011 de 29 de enero de 2010.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no legal provisions for this type of restriction.

References:

Jaime Navarro, Congressman for Unidad Nacional Party (UN), Nov. 4, 2010.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no legal provisions for this type of restriction.

References:

Jaime Navarro, Congressman for Unidad Nacional Party (UN), Nov. 4, 2010.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Jaime Navarro, Congressman for Unidad Nacional Party (UN), Nov. 4, 2010.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

94

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | No

References:

<https://www.cge-djbr.gob.bo/page7.html>

Yes: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Jaime Navarro, Congressman for Unidad Nacional Party (UN), Nov. 4, 2010.

<https://www.cge-djbr.gob.bo/page7.html>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

References:

Jaime Navarro, Congressman for Unidad Nacional Party (UN), Nov. 4, 2010.

<https://www.cge-djbr.gob.bo/page7.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

Comments:

"There are reasonable restrictions for detailed information for security reasons; however, the relevant information is available to anyone at anytime" – Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010.

References:

Accessing the following websites:

<https://www.cge-djbr.gob.bo/guiadellenado.pdf>

<https://www.cge-djbr.gob.bo/formulariodjbr.pdf>

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

67

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

References:

Reglamento General de la Cámara de Diputados N° 026/2010 – 2011 de 29 de enero de 2010. Título IV (Funcionamiento y Procedimientos Camarales). Capítulo I (Sesiones). Sección B (Sesiones Ordinarias). Artículo 71 (Naturaleza Pública).

Article 71 (Public Nature): Plenary Sessions of the Commissions and Brigades will be public and may only be reserved when two-thirds of its members decide so.

Reglamento General de la Cámara de Diputados N° 026/2010 – 2011 de 29 de enero de 2010. Título IV (Funcionamiento y Procedimientos Camarales). Capítulo VII (Publicaciones). Artículo 153 (Publicaciones Oficiales), Artículo 155 (Distribución) y Artículo 156 (Sistema de Información).

Article 153 (Official Publications): Official publications of the House will be the following, whether in print or in digital media:

I. The "Editor": to be published monthly and to contain the transcripts of the audiotape versions of the plenary debates.

II. Annual Reports of the Legislative Committees.

III. "Legislative Yearbook", containing all the laws enacted by the Legislature, specifying whether they were enacted or vetoed, stating the date of enactment or veto, declarations and decisions of the chambers, an indication of the Minutes approved and Communication Bills that remain pending, a statistical table of all cases handled and the most significant actions of the legislature.

IV. "Legislative Bulletin," which will publish a daily report of projects and reports brought to the attention of the House, as well as the minutes, resolutions and declarations of the chambers.

V. Presentations, research and conclusions of the events sponsored by the House or its committees.

VI. Daily Agenda and Weekly Agenda of the Plenary and Committee Sessions.

VII. Management Report of the President of the Chamber.

VIII. "Parliamentarians Bulletins": each parliamentary will publish a report of its activities, its management, its audit work, its legislative initiatives, and the relevant and most interesting laws of their jurisdiction that were approved by the House of Representatives and passed by the Executive.

Article 155 (Distribution): The official publications of the House and presidential messages [...] will be forwarded to the Legislative Assembly Library, the National Archives and Library of Bolivia with headquarters in the city of Sucre, to the organs of State, National Repository, Universities and Public Libraries [...].

Article 156 (Information System): The public can access information about treatment and legislative actions and communicate with the various parliamentary bodies via the Internet and email, media and other appropriate means.

The House of Representatives will develop a comprehensive computer system communication.

Yes: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

No: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The bureaucracy, the public's lack of awareness of its rights and the lack of systems and information provided to the public generate delays between 10 to 20 days.

References:

Jaime Navarro, Congressman for Unidad Nacional Party (UN), Nov. 4, 2010.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The information is located only in the cities of La Paz and Sucre; it is also necessary to pay for copies of documents.

References:

Jaime Navarro, Congressman for Unidad Nacional Party (UN), Nov. 4, 2010.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

66

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

References:

Political Constitution of the State. Artículos 182 y 195.

Artículo 182: I. The Judges and the Justices of the Supreme Court of Justice will be chosen by means of universal suffrage.

II. Multinational Legislative Assembly, by a vote of two-thirds of its members, will present the screening of applicants, including applicants from each department, and forward them to the electoral body's list of those pre-qualified so it can proceed with organizing the electoral process.

III. The applicants or any person, may not campaign for their own nominations, under penalty of disqualification. The Electoral Body shall be solely responsible for promoting the merits of the candidates.

IV. The magistrates may not belong to political organizations.

V. Candidates will be chosen and elected candidates by a simple majority of votes. The President or the State will announce the decision.

VI. To qualify as a Judge of the Supreme Court, candidate will need to meet the general requirements for public servants: be over thirty years of age, hold a law degree, having worked, with honesty and ethics, in a judicial or legal profession or university chair for eight years and have no sanction or dismissals by the Council of the Magistracy. For the merit rating will be considered to have exercised the quality of original authority (Autoridad Originaria) under its system of justice.

Artículo 195: The powers of the Judicial Council of Justice, in addition to those established in the Constitution and the law:

7. Pre-select candidates for the confirmation by the departmental courts to be appointed by the Supreme Court.

8. Appoint, by competitive examinations, judges of party and instruction.

Yes: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

While there is a new law that determines their choice by universal suffrage, it has not been implemented yet.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, Nov. 2010.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

References:

Political Constitution of the State. Artículo 182.

Artículo 182: I. The Judges and the Justices of the Supreme Court of Justice will be chosen by means of universal suffrage.

II. Multinational Legislative Assembly, by a vote of two-thirds of its members, will present the screening of applicants, including applicants from each department, and forward them to the electoral body's list of those pre-qualified so it can proceed with organizing the electoral process.

III. The applicants or any person, may not campaign for their own nominations, under penalty of disqualification. The Electoral Body shall be solely responsible for promoting the merits of the candidates.

IV. The magistrates may not belong to political organizations.

V. Candidates will be chosen and elected candidates by a simple majority of votes. The President or the State will announce the decision.

VI. To qualify as a Judge of the Supreme Court, candidate will need to meet the general requirements for public servants: be over thirty years of age, hold a law degree, having worked, with honesty and ethics, in a judicial or legal profession or university chair for eight years and have no sanction or dismissals by the Council of the Magistracy. For the merit rating will be considered to have exercised the quality of original authority (Autoridad Originaria) under its system of justice.

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

67

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

References:

Law N° 0025. June 24, 2010. Law of the Judicial Organ. Article 30.11

Article 30.11: Material truth . Requires authorities to base their decisions with evidence relating only to the facts and circumstances as they occurred, in strict compliance with due process.

Yes: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

No: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, Nov. 2010.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

References:

Ley del Órgano Judicial N° 0025 de 24 de junio de 2010. Capítulo III (De las Responsabilidades del Consejo de la Magistratura). Sección II (De los Procedimientos Administrativo Disciplinarios). Subsección I (De las Autoridades Disciplinarias). Artículo 189 (Autoridades Competentes).

Article 189 (Competent Authorities):

Competent authorities are to substantiate disciplinary proceedings and impose sanctions:

1. The Disciplinary Judges competent in the first instance to substantiate disciplinary proceedings for minor and serious offenses and gather evidence for the conduct of prosecutions for serious disciplinary offenses;
2. Disciplinary Courts competent in the first instance to substantiate disciplinary proceedings for serious offenses, and
3. The Disciplinary Board of the Council of Magistrates competent to hear and decide appeals brought against decisions of the Disciplinary Judges and Courts.

<http://bolivia.infoleyes.com/shownorm.php?id=1839>

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | No

References:

Ley del Órgano Judicial N° 0025 de 24 de junio de 2010. Capítulo III (De las Responsabilidades del Consejo de la Magistratura). Sección II (De los Procedimientos Administrativo Disciplinarios). Subsección I (De las Autoridades Disciplinarias). Artículo 191 (Designación y Requisitos para ser Jueces Disciplinarios).

Article 191 (Appointment and Requirements for Disciplinary Judge)

- I. The Council of Magistrates, will designate disciplinary judges in the capitals of the nine (9) departments.

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is a very low level of effectiveness and monitoring due to excessive bureaucracy and limited resources; so, the process works only for specific processes where there is political interest or high public profile.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, Nov. 2010.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, Nov. 2010.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

43

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

References:

Constitución Política del Estado. Capítulo IV (Servidoras Públicas y Servidores Públicos). Artículo 235.

Article 235: The duties of the public servants are:

3. Sworn statement of income and assets before, during and after exercise office.

Ley N° 2027 del Estatuto del Funcionario Público de 27 de octubre de 1999. Artículo 53.

Article 53: All public servants, whatever their status, rank or category are required to provide explicit statements on the property and income [...].

Decreto Supremo N° 26257 de 20 de Julio de 2001 que Aprueba el Reglamento de desarrollo parcial de la Ley N°2027 del Estatuto del Funcionario Público, Relativo al Sistema de Declaración de Bienes y Rentas de los Servidores Públicos. Artículo 4 (Categorías).

Article 4 (Categories):

I. Only for purposes of this regulation, civil servants are classified into two categories:

A. Elected officials, designated and appointed, chief executives of public entities, first hierarchical level managers who are in charge of different operating, administrative and control systems, and all public servants of the Judiciary, Attorney General, Ministry of Finance, General Controller of the Republic, Central Bank of Bolivia, Superintendents [...].

B. All other public servants are not included explicitly in category "A" [...]. Public servants appointed temporarily in another position are not required to submit a new statement of assets and income.

II. If there is doubt on the categorization of public servants, it will be always resolved for category "A."

Yes: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

References:

Ley N° 2027 de 27 de octubre de 1999 del Estatuto del Funcionario Público. Artículo 14 (Regalos y Otras Dádivas) y Artículo 15 (Excepciones).

Article 14 (Gifts): Public servants are forbidden to accept from any individual or collective, public or private, domestic or foreign person, gifts, benefits or other favors designed to directly or indirectly promote efforts to assert his position or influence other public servants with similar purposes, subject to criminal penalties.

Article 15 (Exceptions): Public servants are not prevented from receiving gifts, ceremonial gifts or awards from governments or international organizations under conditions in which the law or custom officially support it.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

References:

Ley N° 2027 de 27 de octubre de 1999 del Estatuto del Funcionario Público

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | No

References:

Ley N° 025 del Órgano Judicial de 24 de junio de 2010. Artículo 22 (Causales de Incompatibilidad).

Article 22. (Grounds of Incompatibility). The grounds of incompatibility for the exercise of the judicial function, besides those indicated in the Article 239 of the Political Constitution of the State, are the following:

1. With the exercise of any other public remunerated post, including military men and policemen in active service, even when they are given a temporary commission; with the managerial functions of private, mercantile institutions and of any another nature. The acceptance of any one of these functions means tacit resignation from the judicial function and will annul a person's jurisdictional acts from the above mentioned acceptance.

Yes: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal rule about it

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, Nov. 2010.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

"The regulations governing gifts and hospitality for the civil service are systematically ignored and not enforced" — Interview with Jorge Dulón.

"Small gifts are customary not big ones; there is a deeply rooted culture of gifts we are trying to change" — Interview with Carlos Camargo.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, Nov. 2010.

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, Nov. 2010.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, Nov. 2010.

www.cge-djbr.gob.bo/page7.html

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

94

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, Nov. 2010.

www.cge-djbr.gob.bo/page7.html

Yes: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, Nov. 2010.

www.cge-djbr.gob.bo/page7.html

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, Nov. 2010.

www.cge-djbr.gob.bo/page7.html

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

References:

"There are reasonable restrictions for detailed information for security reasons, however, the relevant information is available to anyone at anytime" – Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, Nov. 2010.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

75

40a. In law, the legislature can amend the budget.

Yes | No

References:

Constitución Política del Estado. Segunda Parte (Estructura y Organización Funcional del Estado). Título I (Órgano Legislativo). Capítulo Primero (Composición y Atribuciones de la Asamblea Legislativa Plurinacional). Artículo 158.

Article 15: I. The powers of the Plurinational Legislature in addition to those determined by this Constitution and the law:

11. To approve the State Budget presented by the Executive. When received, the bill must be considered in the Legislative Assembly within sixty days. If not approved in this term, the project shall be deemed approved.

Yes: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

No: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Capabilities and resources are scarce; however, some control occurs when political parties, interest groups or the media have some interests and make the process public.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

50

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

There are no procedures for that to place, except for the municipal budget process, where citizen participation is structural.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: Citizens, usually acting through NGOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

You can access the procedural rules of budgeting and the budget approved online, but not the existing modifications during their execution.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

References:

Reglamento General de la Cámara de Diputados N° 026/2010 – 2011 de 29 de enero de 2010. Capítulo IV (Comisiones y Comités). Sección A (Comisiones). Artículo 45 (Número y Denominación).

Article 45 (Number and Title):

3 .- PLANNING, ECONOMIC POLICY AND FINANCE (13)

1 .- Planning and Public Investment Committee 3

2 .- Committee on Budget, and Comptroller's Tax Policy 3

3 .- Financial Policy, Monetary and Insurance Committee 3

4 .- Committee on Science and Technology 3

Yes: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

No: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

43. Is the legislative committee overseeing the expenditure of public funds effective?

50

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

What really happens is that the legislative committees seek written and oral reports to the Ministry of Finance. Once the information is obtained, they do their work.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. ⁷⁰Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | **No**

Comments:

The extinction of the Superintendencia of Civil Service was based on Article 139 of Supreme Decree 29894, dated February 7, 2009.

In addition, the newest Decree of Organization of the Executive Body of the Pluri-national State of Bolivia, stated in its article 55 (Supreme Decree 0071 dated April 9, 2009) the transfer of Superintendencia of Civil Service functions to the Ministry of Labor, Employment and Social Welfare through the Vice Ministry of Employment, Civil Service and Cooperatives as so the General Direction of the Civil Service.

References:

Supreme Decree N° 29894. February 7, 2009.

* Artículo 139: (EXTINCION DE LA SUPERINTENDENCIA DEL SERVICIO CIVIL). Se extingue la Superintendencia de Servicio Civil y sus atribuciones serán asumidas por una dirección general dependiente del Ministerio del Trabajo, Empleo y Previsión Social en un plazo de sesenta (60) días.

http://www.produccion.gob.bo/system/files/normativa_general/DS29894EstructuraOrganizativadPoderEjecutivodelEstadoPlurinacional.pdf

Supreme Decree N° 0071. April 9, 2009

* Artículo 55: (MODIFICACIONES).

I. Se modifica el Artículo 139 del Decreto Supremo No 29894 de 7 de febrero de 2009, con el siguiente texto: "ARTICULO 139.- (EXTINCION DE LA SUPERINTENDENCIA DEL SERVICIO CIVIL). Se extingue la Superintendencia de Servicio Civil, sus atribuciones serán asumidas por el Ministerio de Trabajo, Empleo y Previsión Social a través del Viceministerio de Empleo, Servicio Civil y Cooperativas, en un plazo de sesenta (60) días.

II. Se modifica el inciso i) del Artículo 88 del Decreto Supremo No 29894 del 7 de febrero de 2009 con el siguiente texto: "i) Administrar el registro estatal de las servidoras y servidores públicos como único registro de datos personales, carrera administrativa, declaraciones de incompatibilidades; así como solicitar a la Contraloría General del Estado información sobre las declaraciones juradas de bienes y rentas, en el marco de las disposiciones legales vigentes.

http://www.economiayfinanzas.gob.bo/biblioteca/MH/documentos/DS_0071_CREA_LAS_AUTORIDADES_DE_FISCALIZACION_Y_CONTROL_SOCIAL

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

While there is a specific prohibition in the Constitution against nepotism in article 236, part III, Law of Government Administration and Control (SAFCO), Law 1178, dated July 20, 1990 establishes a specific Personnel Management System to deal with professional and non-professional Public Officials.

SAFCO notes in article 9: The Personnel Management System, in pursuit of efficiency in the public sector, will determine the actual job requirements; requirements and mechanisms to create jobs; implement an evaluation and pay systems; training and develop skills and competences in public officials; and establish procedures against arbitrary and dismissal.

Secondly, the Supreme Decree on the Organization of the Executive Body is established to create Transparency Units in ministries and decentralized entities. These Units at the Executive Branch enforce strict controls against patronage, cronyism and nepotism. On these issues, any Public Official or citizen can make such allegations.

References:

Political Constitution of the State.

<http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/36208>

SAFCO Law N° 1178. July 20, 1990.

<http://www.umsa.bo/umsa/presupuestos/LEY-1178.pdf>

Supreme Decree N° 29894. February 7, 2009.

http://www.produccion.gob.bo/system/files/normativa_general/DS29894EstructuraOrganizativadPoderEjecutivodelEstadoPlurinacional.pdf

Yes: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

No: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

There are two mechanisms: The first one is a Constitutional one: Acción de Amparo Constitucional, article 128. The second one is purely administrative and it is not independent of supervisors.

References:

Political Constitution of the State

<http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/36208>

Administrative Procedure Act (Ley del Procedimiento Administrativo) Law N° 2341. April 23, 2002.

http://www.economiayfinanzas.gob.bo/biblioteca/MH/documentos/LEY_No_2341.pdf

Yes: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | No

Comments:

There is an extensive description of the Responsibilities of Public Officials (including corruption and mismanagement of resources) in the Law of Government Administration and Control (SAFCO), Law 1178, dated July 20, 1990, Chapter V; Articles 28 to 40.

Additionally, future employment in government is formally prohibited for convicted Public Officials by Criminal Law (articles 34 and 35), and Transparency and Anti-corruption Law 004 dated March 31, 2010 (articles 27, 29, 173 Bis, 185 Bis).

References:

Law on Government Administration and Control (SAFCO), Law N° 1178. July 20, 1990.

<http://www.umsa.bo/umsa/presupuestos/LEY-1178.pdf>

Criminal Law (Código Penal de Bolivia), Law N° 1768. March 10, 1997 and Law N° 2494. August 4, 2003.

http://www.gnppplus.net/criminalisation/images/stories/documents_latam/bolivia_penal_code.pdf

Law against Corruption and Illicit Enrichment "Marcelo Quiroga Santa Cruz", Law N° 004. March 31, 2010.

http://www.transparencia.gob.bo/documentos_pagweb/Ley_Quiroga_Santa_Cruz.pdf

Yes: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

No: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

58

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Practice shows that such rules do not necessarily influence the attitude of officials and users of public services. In general, top public officials are influenced over by political factors. This is an old practice that develops not only at the national level but also at the local one. For example, anyone who visits a ministry will see the ruling party's flags hanging on the walls.

During campaigns, public officials are forced to attend and support the campaign. If not, they might be subject to arbitrary internal administrative sanctions — Interview with Jorge Dulón.

This seems to be so — Interview with Carlos Camargo.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

"In some cases, appointments are performed properly. Usually such processes are performed that way because they depend on a type of external financing. In other cases, the process is widely publicized, but the person who takes office has already been decided on internally; terms of reference are drawn up for that candidate" — Interview with Jorge Dulón.

"In recent years we have promoted reforms in this direction" — Interview with Carlos Camargo.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency; November 2010.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

"Although there are not enough rules to control this matter, we promote a culture against nepotism" — Interview with Carlos Camargo.

"Sanctions have been tightened and this has had some deterrent effect. This year alone, 15 officials have been charged for making appointments against the norm at the Ministry of Public Works, Services and Housing" — Interview with Mariana Prado.

References:

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency; November 2010

Interview with Mariana Prado, General Counsel's Officer at the Ministry of Public Works, Services and Housing; November, 2010

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

While there are general job descriptions for civil servants or public officials, in practice, they are only somewhat implemented, due to inadequate and insufficient training.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

This issue has not been specifically studied, but because of the President's decision to limit civil servants' salary to Bs 15,000 (US\$2,155), there are some positions of responsibility requiring adequate remuneration based on the responsibilities and professional profile. For this reason, they have opted for alternatives to increase the salaries of professionals in a less formal manner.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Each ministry releases a list of filled and vacant positions at the State Procurement System (SICOES)

http://www.simop.org/index.php?option=com_content&view=article&id=13&Itemid=27

References:

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

"I could not assert the contrary because, in my experience, I have never witnessed any complaint to the Vice-Ministry of Civil Service that has been influenced against the Civil Servant or Public Official. Rather, in line with the government, all provisions from the Ministry of Labor are protective (whether involving private sector or public sector employees). This Ministry, in two occasions had to reinstate officials because of decisions of the Vice-Ministry of Civil Service" — Interview with Mariana Prado.

"There are well-known cases where elected officials were subsequently arrested without being allowed access to an adequate judicial process. However, at a lower hierarchical level, allegations against officials follow an appropriate course of process, and, in many cases, they are able to prove their innocence" — Interview with Jorge Dulón.

References:

Interview with Mariana Prado, General Counsel's Officer at the Ministry of Public Works, Services and Housing, November, 2010.

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

It depends on what state level the civil servant is working at. At the top level, it seems there are no delays in paying public officials. At the middle level, there have been cases where delays are due to freezing of accounts (such as an accountability alert sent to the administration) or other administrative problems. At the local level is where most delays occur for the same reasons: freezing of accounts or internal corruption problems.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

"Although there are some officials who have shown signs of corruption and have been retired from their job positions, others continue consulting or working for the public sector while keeping a low profile" — Interview with Jorge Dulón.

"Control systems are yet not consolidated, but they are working on systems to easily exclude former officials who have caused harm to the State from returning to government employment" — Interview with Mariana Prado.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

Interview with Mariana Prado, General Counsel's Officer at the Ministry of Public Works, Services and Housing, November, 2010.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

39

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

References:

Political Constitution of the State, Artículo 235, Numeral 3.

Article 235, numeral 3: As part of the Obligations of Public Officials they must submit a sworn statement of Income and assets before, during and after taking office.

<http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/36208>

Recently Approved Anti-corruption Law also refers to False Declaration of Assets and Income as a crime, article 25.

Law against Corruption and Illicit Enrichment, "Marcelo Quiroga Santa Cruz," Law N° 004. March 31, 2010, Artículo 25.

http://www.transparencia.gob.bo/documentos_pagweb/Ley_Quiroga_Santa_Cruz.pdf

Yes: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

References:

Statute of the Public Official (Estatuto del Funcionario Público), Law N° 2027. October 27, 1999.

http://www.produccion.gob.bo/system/files/normativa_general/EstatutodFuncionarioPublico.pdf

Article 8, paragraphs k) and l), provides that public officials should: "k) State the degree of his relationship or marital relationship with elected or appointed officials who serve on the administration; l) be excused from participating in the selection of civil servants where there is a linkage with applicants or a degree of kinship to the third degree of consanguinity and second degree of inclusiveness, according to the statement drawn up in the Family Code. "

Article 10 (Conflict of Interest): "Public servants may not direct, administer, advise, sponsor, represent or provide services, paid or unpaid, to individuals or groups, or to manage any type of paperwork, licenses, authorizations, concessions, privileges or try to enter into contracts of any kind, with the entities of Public Administration."

Yes: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

No: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | No

Comments:

There is no statute that expressly prohibits public officials working in the private sector.

References:

Statute of the Public Official (Estatuto del Funcionario Público), Law 2027, dated October 27, 1999.

http://www.produccion.gob.bo/system/files/normativa_general/EstatutodFuncionarioPublico.pdf

Yes: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

References:

Statute of the Public Official (Estatuto del Funcionario Público), Law N° 2027. October 27, 1999.

http://www.produccion.gob.bo/system/files/normativa_general/EstatutodFuncionarioPublico.pdf

Law against Corruption and Illicit Enrichment, "Marcelo Quiroga Santa Cruz," Law N° 004, March 31, 2010.

http://www.transparencia.gob.bo/documentos_pagweb/Ley_Quiroga_Santa_Cruz.pdf

Criminal Law (Código Penal de Bolivia), Law N° 1768. March 10, 1997 and Law N° 2494, August 4, 2003.

http://www.gnppplus.net/criminalisation/images/stories/documents_latin_america/bolivia_penal_code.pdf

Yes: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

No: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | No

Comments:

An Integrated Management Information System is administered by the Ministry of Institutional Transparency and Anti-Corruption, within the government.

References:

Law Against Corruption and Illicit Enrichment, "Marcelo Quiroga Santa Cruz," Law N° 004, March 31, 2010, Article 23 SIARBE (Sistema Integrado de Información Anti-Corrupción y Recuperación de Bienes del Estado).

http://www.transparencia.gob.bo/documentos_pagweb/Ley_Quiroga_Santa_Cruz.pdf

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

"The regulations governing gifts and hospitality for the civil service are systematically ignored and not enforced" — Interview with Jorge Dulón.

"Small gifts are customary, not big ones; there is a deeply rooted culture of gift-giving that we are trying to change" — Interview with Carlos Camargo.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no requirements or explicitly formulated mechanisms for these issues; this is the reason that it is impossible to ascertain whether everyone who should have refrained from a decision really did, or did so through a simple note addressed to any Minister.

References:

Interview with Mariana Prado, General Counsel's Officer at the Ministry of Public Works, Services and Housing; November, 2010

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosures are audited in full but have not yet been publicized fully. However, this year will be the first time they are publicized

References:

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency; November 2010

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

100

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

References:

1) Access to Public Information, Supreme Decree N° 28168, May 16, 2005

[http://docs.google.com/viewer?
a=v&q=cache:tHVBo5j2RMEJ:info.worldbank.org/etools/library/latestversion_p.asp%3FobjectID%3D211219%26program%3D1+decreto+acceso+a+la+i+r](http://docs.google.com/viewer?a=v&q=cache:tHVBo5j2RMEJ:info.worldbank.org/etools/library/latestversion_p.asp%3FobjectID%3D211219%26program%3D1+decreto+acceso+a+la+i+r)

2) Reglamento de Control de La Declaración Jurada de Bienes y Rentas en las Entidades Públicas, Versión: 3; Vigencia: 01/2007 Código: R/CE/17

https://www.cge-djbr.gob.bo/reglamento_ce17.pdf

Yes: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

No: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Access the following website:

<https://www.cge-djbr.gob.bo/page7.html>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Access the following website:

<https://www.cge-djbr.gob.bo/page7.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records' costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There are reasonable restrictions for detailed information for security reasons; however, the relevant information is available to anyone at anytime

References:

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010.

<https://www.cge-djbr.gob.bo/page6.html>

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

25

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

Comments:

Recently approved Anti-Corruption Law (article 17) creates a wide Protection System for Public Officials and Citizenry. However, this system is not independent of the government. It is governed by Ministry of Government, the Police and the Attorney General.

A detailed rule for this system is still being discussed in Parliament.

References:

Law Against Corruption and Illicit Enrichment, "Marcelo Quiroga Santa Cruz," Law N° 004, March 31, 2010.

http://www.transparencia.gob.bo/documentos_pagweb/Ley_Quiroga_Santa_Cruz.pdf

Yes: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

The Protection System for Public Officials and Citizenry is not working fully. Regulations and Implementation are being discussed in Parliament.

However, the Ministry of Institutional Transparency and Anti-Corruption collects whistleblowers' allegations and conceals and protects their identity

References:

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

Comments:

The Protection System for Public Officials and Citizenry is not working fully. Regulations and Implementation are being discussed in Parliament.

However, the Ministry of Institutional Transparency and Anti-Corruption collects whistleblowers' allegations and conceals and protects their identity — Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010.

References:

Law Against Corruption and Illicit Enrichment, "Marcelo Quiroga Santa Cruz," Law N° 004, March 31, 2010.

http://www.transparencia.gob.bo/documentos_pagweb/Ley_Quiroga_Santa_Cruz.pdf

Yes: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Comments:

The Protection System for Public Officials and Citizenry is not working fully. Regulations and Implementation are being discussed in Parliament.

However, the Ministry of Institutional Transparency and Anti-Corruption collects whistleblowers' allegations and conceals and protects their identity.

References:

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency; November 2010

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes | No

Comments:

Hotline number is 800 109 988

<http://www.transparencia.gob.bo/index.php?Modulo=Extras&Opcion=GuiaDenuncias>

Additionally, officials familiar with corruption cases, connected to the executive branch, can report these cases to the Transparency Units, which have specific mechanisms to process these complaints, both internal and external

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

88

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The entity has sufficient staff to fulfill its basic mandate.

References:

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Transparency Units were previously financed by International Cooperation; however, it has recently been supported by each Ministry's budget; further, the Ministry of Transparency and Anti-Corruption is supported by the National Executive Budget.

References:

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The entity acts quickly on complaints and passes this information to the Attorney General within 30 days.

References:

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Each unit has internal regulations that establish the necessary steps to deal with complaints and to pass them on to Attorney General.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

71
4.3. Government Procurement: Transparency, Fairness, and
Conflicts of Interest Safeguards

51. Is the public procurement process effective?

73

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

References:

Statute of the Public Official (Estatuto del Funcionario Público), Law N° 2027, October 27, 1999.

Statute of the Public Official, Article 10 (Conflict of Interest): "Public servants may not direct, administer, advise, sponsor, represent or provide services, paid or unpaid, to individuals or groups, or to manage any type of paperwork, licenses, authorizations, concessions, privileges or try to enter into contracts of any kind, with the entities of Public Administration."

http://www.produccion.gob.bo/system/files/normativa_general/EstatutoFuncionarioPublico.pdf

See also, article 41, Supreme Decree 181 "NORMAS BÁSICAS DEL SISTEMA DE ADMINISTRACIÓN DE BIENES Y SERVICIOS, " dated June 28, 2009.

"ARTICLE 41 (Grounds for Excuses):

I. The PRC, RPA, Evaluation Officer, members of the Qualification Commission, those responsible for reception, members of the Commission for Reception and public servants of Legal and Administrative Units involved in the recruitment process, will be unable to participate in a particular process recruitment, based on a report, for the following reasons:

- a) Having personal or economic interest of any kind with the proponents;
- b) Having marital relationships or degrees of kinship to the third degree of consanguinity, affinity with two or derivative bonds of adoption, in accordance with the provisions of the Family Code, as well as the legal representatives, shareholders or controlling shareholders of the proponents;
- c) Taking proceedings pending with the proponent or their legal representatives, shareholders or controlling shareholders;
- d) Having a service relationship with the proponent or having served professionals of any kind, during the last year prior to commencement of recruitment process."

<http://www.economiayfinanzas.gob.bo/biblioteca/VPC/documentos/decretos/DS181.pdf>

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

No: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | **No**

References:

There is no statute that explicitly demands a professional level of experience or training for public procurement official; however, each entity recruits its staff based on professional qualifications, though exceptions might occur at lower state levels. This can be seen in the calls for staff at the ministry's web pages.

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | **75** | 50 | 25 | 0

Comments:

Officials responsible for public procurement have been carefully assessed to avoid such conflicts of interest in this ministry.

References:

Interview with Mariana Prado, General Counsel's Officer at the Ministry of Public Works, Services and Housing, November, 2010

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | No

Comments:

There is no statute that explicitly demands this kind of specific requirement.

References:

Interview with Viviana Chacón, Deputy Controller of Legal Services at General Comptroller of the Republic, November 2010.

Yes: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

No: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

Yes | No

References:

Supreme Decree N° 181 "NORMAS BÁSICAS DEL SISTEMA DE ADMINISTRACIÓN DE BIENES Y SERVICIOS," June 28, 2009.

<http://www.economiayfinanzas.gob.bo/biblioteca/VPC/documentos/decretos/DS181.pdf>

Yes: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

No: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

References:

Supreme Decree N° 181 "NORMAS BÁSICAS DEL SISTEMA DE ADMINISTRACIÓN DE BIENES Y SERVICIOS. June 28,

2009.

<http://www.economiayfinanzas.gob.bo/biblioteca/VPC/documentos/decretos/DS181.pdf>

Yes: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

No: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

References:

Supreme Decree N° 181 "NORMAS BÁSICAS DEL SISTEMA DE ADMINISTRACIÓN DE BIENES Y SERVICIOS. June 28, 2009.

<http://www.economiayfinanzas.gob.bo/biblioteca/VPC/documentos/decretos/DS181.pdf>

Yes: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

No: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

References:

Supreme Decree N° 181 "NORMAS BÁSICAS DEL SISTEMA DE ADMINISTRACIÓN DE BIENES Y SERVICIOS. June 28, 2009.

<http://www.economiayfinanzas.gob.bo/biblioteca/VPC/documentos/decretos/DS181.pdf>

Yes: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

No: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

References:

Article 43, Supreme Decree N° 181 "NORMAS BÁSICAS DEL SISTEMA DE ADMINISTRACIÓN DE BIENES Y SERVICIOS. June 28, 2009.

<http://www.economiayfinanzas.gob.bo/biblioteca/VPC/documentos/decretos/DS181.pdf>

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | **50** | 25 | 0

Comments:

It is very hard to tell to which extent this happens in practice as there is no such a blacklist that enforces article 43 of the Supreme Decree 181, NORMAS BÁSICAS DEL SISTEMA DE ADMINISTRACIÓN DE BIENES Y SERVICIOS, dated June 28, 2009.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

67

52a. In law, citizens can access public procurement regulations.

Yes | No

References:

The procurement regulations are published online in the State Procurement System (SICOES).

<http://www.simop.org/>

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | **No**

Comments:

Providing access is not an established obligation, but it is governed by the principle of transparency.

References:

Interview with Mariana Prado, General Counsel's Officer at the Ministry of Public Works, Services and Housing, November 2010.

Yes: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The procurement regulations are published online in the State Procurement System (SICOES).

<http://www.simop.org/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Not all administrations/entities have updated their websites, nor do they have all their information posted on the Internet.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

The procurement regulations and results are published online on the State Procurement System (SICOES).

<http://www.simop.org/>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

"Access is not always available" — Interview with Jorge Dulón.

"Information is available, but there is not a strong civic culture of control being promoted by the Vice-Ministry of Institutional Transparency that Bolivia needs" — Interview with Carlos Camargo.

References:

Interview with Jorge Dulón, Director of Research and Training at Fundación Boliviana para la Democracia Multipartidaria, November 2010.

Interview with Carlos Camargo, Vice-Minister of Institutional Transparency, November 2010.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

50

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

Comments:

"The Bolivian Constitution provides that certain sectors (health, social security, water, energy and other natural resources) are not eligible to compete for privatized state assets. Such private participation shall be regulated in the future" — Interview with Eduardo Quintanilla Ballivian, Senior Lawyer at Quintanilla, Soria & Nishizawa, Attorneys at Law, November 2010.

References:

Political Constitution of the State

<http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/36208>

Article 38:

I. Public health services are state property, and cannot be privatized or franchised.

Article 45:

VI. Social security services cannot be privatized or franchised.

Article 298:

Part II. Exclusive powers of the central state level are:

Paragraph 4: Strategic natural resources, which include minerals, spectrum electromagnetic and biogenetic resources and water sources.

Yes: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

No: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

References:

SAFCO, Law N° 1178. July 20, 1990

<http://www.umsa.bo/umsa/presupuestos/LEY-1178.pdf>

Statute of the Public Official (Estatuto del Funcionario Público), Law N° 2027. October 27, 1999.

http://www.produccion.gob.bo/system/files/normativa_general/EstatutodFuncionarioPublico.pdf

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Several cases of administrative, executive, civil and criminal procedures under the Safco Law have been undertaken in several government offices.

References:

Interview with Eduardo Quintanilla Ballivian, Senior Lawyer at Quintanilla, Soria & Nishizawa, Attorneys at Law, November 2010.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

90

54a. In law, citizens can access privatization regulations.

Yes | No

References:

Privatization law N° 1330, April 24, 1992.

<http://mioruro.com/libros/derecho/LEYES/1959-2007/1330.pdf>

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Privatization law provides for newspaper advertising for most privatizations.

References:

Interview with Eduardo Quintanilla Ballivian, Senior Lawyer at Quintanilla, Soria & Nishizawa, Attorneys at Law, November 2010

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

References:

Privatization law N° 1330, April 24, 1992

<http://mioruro.com/libros/derecho/LEYES/1959-2007/1330.pdf>

Yes: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Most of the cases are fully available in a reasonable time of period.

References:

Interview with Eduardo Quintanilla Ballivian, Senior Lawyer at Quintanilla, Soria & Nishizawa, Attorneys at Law, November 2010

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

Comments:

Retrieving records may require a visit to a specific office, such as a regional or national capital.

References:

Interview with Eduardo Quintanilla Ballivian, Senior Lawyer at Quintanilla, Soria & Nishizawa, Attorneys at Law, November 2010

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁷⁶National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

References:

Constitución Política del Estado. Artículo 128.

Article 128: I. The Ombudsman shall ensure the observance, promotion, dissemination and implementation of human rights, individual and collective set out in the Constitution, laws and international instruments. The role of the Ombudsman will reach the administrative activity of the entire public sector and the activity of private institutions providing social public services.

Ley N° 1818 del Defensor del Pueblo, de 22 de diciembre de 1997. Artículo 1.

Article 1 (Nature): The Ombudsman is an institution established by the Political Constitution of the State to ensure the validity and enforcement of person's rights and guarantees in relation to the administrative activity of the entire public sector ; also ensures the promotion, currency, disclosure and protection of human rights.

Yes: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

No: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

56. Is the national ombudsman effective?

77

56a. In law, the ombudsman is protected from political interference.

Yes | No

References:

Ley N° 1818 del Defensor del Pueblo, de 22 de diciembre de 1997. Artículo 4.

Article 4 (Independence): The Ombudsman is independent in the performance of their duties and does not receive instructions from public authorities.

Yes: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

FM Bolivia. 2010. Elección de Defensor del Pueblo desata intenso ataque de opositores contra oficialistas por desplazar la meritocracia. 16 de Abril de 2010. <http://www.fmbolivia.com.bo/noticia26285-eleccion-de-defensor-del-pueblo-desata-intenso-ataque-de-opositores-contra-oficialistas-por-desplazar-la-meritocracia.html>. Accesado: diciembre de 2010.

Canal SUR. 2010. Oposición boliviana critica elección del Defensor del Pueblo. Jueves, 13 de Mayo de 2010. <http://surtitulares.com/rss-all/item/5687-oposici%C3%B3n-boliviana-critica-elecci%C3%B3n-del-defensor-del-pueblo>. Accesado: diciembre de 2010.

Agencia Latinoamericana de Información. 2010. Complicada elección del Defensor del Pueblo. 30 de abril de 2010. [http://alainet.org/active/37745_\(=es](http://alainet.org/active/37745_(=es). Accesado: diciembre de 2010.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

All the ombudsmen concluded their mandates, except for one who resigned.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Página oficial del Defensor del Pueblo de Bolivia. 2010. Resultado de Convocatorias para personal del Defensor del Pueblo. http://www.defensor.gov.bo/contenido/resultado_info.asp?c=1

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Centro de Estudios de Justicia de las Américas. Descripción Institucional y Organización del Sistema de Justicia: El Defensor del Pueblo. http://www.cejamericas.org/reporte/2008-2009/muestra_pais32a0b.html?idioma=espanol&pais=BOLIVIA&tipreport=REPORTE4&seccion=OMMBD_07

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The information is online.

References:

<http://www.defensor.gov.bo/>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman will initiate ex officio or following a complaint, investigations concerning the powers granted by the Defensor del Pueblo Law (Article 18)

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

<http://www.acnur.org/biblioteca/pdf/0858.pdf>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman does not have powers to impose punishment, only to make recommendations to the involved authorities.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

* FM Bolivia. 2010. Caso Caranavi enfrenta al Gobierno con el Defensor del Pueblo. 25 de agosto de 2010. www.fmbolivia.net/noticia15561-bolivia-caso-caranavi-enfrenta-al-gobierno-con-el-defensor-del-pueblo.html

* Bolpress. 2010. Denuncian que tres poderes del Estado cierran filas para encubrir a Llorenti, el "Mariscal de Caranavi". 27 de agosto de 2010. <http://www.bolpress.com/art.php?Cod=2010082701>

* Periódico Los Tiempos. 2010. Defensor responsabiliza a la Policía y Sacha por Caranavi. 25 de agosto de 2010. http://www.lostiempos.com/diario/actualidad/nacional/20100825/defensor-responsabiliza-a-la-policia-y-sacha-por-caranavi_86648_165714.html

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman Law establishes a time period of 10 days; however, the ombudsman may extend the period if specific circumstances justify it.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

References:

Ley N° 1818 del Defensor del Pueblo de 22 de diciembre de 1997. Título V (Informes del Defensor del Pueblo). Capítulo I (Informes al Congreso). Artículo 33 (Informes Ordinarios) y Artículo 34 (Informes Especiales)

Article 33 (Regular Reports): The Ombudsman Office shall report its actions to Congress in written annual report, containing its resolutions and the status of implementation of the budget.

The report will be presented before the end of each term, and within thirty days of its presentation, oral presentations of the same will be presented.

Also, any of the chambers will convene committees in relation to the exercise of their functions.

Article 34 (Specials Reports): The Ombudsman Office, as a result of its investigations, may produce reports on specific topics.

Regular and special reports will be published. Also the suggestions and recommendations of the Ombudsman to Congress will be published.

<http://www.defensor.gov.bo> (important to read)

Yes: A YES score is earned if all ombudsman reports are publicly available.

No: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

<http://www.defensor.gov.bo>

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

<http://www.defensor.gov.bo>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

References:

Constitución Política del Estado. Título V (Funciones de Control, de Defensa de la Sociedad y de Defensa del Estado). Capítulo Primero (Función de Control). Sección I (Contraloría General del Estado). Artículo 213.

Article 213:

I. The General Comptroller is the technical institution that serves as the control of the administration of public institutions and those in which the State has participation or economic interest. The Comptroller is empowered to investigate evidence of administrative, executive, civil and criminal responsibility; it has functional, financial, administrative and organizational autonomy.

<http://www.minedu.gov.bo/Portals/0/Users/documentos/CPE.pdf>

Ley N° 1178 de Administración y control Gubernamental (SAFCO), de 20 de julio de 1990.

Article 23: The General Comptroller of the Republic is the governing body of Government Control system, which will be implemented under the direction and supervision. The General Comptroller of the Republic shall issue basic rules of internal and external control, evaluate the effectiveness of internal control systems, place and monitor the external control and supervision exercised by the rules of public sector accounting systems by the General Accounting Office of State, Ministry of Finance. In the same way, it shall promote the establishment of accounting systems and internal control and conduct the training and expertise of public servants in the management of systems covered by this law.

http://www.legislacionmunicipal.fam.bo/Archivo/Docs/Leyes/Ley_1178.pdf

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

69

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

References:

Constitución Política del Estado. Título V (Funciones de Control, de Defensa de la Sociedad y de Defensa del Estado). Capítulo Primero (Función de Control). Sección I (Contraloría General del Estado). Artículo 213 y Artículo 214.

Article 213:

I. [...] The Comptroller is empowered to determine evidence of administrative, executive, civil and criminal responsibility; it has functional, financial, administrative and organizational autonomy.

Article 214: The General Comptroller of the State shall be designated by two thirds of the vote of those present in the Legislative Assembly. The vote process will require prior public notice, and qualification of professional competence and merit through open competition.

Yes: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The figure of the General Comptroller was always respected, but the change of administration and the associated political paradigm shift, generated criticism of the liberal philosophical commitment of the Comptroller, which is the reason why it was removed from office and replaced by an ad interim Comptroller.

The new comptroller is probably more adapted to the new political paradigm of the current administration and therefore will have the opportunity to stay in office and institutionalize their administration's actions; however, doubts remains about his impartiality.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

Periódico El Diario. 2008. Gobierno descabeza Contraloría General. 30 de diciembre de 2008. <http://www.hidrocarburosbolivia.com/component/content/article/12378-gobierno-descabeza-contraloria-general-.html>.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The General Comptroller has always been characterized as having a professional staff to carry out the tasks that the law confers. However, recent staffing changes leave doubts about the office's impartiality.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

Periódico Cambio. 2009. La Contraloría institucionaliza a su personal. 17 de diciembre de 2009. <http://www.cambio.bo/noticia.php?fecha=2009-12-17&idn=12140>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The General Comptroller has always been characterized by having a professional staff to carry out the tasks that the law confers. However, recent changes in their staffing leave doubts about the office's impartiality.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

FM Bolivia. 2008. Gobierno posesiona a diputado masista Gabriel Herbas como Contralor interino. 30 de diciembre de 2008. <http://www.fmbolivia.com.bo/noticia6780-gobierno-posesiona-a-diputado-masista-gabriel-herbas-como-contralor-interino.html>

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Each year, the General Budget of the Nation includes the budget for the General Comptroller of the Republic, which works autonomously.

References:

Interview with Viviana Chacón, Deputy Controller of Legal Services at the General Comptroller of the Republic, November 2010.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Interview with Viviana Chacón, Deputy Controller of Legal Services at the General Comptroller of the Republic, November 2010.

General Comptroller of the Republic Web page: <http://www.cge.gob.bo/PortalCGR/inicio.aspx?indice=2&grupo=7&indiceSubGrup>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

According to the report of the Minister of Transparency, there are 257 reports in the State Comptroller on resource mismanagement and misappropriation of funds in the country's mayors and governors. Only 2 percent of these cases have been clarified.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

Periódico El Diario. 2010. Transparencia: hay 568 casos de corrupción en el Ejecutivo. 13 de octubre de 2010. http://www.eldiario.net/noticias/2010/2010_10/nt101013/2_02plt.php

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Comptroller has an Annual Operating Plan to carry out, which is based on its own annual budget. This includes scheduled audits and other activities performed at the request of various authorities. In addition, the Comptroller, on the basis of administrative or criminal evidence of its audits, can publicly refer incidents for legal prosecution.

References:

Interview with Viviana Chacón, Deputy Controller of Legal Services at General Comptroller of the Republic, November 2010.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

Yes | No

References:

Supreme Decree N° 28168, about Access to Public Information. May 16, 2005

<http://docs.google.com/viewer?>

[a=v&q=cache:tHVBo5j2RMEJ:info.worldbank.org/etools/library/latestversion_p.asp%3FobjectID%3D211219%26program%3D1+decreto+acceso+a+la+i](http://www.worldbank.org/etools/library/latestversion_p.asp%3FobjectID%3D211219%26program%3D1+decreto+acceso+a+la+i)

General Comptroller of the Republic Web page:

<http://www.cge.gob.bo/PortalCGR/inicio.aspx?indice=2&grupo=7&indiceSubGrup>

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Viviana Chacón, Deputy Controller of Legal Services at the General Comptroller of the Republic, November 2010.

General Comptroller of the Republic Web page: <http://www.cge.gob.bo/PortalCGR/inicio.aspx?indice=2&grupo=7&indiceSubGrup>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Viviana Chacón, Deputy Controller of Legal Services at the General Comptroller of the Republic, November 2010.

General Comptroller of the Republic Web page: <http://www.cge.gob.bo/PortalCGR/inicio.aspx?indice=2&grupo=7&indiceSubGrup>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

90
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

References:

Ley N° 2166 del Servicio Nacional de Impuestos de 22 de diciembre de 2000. Título I (Del Marco Institucional, Atribuciones y Organización). Capítulo I (Marco Institucional y Atribuciones). Artículo 3 (Función).

Article 3 (Function): The role of the National Tax Service is to administer the tax system and its mission is to optimize revenue through the administration, enforcement, collection and efficient and effective control of internal taxes, the guidance and facilitation of voluntary compliance, the accurate and timely tax obligations and collection and the punishment of those who fail according to the provisions of the Tax Code, with the exception of those taxes that, by law, are administered, collected and overseen by the municipalities.

http://www.lexivox.org/packages/lexml/buscar_normas.php?search_xml=Ley+de+impuestos+internos <=es

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

As shown in the report of the National Tax Service, 594 of 1,160 officers are professionalized (51.2 percent).

References:

Interview with José Luis Carvajal, Political Scientist and Analyst and former National Tax Service General Adviser (2002), November 2010.

Report of the National Tax Service:

<http://www.impuestos.gov.bo/Institucional/Convocatorias/ConvocaHistorico.php>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Each year, the General Budget of the Nation includes the budget of the National Tax Service, which is autonomous in its execution.

References:

Interview with José Luis Carvajal, Political Scientist and Analyst and former National Tax Service General Adviser (2002), November 2010.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

They are enforced only in the general system where there are major contributors, such as corporations and other actors in the formal economy. However, the vast majority that are linked to the informal economy is, under special arrangements, taxed very little or nothing.

This is one of the main problems with taxation which makes it difficult for the universal application of taxes and the effective extension of the tax base.

References:

Interview with José Luis Carvajal, Political Scientist and Analyst and former National Tax Service General Adviser (2002), November 2010.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

References:

Ley N° 1990 Ley General de Aduanas de 28 de julio de 1999. Título I (Principios, Objeto, Ámbito de Aplicación y Definiciones). Capítulo I (Principios, Objeto, Ámbito de Aplicación y Definiciones). Artículo 3.

Article 3: National Customs is the agency responsible for monitoring and controlling the movement of goods across borders, ports and airports; is involved in international cargo traffic for the purposes of collection of taxes levied on them; and generates statistics of this traffic, without prejudice to other powers or functions as prescribed by the laws.

http://www.lexivox.org/packages/lexml/buscar_normas.php?search_xml=Ley+de+impuestos+internos <=es

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

National Customs was part of the Civil Service Program supported by the World Bank for administrative modernization and institutionalization of staff. However, recent changes to personnel leave doubts about the ability and impartiality of its new employees.

References:

Interview with Gabriela Encinas, business administrator, member of the law firm Cespedes and Associates and former National Customs General Adviser (2002), November 2010.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Each year, the General Budget of the Nation includes the budget of the National Customs, which works autonomously in its execution.

References:

Interview with Gabriela Encinas, business administrator, member of the law firm Cespedes and Associates and former National Customs General Adviser (2002), November 2010.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The General Customs Law is universally applicable, but the capacity and resources are not sufficient to control a territory as large

as the border areas of Bolivia. Consequently, there are high levels of smuggling, as well as corruption of border customs officials.

Another aspect that works against the National Customs is the substantial amount of drug money that is the main financial source of the smuggling.

References:

Interview with Gabriela Encinas, business administrator, member of the law firm Cespedes and Associates and former National Customs General Adviser (2002), November 2010.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

References:

Decreto Supremo N° 0071 de Creación de las Autoridades de Fiscalización y Control Social de 9 de Abril de 2009. Artículo 3 (Creación de las Autoridades de Fiscalización y Control Social) y Artículo 4 (Atribuciones y Competencias).

Article 3 (Creation of Enforcement and Social Control Authorities):

I. Create the following public institutions:

[...] f) Authority Control and Social Control of Business – AEMP.

II. The objective of Monitoring and Control Authority is to regulate the activities undertaken by individuals and corporations, private, community, public, mixed and cooperative sectors of Transport and Telecommunications, Water Supply and Sanitation, Electricity, Forest and Land; pensions and Companies.

Article 4 (Duties and Responsibilities):

I. The functions, powers, duties and obligations of the former Sectoral Superintendents will be assumed by the Enforcement and Social Control Authorities, as not contrary to the provisions of the CPE.

II. The functions, powers, responsibilities, rights and obligations of the former Superintendent shall be assumed by the head of sector Ministers, as not contrary to the provisions of the CPE.

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

40

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | **No**

References:

Decreto Supremo N° 0071 de Creación de las Autoridades de Fiscalización y Control Social de 9 de Abril de 2009. Artículo 4 (Atribuciones y Competencias) y Artículo 7 (Máxima Autoridad Ejecutiva de las Autoridades de Fiscalización y Control Social).

Article 4 (Duties and Responsibilities):

II. The functions, powers, responsibilities, rights and obligations of the former Superintendent shall be assumed by the head of sector Ministers, as not contrary to the provisions of the CPE.

Article 7 (Maximum Executive of the Enforcement and Social Control Authority):

II. The Executive Director of the Enforcement and Social Control Authority will be appointed by the President by Supreme Resolution.

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Since the removal of superintendents, most of the full-time professional staff has become part of the Enforcement and Social Control Authorities.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Each year the General Budget of the Nation includes the budget of the Enforcement and Social Control Authorities within the Ministries budgets.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

For political reasons, no audit proceedings or penalties were started or imposed against public companies.

The current administration does not want to do harm to its image for too long. Because of the high political cost of initiating legal proceedings against their own companies, the only action that has been taken when problems have arisen is the replacement of the chairman.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

For political reasons, no audit proceedings or penalties were started or imposed against public companies.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

30

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

References:

Supreme Decree N° 28168 about Access to Public Information. May 16, 2005

http://docs.google.com/viewer?a=v&q=cache:tHVBo5j2RMEJ:info.worldbank.org/etools/library/latestversion_p.asp%3FobjectID%3D211219%26program%3D1+decreto+acceso+a+la+in

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

The financial records of public companies are not available to the public. Also unknown are the costs of developments and investments made in the new public companies.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

While using generally accepted accounting procedures, public enterprises also apply budgetary procedures that do not work as accounting standards. They also have problems because they cannot incorporate many of their assets due to lack of clear property rights, an aspect that results in not very accurate financial information. Finally, they do not meet the requirement to regularly publish their financial statements.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The financial records of public companies are not available to the public. Also unknown are the costs of developments and investments made in the new public companies.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The financial records of public companies are not available to the public. Also unknown are the costs of developments and investments made in the new public companies.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

57

5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

100

70a. In law, anyone may apply for a business license.

Yes | No

References:

Decreto Ley N° 14379 de Código de Comercio de 25 de febrero de 1977. Título I (De los Comerciantes). Capítulo I (Ejercicio del Comercio). Artículo 12 (Capacidad), Artículo 20 (Presunción Legal) y Artículo 32 (Solicitud de Inscripción).

Article 12 (Capacity): People able to recruit and be obligated under the Civil Law can conduct business.

* Article 20 (Legal Presumption): It presumed, for legal purposes, that a person exercises the trade when, in any of the following cases:

- 1) Have commercial place open to the public, and
- 2) Announce, by any media, his quality as a merchant.

* Article 32 (Enrollment Application). Registration can be ordered by merchants or by anyone interested. In case of refusal of registration may be appealed, within a period of five days, before the Superior Court of the District, without further action.

Yes: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

No: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

References:

Decreto Ley N° 14379 de Código de Comercio de 25 de febrero de 1977. Título I (De los Comerciantes). Capítulo I (Ejercicio del Comercio). Artículo 32 (Solicitud de Inscripción).

Article 32 (Enrollment Application): Registration can be done by merchants or by anyone who is interested. Cases of refusal of registration may be appealed, within a period of five days, before the Superior Court of the District, without further action.

Yes: A YES score is earned if there is a formal process for appealing a rejected license.

No: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Tariff: US\$37

Term process: A working day, counted from the working day following the entry of the proceedings before the Commercial Registry.

References:

Manual de Trámites del Fundempresa

Individual Merchant or Sole Proprietorship

<http://www.fundempresa.org.bo/pub2/PublicNew/sitios/fundempresa/tramites/Tramite2.pdf>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Tariff: US\$37

Term process: A working day, counted from the working day following the entry of the proceedings before the Commercial Registry.

References:

Manual de Trámites del Fundempresa

Individual Merchant or Sole Proprietorship

<http://www.fundempresa.org.bo/pub2/PublicNew/sitios/fundempresa/tramites/Tramite2.pdf>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

33

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

References:

Ley N° 2061 de El Servicio Nacional de Sanidad Agropecuaria e Inocuidad Alimentaria (SENASAG) de 16 de marzo de 2000

<http://www.congreso.gov.bo/leyes/2061.htm>

Decreto Supremo N° 25729 que Reglamenta el Funcionamiento del El Servicio Nacional de Sanidad Agropecuaria e Inocuidad Alimentaria (SENASAG) del 07 de abril del 2000.

<http://www.senasag.gov.bo/index.php?option=content&task=view&id=6&Itemid=29>

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

References:

There are no environmental requirements for basic business activities, only for industrial activities.

Industrial Environmental Record Form

<http://www.bolivia-industry.com/sia/marcoreg/Ley/RAI/formularioRAI.pdf>

Yes: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | **No**

References:

There are no public safety standards requirements for basic business activities, only for industrial activities.

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

In the municipal governments of the capital cities and medium-sized cities with populations greater than 50,000 (30/329 municipalities), municipal inspections of companies are carried out routinely as part of standard procedures, and for the renewal of operating licenses. There are cases of corruption or favoritism, but only in small and isolated cases.

References:

Interview with Bernardo del Castillo, Political Scientist and Former Technical Adviser of the National Federation of Municipal Associations, October 2010.

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

In the municipal governments of the capital cities and medium-sized cities with populations greater than 50,000 (30/329 municipalities), municipal inspections of companies are carried out routinely as part of standard procedures, and for the renewal of operating licenses. There are cases of corruption or favoritism, but only in small and isolated cases.

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100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

In the municipal governments of the capital cities and medium-sized cities with populations greater than 50,000 (30/329 municipalities), municipal inspections of companies are carried out routinely as part of standard procedures, and for the renewal of operating licenses. There are cases of corruption or favoritism, but only in small and isolated cases.

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75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

74
6.1. Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes | No

References:

Ley N° 004 Ley de Lucha Contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas "Marcelo Quiroga Santa Cruz" de 31 de marzo de 2010. Capítulo I (Disposiciones Generales). Artículo 1 (Objeto).

Article 1 (Object): This Act is to establish mechanisms and procedures under the State Constitution, laws, treaties and conventions; is designed to prevent, investigate, prosecute and punish acts of corruption committed by public servants and former public servants in the exercise of their functions, and by natural or legal persons and legal representatives of legal persons, public or private, domestic or foreign that affect state resources, and to recover the affected assets of the State through competent courts.

http://www.autonomia.gob.bo/porta13/sites/default/files/Ley_Marcelo_Quiroga_Santa_Cruz-Aprobado.pdf

Decreto Ley N° 10426 de Código Penal de 23 agosto de 1972 elevando a rango de Ley el 10 de marzo de 1997. Título II (El Delito, Fundamentos de la Punibilidad y el Delincuente). Capítulo I (Formas de Aparición de Delito). Artículo 8 (Tentativa).

Article 8 (Tentative): One who, through suitable or unequivocal acts, shall begin the implementation of crime and not consummate the act through no fault of their own, shall be punished by two-thirds of the penalty for the offense.

http://www.oas.org/juridico/spanish/gapeco_sp_docs_bo11.pdf

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | No

References:

Decreto Ley N° 10426 de Código Penal de 23 agosto de 1972 elevando a rango de Ley el 10 de marzo de 1997. Título XII (Delitos contra a Propiedad). Capítulo III (Extorsiones). Artículo 333 (Extorsión).

Article 333 (Extortion): One who, by intimidation or serious threat, constrains a person to do, tolerate or do not do something, with the purpose to obtain for himself or a third party undue advantage or profit, will incur imprisonment of one (1) to three (3) years.

http://www.oas.org/juridico/spanish/gapeco_sp_docs_bo11.pdf

Yes: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

No: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

References:

Ley N° 004 Ley de Lucha Contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas “Marcelo Quiroga Santa Cruz” de 31 de marzo de 2010. Capítulo I (Disposiciones Generales). Artículo 2 (Definición de Corrupción).

Article 2 (Definition of Corruption): the solicitation or acceptance, offering or granting, directly or indirectly, by a public servant, a natural or legal person, domestic or foreign, of any article of monetary value or other benefit, favor, promise or advantage for himself or another person or entity, in exchange for the act or omission of any measure affecting state interests.

http://www.autonomia.gob.bo/portal3/sites/default/files/Ley_Marcelo_Quiroga_Santa_Cruz-Aprobado.pdf

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

References:

Ley N° 004 Ley de Lucha Contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas “Marcelo Quiroga Santa Cruz” de 31 de marzo de 2010. Capítulo I (Disposiciones Generales). Artículo 2 (Definición de Corrupción).

Article 2 (Definition of Corruption): the solicitation or acceptance, offering or granting, directly or indirectly, by a public servant, a natural or legal person, domestic or foreign, of any article of monetary value or other benefit, favor, promise or advantage for himself or another person or entity, in exchange for the act or omission of any measure affecting state interests.

http://www.autonomia.gob.bo/portal3/sites/default/files/Ley_Marcelo_Quiroga_Santa_Cruz-Aprobado.pdf

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

References:

Ley N° 004 Ley de Lucha Contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas “Marcelo Quiroga Santa Cruz” de 31 de marzo de 2010. Capítulo III (Delitos de Corrupción). Artículo 30 (Cohecho Activo Transnacional) y Artículo 31 (Cohecho Pasivo Transnacional).

Article 30 (Transnational Active Bribery Crime): One who offers or is granted, directly or indirectly, to a foreign public official or a public international organization, benefits such as gifts, favors or advantages that redound to their own advantage or another person or entity, with the purpose that the official act or refrain from acting in the exercise of their functions to get or maintain an undue advantage in relation to international commercial activities, shall be punished with imprisonment from five to ten years and a fine of one hundred five hundred days.

Article 31 (Transnational Passive Bribery Crime): The foreign public official or officer of a public international organization who requests or accepts, directly or indirectly an undue advantage for its own benefit or that of another person or entity, in order that the official act or refrain from acting in the exercise of their functions shall be punished with imprisonment of three to eight years and a fine of fifty to five hundred days.

http://www.autonomia.gob.bo/portal3/sites/default/files/Ley_Marcelo_Quiroga_Santa_Cruz-Aprobado.pdf

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

References:

Ley N° 004 Ley de Lucha Contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas “Marcelo Quiroga Santa Cruz” de 31 de marzo de 2010. Capítulo III (Delitos de Corrupción). Artículo 142 (Peculado) y Artículo 144 (Malversación).

Article 142. (Peculation): The public servant who took advantage of his position and appropriates money, securities or assets of the administration, of which collection or custody is in charge, shall be found responsible and will be punished with imprisonment of five to ten years and a fine of two hundred to five hundred days.

Article 144 (Misappropriation): The public servant who gives money that it manages, or is perceived to have custody of, a different application than that to which it has been assigned for, shall be punished with imprisonment of 3 to 8 years and a fine of one hundred to two hundred and fifty days.

http://www.autonomia.gob.bo/portal3/sites/default/files/Ley_Marcelo_Quiroga_Santa_Cruz-Aprobado.pdf

Yes: A YES score is earned if using public resources for private gain is illegal.

No: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

References:

Ley N° 004 Ley de Lucha Contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas “Marcelo Quiroga Santa Cruz” de 31 de marzo de 2010. Capítulo III (Delitos de Corrupción). Artículo 24 (Sistematización de los Crímenes de Corrupción y Vinculados).

Article 24 (Crimes of corruption and related crimes): In addition to those established in this Chapter, the crimes of corruption contained in the following Articles of the Penal Code: [...] Article 225.

Article 225 (Economic disloyalty): The public servant or the one who, because of his position or duties, shall be found in possession of data or information about economic policy to be kept in reserve, and reveals it, shall be punished with imprisonment of 1 to 4 years.

Will incur in the same penalty, increased by one-third, the public servant or the one that in the same above conditions will use or reveal such information or news on their own or for others benefit. If the public servant acted culpably, the punishment shall be reduced by one-third.

http://www.oas.org/juridico/spanish/gapeco_sp_docs_bol1.pdf

Yes: A YES score is earned if using confidential state information for private gain is illegal.

No: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

Yes | No

References:

Decreto Ley N° 10426 de Código Penal de 23 agosto de 1972 elevando a rango de Ley el 10 de marzo de 1997. Artículo 185 (Legitimación de Ganancias Indebidas).

Article 185 (Laundering of illicit earnings): One who acquires, converts or transfers property, resources or rights connected with crimes of: processing, trafficking in controlled substances, smuggling, corruption, organized crime, delinquent associations, trade and human trafficking, human organ trafficking, arms trafficking and terrorism, in order to conceal or disguise the nature, origin, location, destination, movement or ownership, shall be punished with imprisonment of five (5) to ten (10) years, disqualification from public and/or elected offices and a fine of two hundred (200) five hundred (500) days.

<http://www.congreso.gov.bo/leyes/1768.htm>

Yes: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

No: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

References:

Decreto Ley N° 10426 de Código Penal de 23 agosto de 1972 elevando a rango de Ley el 10 de marzo de 1997. Artículo 132 (Organización Criminal).

Article 132 (Criminal Association): Anyone who is part of a partnership of four (4) or more persons to commit crimes should be punishable by imprisonment of six (6) months to two (2) years working to provide one (1) month to one (1) year. The same penalty applies to anyone belonging to youth gangs in order to provoke disorder, insults or any other crime.

<http://www.congreso.gov.bo/leyes/1768.htm>

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

References:

Decreto Supremo N° 29864 de Estructura del Poder Ejecutivo de 2 de febrero de 2009. Artículo 25 (Estructura Jerárquica).

Article 25 (Hierarchical Structure): The hierarchical structure of the Ministry of Institutional Transparency and Fight Against Corruption is as follows:

Minister of Institutional Transparency and Fight Against Corruption

Vice Minister of Prevention, Promoting Ethics and Transparency

General Director for Prevention, Promoting Ethics and Transparency

Vice Minister of Fight Against Corruption

General Director of Corruption Acts Research

http://www.produccion.gob.bo/system/files/normativa_general/DS29894EstructuraOrganizativadPoderEjecutivodelEstadoPlurinacional.pdf

Yes: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

No: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

75. Is the anti-corruption agency effective?

56

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | **No**

Comments:

All the members of the anti-corruption agency are members of the Executive Branch and appointed by the President — Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

References:

Ley N° 004 Ley de Lucha Contra la Corrupción, Enriquecimiento Ilícito e Investigación de Fortunas “Marcelo Quiroga Santa Cruz” de 31 de marzo de 2010. Capítulo II (De las Entidades Encargadas de la Lucha Contra la Corrupción). Artículo 6 (Consejo Nacional de Lucha Contra la Corrupción, Enriquecimiento Ilícito y Legitimación de Ganancias Ilícitas).

Article 6: (National Council to Fight Against Corruption, Enrichment and Legitimacy of Illicit Profits).

I. Establishing the National Council to Fight Against Corruption, Enrichment and Legitimacy of Illicit Profits, which will consist of:

- a) Ministry of Institutional Transparency and Fight Against Corruption.
- b) Ministry of Government.
- c) Public Ministry
- d) General Comptroller of the State
- e) Financial Intelligence Unit
- f) General State Attorney
- g) Representatives of Civil Society

II. National Council to Fight Against Corruption, Enrichment and Legitimacy of Illicit Profits will be chaired by the Head of the Ministry of Institutional Transparency and Fight Against Corruption.

The entities members of the Council are independent in meeting its specific powers under the State Constitution and laws.

http://www.autonomia.gob.bo/porta13/sites/default/files/Ley_Marcelo_Quiroga_Santa_Cruz-Aprobado.pdf

Yes: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

All the members of the anti-corruption agency are members of the Executive Branch and appointed by the President.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the anti-corruption agency is the Ministry of Institutional Transparency and Fight Against Corruption and is appointed by the President

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

While there are professional staff in the Ministry, because they are appointed by the Minister it is fair to have doubts about their impartiality.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

<http://www.transparencia.gob.bo/index.php?Modulo=Leyes&Opcion=Normativa#?name=LuchaContraCorrupcion>

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Yes, as you can see in the Decreto Supremo N° 29864 de Estructura del Poder Ejecutivo de 2 de febrero de 2009. Artículo 26 (Atribuciones de la Ministra de Transparencia Institucional y Lucha Contra la Corrupción).

Article 26: (Powers of the Ministry of Institutional Transparency and Fight Against Corruption). The powers of the Ministry of Institutional Transparency and Fight Against Corruption, within the framework of its powers at the central level in the State Constitution, are:

- a) Develop and implement policies, programs and projects in an ethical and transparent manner for the prevention of and the fight against corruption;
- b) Propose draft legislation aimed at the eradication of corrupt practices and achieve higher levels of institutional transparency;
- c) Promote citizen training programs in the areas of their competence with special emphasis on the formation of values and codes of ethics;
- d) Develop mechanisms to strengthen institutional coordination for to promote transparency and fight corruption;
- e) Monitor compliance with the obligations of public servants who are accountable for all public institutions in the country;
- f) Monitor the incorporation of required public accountability mechanisms in all public institutions;
- g) Ensure that every public institution has mechanisms for the preservation, custody and maintenance of all information in their possession;
- h) Promote the strengthening of instruments and means of social control to ensure transparency in public resource management;
- i) Strengthening political structures of citizen participation in the fight against corruption and for government transparency;
- j) Structure and implement policies, programs and projects about the right of access to public information for citizens;
- k) Promote and coordinate research of wealth and laundering of illicit proceeds;
- l) Design policies for inter-agency coordination between governmental and social actors in the fight against corruption;
- m) Promote the development of public ethics in all public institutions, both at the central state level and in the autonomous territorial entities;
- n) Develop policies and implement actions for the recovery of state assets, stolen by corrupt acts in coordination with relevant agencies;

- o) Coordinate with all state agency actions relating to the prevention, control, investigation and punishment of corruption;
- p) Undertake policies to prevent and fight against corruption, with an emphasis on education and media action that seeks to raise the ethical standards of society;
- q) Submit complaints of acts of corruption and assume a civic role;
- r) Coordinate the research and monitoring of events and prosecutions of corruption;
- s) Verify and work for compliance with international conventions and agreements on fighting corruption;
- t) Develop communication strategies to disseminate the work of the Ministry, inform the population and implement awareness campaigns to combat corruption.

http://www.produccion.gob.bo/system/files/normativa_general/DS29894EstructuraOrganizativadPoderEjecutivodelEstadoPlurinacional.pdf

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Decreto Supremo N° 29864 de Estructura del Poder Ejecutivo de 2 de febrero de 2009. Artículo 26 (Atribuciones de la Ministra de Transparencia Institucional y Lucha Contra la Corrupción).

Article 26: (Powers of the Ministry of Institutional Transparency and Fight Against Corruption). The powers of the Ministry of Institutional Transparency and Fight Against Corruption, within the framework of its powers at the central level in the State Constitution, are: [...]

- q) Submit complaints for acts of corruption and assume the civic role.

http://www.produccion.gob.bo/system/files/normativa_general/DS29894EstructuraOrganizativadPoderEjecutivodelEstadoPlurinacional.pdf

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It depends on the type of process followed by the Ministry. If the case is of political concern, the government will act, but not otherwise.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

While the law against corruption provides a system for protecting whistleblowers and witnesses, we must be careful that it not become a double-edged sword and serves as an instrument to affect interests contrary to government.

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

Yes | No

References:

Ley del Órgano Judicial N° 0025 de 24 de junio de 2010. Título II (Jurisdicción Ordinaria). Capítulo I (Normas Generales). Artículo 30 (Principios).

Article 30 (Principles): In addition to the basic and general principles of the judiciary, the ordinary jurisdiction is based on the following:

14. Impugnment: Guarantees the right to appeal, that is to say, the right of parties to appeal to the immediate superior of any final decisions to end a dispute, allegedly causing them harm.

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

No: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The delay of justice in Bolivia is one of the main causes of the violation of human rights of individuals. There are 6,074 preventive prisoners (meaning they have not received a final sentence) and 1,999 sentenced prisoner in the 53 prisons in the country, according to a report by the General Director of Prisons, according to data through December 2009.

References:

Capítulo Boliviano de Derechos Humanos. 2009. Reos sin sentencia son más de seis mil en Bolivia. 8 de febrero de 2010. http://www.derechoshumanosbolivia.org/noticia.php?cod_noticia=NO20100208163436

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Article 1: Is required to comply with the payment of court fees in cases and amounts that are detailed below:

In any new, ordinary or extraordinary action question that is brought before the Supreme Court, the Constitutional Court, Council of the Judiciary and the Agrarian Tribunal, there will be appended a certificate of deposit in the amount of US\$7 (except in the case of the accused under Article 302 of the Criminal Procedure Code).

In ordinary or extraordinary resources for its corresponding decision to the Superior District Courts, Courts of parts, instructions, the deposit will US\$3, US\$1.5, US\$ 0.7 respectively, which must be endorsed with the certificate of deposit.

In the ordinary demands, summary, executive and coercive with specified amount and the counterclaim is required to pay the four per thousand (4/1,000) of the respective value and should be required certificate of deposit paid, for each claim.

[...] To bring resources to recuse Ministers of the Supreme Court, Members of the Agrarian Court, Judges of the Superior Courts, Judges and Coroners, Party should make payments of US\$7, US\$6, US\$3, US\$1.5, US\$ 0.7 respectively, should be required certificate of deposit for the payment.

For Computer Services US\$, for each procedure.

References:

Honorable Senado Nacional. 2009. Aranceles Judiciales. 25 de marzo de 2009.

http://mail.poderjudicial.gob.bo/main1.php?page_id=65&nweb=4180fdc9a581bc4dea590a5b134ebbc0

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

It most often happens that way, but, depending on the importance of the case, have been experiences of corruption that have changed a court ruling.

References:

Interview with Bernardo Wayar, Partner of the Wayar Law Firm and former President of the Lawyers School of Bolivia (2009), December 2010.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Most often the result of a decision is final; however, depending on political concerns the state may or may not support decision. A clear example has been in the area of mining concessions where the state has not supported eviction judgments because the judge had an interest in the concessions.

References:

Interview with Bernardo Wayar, Partner of the Wayar Law Firm and former President of the Lawyers School of Bolivia (2009), December 2010.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

81

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

References:

Constitución Política del Estado. Título III (Órgano Judicial y Tribunal Constitucional Plurinacional). Capítulo Primero (Disposiciones Generales). Artículo 178.

Article 178, I: The power to dispense justice emanates from the people of Bolivia and is based on the principles of independence, impartiality, legal certainty, transparency, integrity, speed, free, legal pluralism, intercultural equity, service to society, citizen participation, social harmony and respect for rights.

II Constitute guarantees of judicial independence:

1. The performance of judges according to the judiciary;
2. Budgetary autonomy of the judiciary.

Yes: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

No: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Since the new Constitution, judges are elected by direct vote; however, prior to the vote, the list of finalists is determined by Congress on the basis of political negotiations — Interview with Bernardo Wayar, Partner of the Wayar Law Firm and former President of the Lawyers School of Bolivia (2009), December 2010.

References:

Interview with Bernardo Wayar, Partner of the Wayar Law Firm and former President of the Lawyers School of Bolivia (2009), December 2010.

América Economía. 2010. Evo Morales amplía su poder con numerosa designación de jueces. 18 de febrero de 2008.

<http://www.americaeconomia.com/politica-sociedad/politica/evo-morales-amplia-su-poder-con-numerosa-designacion-de-jueces>

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | No

References:

Ley del Órgano Judicial N° 0025 de 24 de junio de 2010. Título II (Jurisdicción Ordinaria). Capítulo II (Tribunal Supremo de Justicia). Sección II (De la Sala Plena y Presidencia). Artículo 40 (Atribuciones de la Presidenta o el Presidente del Tribunal Supremo).

ARTICLE 40 (Powers Of The President Of The Supreme Court): [...]

6. Arrange for the distribution of causes of the Plenary, sorting them by order of arrival, giving priority to cases in which are restriction of liberty;

Carlos Pelaez. 2010. Implementación de Proyectos de Informática Jurídica en el Poder Judicial Boliviano. Alfa Redi Revista de Derecho Informático N° 21 de abril de 2010.
<http://www.alfa-redi.org/rdi-articulo.shtml?x=458>

Yes: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

No: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

References:

Ley del Órgano Judicial N° 0025 de 24 de junio de 2010. Título I (Disposiciones Generales). Capítulo IV (Mandato de los Servidores Judiciales). Artículo 23 (Cesación).

Article 23 (Cease): The judges and judicial support servers of the ordinary courts, "agroambiental" and specialized courts shall cease their performing in their offices or positions for the following reasons:

1. In compliance with the period of duty or mandate;
2. Total and permanent disability, as declared by a judicial tribunal;
3. By written resignation;
4. For having a criminal conviction;
5. Dismissal as part of a disciplinary process;
6. To have enforceable statement of position;
7. For engaging in any act that is prohibited or disqualifying;
8. By dissent within a performance evaluation process, and
9. Other reasons established by law.

Yes: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

No: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

References:

Human Rights Watch. 2009. Bolivia: Eventos del 2009.

<http://www.hrw.org/es/world-report-2010/bolivia-0>

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

References:

Human Rights Watch. 2009. Bolivia: Eventos del 2009.

<http://www.hrw.org/es/world-report-2010/bolivia-0>

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

68

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

It is not a theme that is reflected in the judicial functions, but its absence is not ensured.

References:

Interview with Bernardo Wayar, Partner of the Wayar Law Firm and former President of the Lawyers School of Bolivia (2009), December 2010.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Legal poverty or lack of rights, is defined as "the inability of a person to use the standards, state institutions and other mechanisms as the ideal alternative to exercise rights and conflict resolution. It is a problem that has been slightly visible, but it affects a large number of women in Peru, Bolivia, Ecuador and the Caribbean who lack access to basic information about the functioning of the justice system. This is either because they live in remote areas or because they have not had the opportunity to be thoroughly educated about the process.

[...]Based on these and other problematic situations, it can be said that although, from the formal regulatory standpoint, Bolivian law has provided access to women, from the point of view of everyday practice, the situation is not favorable.

References:

Due Process of Law (DPLF) and Instituto d Defensa Legal. 2009. Obstáculos para el acceso a la Justicia en las Américas. Partners for Democratic Change. 3 de noviembre de 2009.

<http://www.partnersglobal.org/20th-anniversary-1/Obstaculos%20para%20el%20Acceso%20a%20la%20justicia%20en%20las%20Americas.pdf/view?searchterm=Obst%C3%A1culos%20para%20el%20acceso%20a%20la%20Justicia%20en%20las%20Am%C3%A9ricas>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

References:

Ley N° 2496 de Creación del Servicio Nacional de la Defensa de 4 de Agosto de 2003. Título 1 (Del Servicio Nacional de Defensa Pública). Capítulo 1 (Disposiciones y Principios Generales). Artículo 2 (Finalidad).

Article 2 (Purpose): The Public Defender National Service aims to ensure the inviolability of criminal defense, providing technical defense to any alleged criminal who lacks economic resources and those who do not appoint a lawyer for their defense. To fulfill this purpose, the Service shall function in response to achieve the most favorable outcome for the accused.

<http://190.41.250.173/rj/bases/legisla/bolivia/ley2496.htm>

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

It is a good service for common legal issues, the sort that people need day by day, but it is not adequate for specific or complex issues.

References:

Interview with Bernardo Wayar, Partner of the Wayar Law Firm and former President of the Lawyers School of Bolivia (2009), December 2010.

FM Bolivia. 2010. Defensa Pública extiende sus servicios al área rural. 3 de julio de 2010, <http://www.fmbolivia.com.bo/noticia30846-defensa-publica-extiende-sus-servicios-al-area-rural.html>

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The minimum tariff establishes amounts between US\$285 to US\$1,000, depending on the type of process or paperwork required. These amounts are high for the income of an average Bolivian.

References:

Interview with Bernardo Wayar, Partner of the Wayar Law Firm and former President of the Lawyers School of Bolivia (2009), December 2010.

<http://www.icalp.org.bo/docs/2008-01-15-web-arancel-minimo.pdf>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The minimum tariff establishes amounts between US\$285 to US\$1,000, depending on the type of process or paperwork required. These amounts are high for the income of an average Bolivian.

References:

Interview with Bernardo Wayar, Partner of the Wayar Law Firm and former President of the Lawyers School of Bolivia (2009), December 2010.

<http://www.icalp.org.bo/docs/2008-01-15-web-arancel-minimo.pdf>

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

The courts are located in capital cities and some medium-sized cities with populations over 50,000. Citizens in rural areas must travel to these cities.

References:

Interview with Bernardo Wayar, Partner of the Wayar Law Firm and former President of the Lawyers School of Bolivia (2009), December 2010.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

25

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Unlike the Army, where the entry criteria are strict, the national police have no salary or social benefits appropriate for establishing very strict entry requirements, especially when this is the type of job where you have to risk your life everyday.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Crime is a growing problem that surpasses the human, technical, logistical and financial resources of the national police. They constantly have to rely on international cooperation or regional governments to obtain additional resources to fulfill the minimum needs of the current police structure.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The senior positions in the police force are appointed by the President through the Minister of Interior. Experience has shown that every new president makes changes to police authorities, achieving in the process allegiances and debts of honor that benefit his own administration, but do not contribute to a process of institutionalization or police reform.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research FES- ILDIS, November 2010.

Quintana, Juan Ramón (Coordinador). 2005. "Policía y democracia en Bolivia: una política institucional pendiente". Editorial Fundación PIEB. La Paz, Bolivia.

<http://books.google.com.bo/books?>

[id=n6DxYpfbv3oC&printsec=frontcover&dq=Polic%C3%ADa+y+democracia+en+Bolivia:+una+pol%C3%ADtica+institucional+pendiente&source=bl&ots=](http://books.google.com.bo/books?id=n6DxYpfbv3oC&printsec=frontcover&dq=Polic%C3%ADa+y+democracia+en+Bolivia:+una+pol%C3%ADtica+institucional+pendiente&source=bl&ots=)

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

88

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

References:

Constitución Política del Estado. Título V (Funciones de Control, de Defensa de la Sociedad y de Defensa del Estado). Capítulo Segundo (Función de Defensa de la Sociedad). Sección I (Defensoría del Pueblo). Artículo 218.

Article 128: I. The Ombudsman shall ensure the observance, promotion, dissemination and implementation of human rights, individual and collective, set out in the Constitution, laws and international instruments. The role of the Ombudsman will reach the administrative activity of the entire public sector and the activity of private institutions providing public social services.

Ley N° 1818 del Defensor del Pueblo de 22 de diciembre de 1997. Título I (Disposiciones Generales). Capítulo I (Naturaleza, Gratuidad, Sede y Ámbito de Competencia de la Institución). Artículo 1 (Naturaleza).

Article 1 (Nature): The Ombudsman is an institution established by the State Constitution to ensure the validity and enforcement of rights and guarantees of persons in relation to the administrative activity of the entire public sector, and also ensures the promotion, realization, dissemination and protection of human rights.

Its mission as High Commissioner of the Congress, is the defense, security and protection of individual and collective rights, protected by the State Constitution and laws.

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman Law establishes a time period of 10 days; however, the Ombudsman may extend the period if specific circumstances justify it.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

References:

Decreto Supremo N° 29864 de Estructura del Poder Ejecutivo de 2 de febrero de 2009. Artículo 25 (Estructura Jerárquica).

Article 25 (Hierarchical Structure): The hierarchical structure of the Ministry of Institutional Transparency and Fight Against Corruption is as follows:

Minister of Institutional Transparency and Fight Against Corruption

Vice Minister of Prevention, Promoting Ethics and Transparency

General Director for Prevention, Promoting Ethics and Transparency

Vice Minister of Fight Against Corruption

General Director of Corruption Acts Research

http://www.produccion.gob.bo/system/files/normativa_general/DS29894EstructuraOrganizativadPoderEjecutivodelEstadoPlurinacional.pdf

Yes: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

Interview with Jimena Costa, Political Analyst and Professor at Universidad Mayor de San Andrés, November 2010.

Decreto Supremo N° 29864 de Estructura del Poder Ejecutivo de 2 de febrero de 2009. Artículo 26 (Atribuciones de la Ministra de Transparencia Institucional y Lucha Contra la Corrupción).

Article 26 - (Powers of the Ministry of Institutional Transparency and Fight Against Corruption). The powers of the Ministry of Institutional Transparency and Fight Against Corruption, within the framework of its powers at the central level in the State Constitution, are: [...]

q) Submit complaints regarding acts of corruption and assume the civic role.

http://www.produccion.gob.bo/system/files/normativa_general/DS29894EstructuraOrganizativadPoderEjecutivodelEstadoPlurinacional.pdf

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

References:

Constitución Política del Estado. Título III (Órgano Judicial y Tribunal Constitucional Plurinacional). Capítulo Segundo (Jurisdicción Ordinaria). Artículo 180.

Article 180: I. Ordinary jurisdiction is based on procedural principles of freedom, publicity, transparency, speed, integrity, honesty, legality, effectiveness, efficiency, accessibility, immediacy, material truth, due process and equality before the judge;

II. It guarantees the principle of impugment in judicial proceedings;

III. The ordinary courts will not recognize privileges or special courts. Military jurisdiction shall judge the military offenses covered by the law.

Yes: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

No: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Due to the significant presence of media and the spreading of news, it is increasingly difficult to hide the crimes committed by members of the national police. The public and relevant institutions, such as the Ombudsman, demand judicial attention for these cases.

References:

Interview with Carlos Toranzo, Project Coordinator at Friedrich Ebert Foundation and the Latin American Institute for Social Research (FES-ILDIS), November 2010.

Periódico El Día. 2010. Juez envía a tres policías a la cárcel por caso Olorio. 7 de noviembre de 2010

http://eldia.com.bo/index.php?cat=148&pla=3&id_articulo=45468

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

