



**Bolivia**

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## **Introduction and Summary**

1. Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries.
2. A Breeze of Hope Foundation (ABH, *Fundacion Una Brisa de Esperanza*) strives to prevent sexual violence against children, restore the lives of child survivors, and promote healthy childhood. A Breeze of Hope runs Bolivia's first and most advanced center for child survivors in Cochabamba, and engages in human rights advocacy and sexual violence prevention work.
3. The Foundation Una Brisa de Esperanza (FUBE Bolivia) is a non-profit organization that works with children and adolescent victims of sexual violence and their families.
4. The Committee for Latin America and the Caribbean for the Defense of Women's Rights - CLADEM Bolivia is a network that links feminist activists and organizations for the promotion, monitoring and defense of human rights of women of all ages.
5. The Legal Office of Women (*La Oficina Jurídica de la Mujer*) is a non-governmental development organization whose specialty is the defense of women's rights from a social and gender legal perspective. It is a pioneer in the reference, monitoring, education and promotion of human rights, and from a political-social perspective seeks to influence policies related to women.
6. The Coordinadora de la Mujer is a network of institutions that work for the promotion and defense of women's rights in Bolivia.
7. The Network of Girls, Boys and Adolescents Against Sexual Violence (NNAS COVISE Network) is an activist group that conducts awareness-raising activities on sexual violence and encourages all girls, boys and adolescents who experience sexual violence to break the silence, denounce and prosecute their aggressors so that their right to health can be restored.
8. The Healthy Family Foundation (FAMISAL) works to build a society where families are trained and equipped to take care of their health determinants and where childhood and infancy play a central role and enjoy the appropriate conditions for their integral development.
9. In this submission, the above organizations provide information as stipulated in the *Universal Periodic Review (Third Cycle): information and guidelines for relevant stakeholders' written submissions*. The submission details our concerns regarding Bolivia's failure to protect adolescent girls from sexual violence and provide survivors access to justice. We make key recommendations for action to the government of Bolivia so as to better address this area of concern.

## Sexual Violence against Adolescent Girls

10. The undersigned organizations would like to express their concern about articles of the penal code that contravene international human rights standards, namely its provisions on rape and *estupro*, as well as the government's systemic failure to grant access to justice to adolescent girls who are victims of sexual violence.
11. Brisa was just 15 years old when her adult cousin began sexually abusing her. During the eight months that followed, Brisa isolated herself from her family and attempted suicide twice. When her family discovered the abuse they immediately reported it to the police, but Brisa's suffering didn't end there. She was continuously re-victimized by the justice system, including by medical personnel, the prosecutor, and judges. Although the charges that Brisa brought against her abuser were for rape, one judge used his discretion to change the charge to *estupro*—a crime where an underage girl is presumed to have consented to sex with an adult man through seduction—which imposes much lower penalties than for rape. When Bolivia's justice system failed her and her perpetrator ultimately escaped justice by fleeing the country, Brisa decided to get her law degree and take her case to the Inter-American Commission on Human Rights. She submitted her case to the Commission in 2012 which admitted her case in April 2017, fifteen years after her abuse was first reported.
12. Brisa's case is not unique. Bolivia has the second highest rate of sexual violence in Latin America and the Caribbean (after Haiti) during a woman's lifetime, according to data from the Pan-American Health Organization.<sup>i</sup> In the first six months of 2015 alone, 569 cases of sexual violence against minors were reported, of which 94% were against girls.<sup>ii</sup> These numbers fail to capture the full extent of the abuse girls face as Bolivia has one of the lowest reporting rates for sexual violence in South America. This is in part due to the justice system's practice of granting perpetrators of sexual violence impunity for their crimes, especially when committed against underage girls. Those women and girls who do report their abuse often face significant obstacles to achieving justice, including re-victimization, delays in prosecution, and unwillingness by police to cooperate with the justice system. This can be shown through a report issued by the Inter-American Commission on Human Rights in 2007, which found that 84% of complaints involving sexual violence were dropped during the preliminary phases of the investigation, generally "because the burden of proof lies with the victim," and that "94 percent of the few cases that make it beyond the preliminary stage are abandoned or lost before they reach the trial tribunal."<sup>iii</sup>
13. Another alarming situation for adolescent girls who experience sexual violence are forced pregnancies and forced marriages. In 2016, CLADEM, issued a report on forced pregnancy and child maternity within 14 countries in Latin America and the Caribbean, including Bolivia.<sup>iv</sup> Under the Bolivian Penal Code, an abortion is permitted for the following reasons: pregnancy as a result of rape, *estupro* or incest; and to avoid danger to the life or health of the mother if this danger could not be avoided by other means.<sup>v</sup> In Bolivia, according to data from the Health Information System - SNIS (Ministry of Health) in 2016 there were 13,332 girls under 15 years of age who became mothers, and the National Maternal Mortality Study indicates that of this number, 2% of these are girls under the age of 14. Girls and adolescents who become pregnant as a result of sexual

violence may be forced to carry a pregnancy to term due to the lack of implementation and obstacles in the application of the existing provisions in the Penal Code, and the lack of implementation of Constitutional Ruling 0206/2014 for performing the legal interruption of a pregnancy due to the above-named causes. Lack of knowledge of these regulations, the failure by the State to provide guidance on access to abortion, prejudice, moral and cultural objectors, coupled with the lack of comprehensive sex education leads to girls being forced to continue with the pregnancy. This generates new and serious violations of their rights to life, health, bodily and emotional integrity and, if kept institutionalized in a hospital in order to carry the pregnancy to term, as in Bolivia, could constitute an act of torture. According to Birgit Gerstenberg of the Office for South America for the United Nations High Commissioner for Human Rights (OHCHR) in a recent case in Tucumán, Argentina, "the non-provision of certain services to women and girls in legal conditions is discriminatory and absolute restrictions or prohibitions on access to legal interruption of pregnancy may constitute torture and ill-treatment."<sup>vi</sup> In addition, many girls and adolescents are forced into marriage and early unions as a result of pregnancy, which implies that the rights of the girl are transferred between the family of the victim of rape and statutory rape and the aggressor.<sup>vii</sup>

14. One of the challenges in accessing justice in cases involving sexual violence against adolescent girls is the provision on rape in the Bolivian Penal Code. This statute requires victims to show "intimidation, physical violence, or psychological violence," and does not define the term "consent" or providing presumptions against consent. Under international human rights law, the victim's lack of consent should be the central element of the crime of rape.<sup>viii</sup>
15. In the Bolivian justice system, the lesser offense of *estupro* is often used to circumvent rape convictions, thereby denying justice to adolescent victims of rape and weakening the overall statutory scheme against sexual violence.<sup>ix</sup> The *estupro* law imposes a sentence of only 3 to 6 years in prison, while a conviction for rape is punishable by 15 to 20 years in prison. Bolivian courts have been using the *estupro* law to allow adults who rape adolescents to avoid the full consequence of their crime. This law is discriminatory and ignores the unequal power dynamics between adolescents and adults which make adolescents especially vulnerable victims. Bolivia should abolish the current *estupro* law and commit to robust protection of adolescents in accordance with international standards.
16. Under the Bolivian Penal Code, minors are generally not allowed to file a criminal report without their parent or guardian's consent. Although they can file a report through an ombudsman or through a service organization without the express consent of parents, for many girls and adolescents, however, this is not an easy process. This law can result in adolescent girls being denied a means to report their abuse to the authorities. For example, cases have been reported where an adolescent girl was sexually abused by her step-father and her mother refused to take allow her to report the crime to the police. In addition, the statute of limitations for crimes related to sexual violence, when the victims are under 14, is four years from the age of majority--18. Another difficulty is that the maximum duration of the judicial process is 3 years from the beginning of the process to a final judgment. This results in the termination of many criminal actions, as they last

longer than three years. When adolescent girls experience sexual violence, it can take years for them to process the trauma, and by that time, the statute of limitations or the maximum duration for the judicial process may have run and leaves the perpetrator unpunished. Taken together, these two provisions create a substantial barrier in access to justice for adolescent girls who were victims of sexual violence, particularly those victimized within their family unit.

17. Another barrier to accessing justice for adolescent girls who have experienced sexual violence occurs through the lack of procedures or enforcement of procedures to ensure the recapture of perpetrators of sexual violence. Although Bolivia has a procedure in place for the initial arrest of the perpetrators, once they have posted bail or accessed alternative measures, in addition to economic bail such as for personal, work, or other reasons and been released, there is no procedure for their recapture. This can lead to situations like the one in Brisa's case, where the perpetrator was able to escape justice by fleeing the country. Laws and policies such as these must be amended to allow adolescent girls the means to access justice.
18. Under the Belém do Pará Convention, Bolivia agreed to undertake programs to educate and train police, judicial administrators, and others involved in the law enforcement process.<sup>x</sup> However, in Bolivia the lack of gender sensitivity among law enforcement and judicial and health officials has been identified as a serious barrier to the full enforcement of the laws to prevent and punish violence against adolescent girls. Reports from adolescent girls who have undergone forensic medical examinations following complaints of sexual assault have claimed that they are re-traumatizing. Training for judges and prosecutors may be uneven and not institutionalized, and do not feature the accountability mechanisms needed to effect permanent change or take into account the particular needs of adolescent girls who have been victims of sexual violence.
19. The Bolivian government's failure to prevent sexual violence against adolescent girls and allow them access to justice run counter to the recommendations made by the Human Rights Council in its previous reviews of Bolivia. In both of its previous reviews, it has consistently recommended that Bolivia prevent violence against women and children.<sup>xi</sup> In its 2014 review, particular focus was placed on the Bolivian Government's need to work towards improving access to justice and reforming its justice system.<sup>xii</sup> Therefore, the Council should use this opportunity to urge Bolivia to amend these discriminatory provisions to better protect adolescent girls from sexual violence, and allow those who have had their rights violated access to justice.
20. In addition to the previous recommendations of the Council, Bolivia has an international obligation as a party to multiple human rights treaties and as a participant in the UN 2030 Agenda for Sustainable Development, including Goals 5: Achieving Gender Equality (Targets **5.1** "End all forms of discrimination against all women and girls everywhere"; **5.2** "Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation;" and **5.C** "Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels") and 16:

Peace, Justice and Strong Institutions (Targets **16.1** “Significantly reduce all forms of violence and related death rates everywhere;” **16.2** “End abuse, exploitation, trafficking and all forms of violence against and torture of children;” **16.3** “Promote the rule of law at the national and international levels and ensure equal access to justice for all”) to ensure that its laws on rape are aligned with international and regional standards and that women and girls are free from sexual violence.

### **Recommendations for Action by the Government of Bolivia**

The above organizations respectfully call on the government of Bolivia to:

1. Amend its Penal Code to define rape based on the constitutive element of lack of consent, include all forms of non-consensual penetration and eliminate the requirement that survivors prove “intimidation, physical violence, or psychological violence”;
2. Repeal the *estupro* provision from the Penal Code;
3. Eliminate harmful legislation and policies that limit adolescent girls’ ability to access justice following sexual violence, including the requirement for a parent to consent to filing the criminal complaint and lengthen the statute of limitations for crimes of this nature.
4. Devise and implement training programs for those on the front line of the administration of justice, including: prosecutors, judges, police and law enforcement officials, psychologists, social workers, health services personnel, and forensic examiners in order to avoid re-victimization and the requirement of evidence such as physical evidence or proof of intimidation.
5. Consider in its criminal policy the implementation of a policy of capture and recapture of perpetrators and allocate the necessary resources for this. In addition, the State must monitor and control perpetrators of crimes of sexual violence against girls, boys, and adolescents when they obtain their freedom in such a way as to ensure their submission to the judicial process.
6. Implement and allocate sufficient resources for a protection program for victims and witnesses in cases of sexual violence.
7. Implement the 2016 - 2020 Strategic Plan for Sexual and Reproductive Health and incorporate clear policies for the prevention of unwanted pregnancies as a result of the crimes of rape, incest and *estupro*, as well as for the health and the risk of the mother’s life for girls under 15 years old. Moreover, the state should also register the pregnancies of minor girls as a result of rape, incest and *estupro*, as well as monitor compliance with the constitutional Judgment 0206/2014 and the care protocols in the Public Ministry and the health system, in order to ensure access to the termination of pregnancy when girls require it.

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- <sup>i</sup> *Violence Against Women in Latin America and the Caribbean*, PAHO, 9 (2013). Available at <https://www.paho.org/hq/dmdocuments/2013/paho-vaw-exec-summ-eng.pdf>.
- <sup>ii</sup> LAS NIÑAS Y LAS ADOLESCENTES, DERECHOS INVISIBLES Y VULNERADOS -Diagnóstico base, Defensoría Del Pueblo - Estado Plurinacional De Bolivia. Available at <http://saludpublica.bvsp.org.bo/cc/bo40.1/documentos/709.pdf>.
- <sup>iii</sup> *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, Inter-Am. C.H.R., para. 348 (2007).
- <sup>iv</sup> *Balance Regional Niñas Madres*, CLADEM. Available at <https://cladem.org/publicaciones/balance-regional-ninas-madres/>.
- <sup>v</sup> Art. 266, Código Penal, Bolivia.
- <sup>vi</sup> *Para la ONU, impedirle un aborto legal a una niña puede "constituir una tortura"*, La Nación, Mar. 7, 2019. Available at [https://www.lanacion.com.ar/sociedad/para-onu-impedirle-aborto-legal-nina-puede-nid2226340?utm\\_medium=Echobox&utm\\_source=Facebook&fbclid=IwAR2OfI-BkP5qVXopAxTXLb33YQiECGm3pURb9TuQncp1pftQGZ6pdH6pH9M#Echobox=1551989969](https://www.lanacion.com.ar/sociedad/para-onu-impedirle-aborto-legal-nina-puede-nid2226340?utm_medium=Echobox&utm_source=Facebook&fbclid=IwAR2OfI-BkP5qVXopAxTXLb33YQiECGm3pURb9TuQncp1pftQGZ6pdH6pH9M#Echobox=1551989969).
- <sup>vii</sup> Plan Internacional Bolivia, Informe sobre el Estudio de Matrimonio y Uniones Forzadas de Niñas en Bolivia, 2018.
- <sup>viii</sup> *Vertido v. The Philippines*, CEDAW Committee, Communication No. 18/2008, par. 8.7, U.N. Doc. CEDAW/C/46/D/18/2008 (2010) (“Through its consideration of States parties’ reports, the Committee has clarified time and again that rape constitutes a violation of women’s right to personal security and bodily integrity, and that its essential element was lack of consent.”).
- <sup>ix</sup> *The World’s Shame: The Global Rape Epidemic*, Equality Now, 29 (2017). Available at [https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/208/attachments/original/1527096293/EqualityNowRapeLawReport2017\\_Single\\_Pages.pdf?1527096293](https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/208/attachments/original/1527096293/EqualityNowRapeLawReport2017_Single_Pages.pdf?1527096293).
- <sup>x</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), art. 8.
- <sup>xi</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Bolivia*, pars. 113.29, 113.35, 114.79, 114.89-123, U.N. Doc. A/HRC/28/7 (Dec. 17, 2014); Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Bolivia*, pars. 20, 30-33, 36 U.N. Doc. A/HRC/14/7 (Mar. 15, 2010).
- <sup>xiii</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Bolivia*, pars. 113.20-24, 114.94, 114.107, 114.110-111, U.N. Doc. A/HRC/28/7 (Dec. 17, 2014).