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OBSERVATORIO  
DE JUSTICIA  
EN CASOS DE VIOLENCIA  
CONTRA LA MUJER - NIÑO (A)



Committee on the Elimination of Discrimination against Women  
Human Rights Treaties Division (HRTD)

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**Re: Information on Bolivia for Consideration by the Committee on the Elimination of  
Discrimination against Women at its 78th Pre-Sessional Working Group**

15 June 2020

Dear Distinguished Committee Members,

We respectfully submit this letter in advance to the Committee on the Elimination of Discrimination against Women (“the Committee”) for consideration during its 78th Pre-sessional working group. Equality Now, Centro Una Brisa de Esperanza (CUBE), Oficina Jurídica de la Mujer, FAMISAL, the Committee for Latin America and the Caribbean for the Defense of Women's Rights - (CLADEM) Bolivia, Coordinadora de la Mujer, Voces Libres, and Observatorio de Justicia request that this letter be used to supplement Bolivia’s seventh State Party Report to the Committee. Our joint submission details our concerns with regard to laws related to rape and other forms of sexual violence and procedures and practices which effectively deny access to justice for young and adolescent survivors of sexual violence. Specifically, the undersigned organizations would like to express their concern about articles of the penal code that contravene the Convention on the Elimination of All Forms of Discrimination against Women (the Convention), 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.

### **Information about the authors to this submission**

Equality Now is an international human rights NGO with the mission to achieve legal and systemic change that addresses violence and discrimination against women and girls around the world. Founded in 1992, Equality Now has offices in London, New York, Nairobi and Beirut, as well as consultants based in various parts of the world. Ending sexual violence, ending sex

trafficking, ending harmful practices and achieving legal equality are the main areas of Equality Now's work.

The Centro Una Brisa de Esperanza (CUBE) strives to prevent sexual violence against children, restore the lives of child survivors, and promote healthy childhood. CUBE runs Bolivia's first and most advanced center for child survivors in Cochabamba and engages in human rights advocacy and sexual violence prevention work.

The Legal Office of Women (La Oficina Juridica 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.

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.

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.

The Coordinadora de la Mujer is a network of institutions that work for the promotion and defense of women's rights in Bolivia.

Voces Libres is a non-profit foundation based in Cochabamba, Bolivia that provides social services for women and children and provides free legal advice on violence, shelters, education centers, therapeutic centers, among other issues.

The Observatorio de Justicia provides free and transparent legal advice to victims of gender based violence in Cochabamba, Bolivia. They also maintain a current registry of data on femicide and violence, as well as assisting with reports of cases affected by corruption, and ensure that victims' rights are not violated.

The legal provisions and practices detailed in our submission highlight the failure of the State to comply with its duty to address the high prevalence of sexual violence against young and adolescent girls (Article 2); its duty to provide equal protection under the law to survivors of sexual violence (Article 2 (c)); and that the decisions and failings of the authorities and their agents constitute demonstrable direct and indirect discrimination against women (Article 2(d)).

Additionally, the State has repeatedly failed in its duty to bring perpetrators to trial and to impose appropriate penal sanctions (General Recommendation 28). In violation of the Convention, Bolivia has also failed in its obligation to combat violence against women and provide access to justice to survivors, as provided for in General Recommendations 19, 33, and 35 of the Committee.

### ***Scale and Nature of Sexual Violence in Bolivia***

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>1</sup> In the first five months of 2020 alone, 352 cases of rape against children and adolescents were reported.<sup>2</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, a problem that has only been exacerbated during the lockdown as a result of COVID-19. 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. A report issued by the Inter-American Commission on Human Rights in 2007 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, "94 percent of the few cases that make it beyond the preliminary stage are abandoned or lost before they reach the trial tribunal."<sup>3</sup>

### ***Legal provisions allowing impunity for perpetrators of sexual violence***

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 provide 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>4</sup>

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<sup>1</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>2</sup> Indagan 47 feminicidios y 352 violaciones a niños en 2020, Los Tiempos (06/06/2020), <https://www.lostiempos.com/actualidad/pais/20200606/indagan-47-feminicidios-352-violaciones-ninos-2020>.

<sup>3</sup> Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia, Inter-Am. C.H.R., para. 348 (2007).

<sup>4</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.").

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>5</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 to victimization. Bolivia should abolish the current *estupro* law and commit to robust protection of adolescents in accordance with international standards.

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*. 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. The case is still pending.

### ***Legal barriers to justice for adolescent girl survivors of sexual violence***

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 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 just 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

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<sup>5</sup> The World's Shame: The Global Rape Epidemic, Equality Now, 29 (2017). Available at [https://d3n8a8pro7vhm.cloudfront.net/equalitynow/pages/208/attachments/original/1527096293/EqualityNowRapeLawReport2017\\_Single\\_Pages.pdf?1527096293](https://d3n8a8pro7vhm.cloudfront.net/equalitynow/pages/208/attachments/original/1527096293/EqualityNowRapeLawReport2017_Single_Pages.pdf?1527096293).

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.

Studies undertaken by the Public Prosecutor show that only 1.13% of complaints reach the sentencing stage in cases of gender violence, including cases of sexual violence. The remainder of cases remain in the preparatory stage, are abandoned, dismissed, settled or being resolved by alternative means. In an investigation carried out by the Oficina Jurídica Para la Mujer (the Legal Office for Women) it was determined that more than two thirds of complaints remain in the preparatory stage; another percentage of complaints, equally high, are rejected at the outset, without even an indictment; and only a minimal percentage of cases reach the stage of oral hearings, denoting the State's neglect of victims of sexual violence.<sup>6</sup>

Although the government of Bolivia points to the passage of the Law on Abbreviated Criminal Procedures (Law 1173) as a sign of progress being made in advancing access to justice, the law in actuality works to violate victims' rights. Under Law 1173, the burden of proving that the accused has or does not have a job, home, and a family and thus more or less unlikely to flee shifts to the victim and the prosecutor. Furthermore, this must be done in a short period of time as even in cases of flagrante delicto, the period is limited to 24 hours. If preventative detention is granted it is only for a maximum of 6 months as provided for under Law 1173.

Preventative detention only lasts for a period of six months under Law 1173. From the start of the implementation of this law, judges have interpreted it to mean that preventative detention should not last for a period of more than six months, after which the accused will be released into alternative measures to detention such as the use of an electronic tracking device. Due to the lack of personnel and resources in the Public Prosecutor's office, the Police Department, the Institute of Forensic Investigations (IDIF), and the courts reaching a judgment in this six month period is extremely difficult. There is currently a ten-year procedural delay in the courts. Offenders (or alleged offenders) will not only be able to leave detention with these alternative measures they will be able to take advantage of this limit to flee and escape trial and the risk of a sentence. There are currently no conditions or standards to ensure that the accused do not flee.

CEDAW General Recommendation 19 establishes that under Article 2, States can be responsible for the private acts of persons if they do not adopt measures with the due diligence

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<sup>6</sup> Report by Oficina Jurídica de la Mujer, *Violencia Sexual e Impunidad en Cochabamba*, Editor H. Cochabamba - Bolivia (2012).

to prevent the violation of the rights or to investigate and punish the acts of violence and compensate the victims. The application of Law 1173 violates due diligence and prevents access to effective protection measures for victims.

### ***Legal and procedural gaps that further harm adolescent girl survivors of sexual violence***

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. Furthermore, this often leaves the victim responsible for searching for and finding their aggressors and often requires them to pay private investigators if they want their assailants to be subjected to judicial procedures and serve their sentences. Laws and policies such as these must be amended to allow adolescent girls the means to access justice.

The Political Constitution of the State provides for free access to justice, but those who do not have the economic resources may still not receive justice. In addition to direct costs such as expert reports, parties must also assume the responsibility of tracking the progress of the case in order to ensure it advances through the judicial process. Although the State has taken measures to ensure that victims have access to a professional lawyer, through the creation of programs such as the Comprehensive Plurinational Justice Service (SIJPLU)<sup>7</sup> and that low-income victims have access to justice through the Plurinational Victim Assistance Service, both services have limitations.

The State has implemented several services specifically for the protection of women, children and adolescents who suffer from violence, such as the Municipal Integral Legal Service (SLIM)<sup>8</sup> the municipal support organization for addressing violence in the family, and the Defenders of Children and Adolescents (DNA), which is a free municipal service for the promotion, protection and defense of the rights of children and adolescents. These two institutions, however, are limited in their effectiveness due to budgetary limitations and the high-rate of turnover since employees are hired as short-term consultants.

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<sup>7</sup> Creado mediante Resolución Ministerial Nro. 092 del 30 de mayo de 2012, *available at*: <https://vjdf.justicia.gob.bo/index.php?r=pagina/view&id=31>

<sup>8</sup> <http://scm.oas.org/pdfs/2010/CIM02724T-B.pdf> and Supreme Decree 25087 of July 1998, *available at*: [https://oig.cepal.org/sites/default/files/1998\\_bol\\_ds25087.pdf](https://oig.cepal.org/sites/default/files/1998_bol_ds25087.pdf). Created in the framework of Law 1674, Against Domestic or Family Violence, *available at*:

Despite all these efforts, the State's initiatives have had no support from the government institutions charged with overseeing these efforts and suffer from a lack of financial resources. We urge the Committee to recommend to the State to give priority to these mechanisms created by the Law; to implement them; to allocate an appropriate budget for their running; and to ensure that they are extended to the largest possible number of towns and cities.

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. Under the Belém do Pará Convention, Bolivia is also obligated to undertake programs to educate and train police, judicial administrators, and others involved in the law enforcement process.<sup>9</sup> Reports from adolescent girls who have undergone forensic medical examinations following complaints of sexual assault are 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.

Lastly, there is, in general, a lack of clear rules or training for health operators and forensic doctors on appropriate interventions for survivors of sexual violence and other elements that delay justice and can lead to misdiagnosing the abuse. There is no prior explanation on the meaning and importance of the required gynecological examination, and it is limited to the verification of whether or not there was sexual intercourse. Forensic doctors who care for victims do not inform them of the possibility of pregnancy, the morning-after pill, or much less prescribe medications to prevent sexually transmitted infections (STI's), since it is believed that those tasks should be carried out by a private doctor that the victim must see on their own. This can condemn the victim to unwanted pregnancy and motherhood or to dying from an STI.

### ***Consequences of Sexual Violence***

Other alarming situations for adolescent girls who experience sexual violence include 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>10</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>11</sup> In Bolivia, according to data from the Health

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<sup>9</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), art. 8.

<sup>10</sup> Balance Regional Niñas Madres, CLADEM. Available at <https://cladem.org/publicaciones/balance-regional-ninas-madres/>.

<sup>11</sup> Art. 266, Código Penal, Bolivia.

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 2019 case in Tucumán, Argentina, “the non-provision of certain services to women and girls in legal conditions is discriminatory and absolute restrictions of prohibitions on access to legal interruption of pregnancy may constitute torture and ill-treatment”.<sup>12</sup>

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>13</sup> The data from the Population Census of 2011 of Bolivia shows that there are unofficial unions or marriages of girls as young as seven,<sup>14</sup> which in effect sanctions the rape of young girls. There is also sometimes extreme pressure from religious institutions to avoid a legal abortion at all costs, even in cases of sexual violence, which often leaves the girl or the family with no choice but to force her to marry the perpetrator.

### ***Suggested Questions for Bolivia:***

We respectfully urge the Committee to raise the following questions with the government of Bolivia regarding the violations of the Convention addressed in this submission:

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<sup>12</sup> Para la ONU, impedirle un aborto legal a una niña puede "constituir una tortura", La Nacion, 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>13</sup> Plan Internacional Bolivia, Informe sobre el Estudio de Matrimonio y Uniones Forzadas de Niñas en Bolivia, 2018.

<sup>14</sup> Available at <https://www.paginasiete.bo/sociedad/2018/10/7/registran-9552-embarazos-de-ni%C3%B1as-menores-de-14-aos-196137.html>

- What measures have been undertaken by the government of Bolivia to ensure that sexual violence crimes are defined in compliance with the standards developed by the CEDAW Committee? In particular, are amendments envisaged to the Bolivian Penal Code to cover sexual violence acts committed without the victim's voluntary, genuine and willing consent, and to include a wide range of coercive circumstances?
- What measures have been undertaken by the government of Bolivia to repeal the *estupro* provision?
- What measures have been undertaken by the government of Bolivia to ensure that those on the front line of the administration of justice conduct gender-sensitive investigations of sexual violence crimes?
- What measures has the government of Bolivia taken to ensure that adolescent victims of sexual violence are able to access justice without undue burden?
- What measures have been undertaken by the government of Bolivia to prevent of unwanted pregnancies and sexually transmitted infections as a result of the crimes of rape, incest and *estupro*?
- What measures is the government currently undertaking to guarantee that victims of sexual violence have access to justice during the quarantine period and how are they guaranteeing that victims are protected from aggressors who may be freed from detention as a result of COVID-19?

***Suggested Recommendations:***

We also respectfully urge the Committee to make the following proposed recommendations to the Bolivian government regarding the violations of the Convention addressed in this letter:

- 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”;
- Repeal the *estupro* provision from the Penal Code;
- 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, as well as the length of the maximum duration of the judicial process beyond three years;
- Approve the proposed bill to modify Articles 233 and 239 of the Law on Abbreviated Criminal Procedures (Law 1173) as those articles violate the rights of victims to effective protective measures;

- 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;
- 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 or are released into alternative measures to detention in such a way as to ensure their submission to the judicial process and that their victims are protected;
- Implement and allocate sufficient resources for a protection program for victims and witnesses, as well as a program for comprehensive care<sup>15</sup> for victims and their non-offending family members in cases of sexual violence;
- The government should renew the 2016 - 2020 Strategic Plan for Sexual and Reproductive Health for the next four year period (2021-2024) 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;
- The Bolivian government and specifically the Ministry of Education must implement a comprehensive human rights education which should include sexuality education in the educational curriculum based on international standards, incorporating a vision of prevention of sexual violence in boys, girls and adolescents.

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.

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<sup>15</sup> As defined by Article 12 of the Bolivian Code of Girls, Boys, and Adolescents.