



Gabriella Habtom  
Secretary of the Human Rights Committee  
Human Rights Committee Secretariat  
8-14 Avenue de la Paix  
CH 1211 Geneva 10  
Switzerland  
Via Email: [gabriella.habtom@un.org](mailto:gabriella.habtom@un.org); [cherry.balmaceda@un.org](mailto:cherry.balmaceda@un.org); [ccpr@ohchr.org](mailto:ccpr@ohchr.org)

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## Information on Bolivia for the consideration of the Human Rights Committee at its 134th Session (February 28 - March 25 2022)

### Introduction

1. We present the following submission in advance of the 134th session of the Human Rights Committee ('the Committee'), taking place between 28 February - 25 March 2022. Equality Now, the Latin American and Caribbean Committee for the Defense of Women's Rights - CLADEM, the Legal Office of Women (La Oficina Jurídica de la Mujer), the Human Rights Community (Comunidad de Derechos Humanos), Fundación Una Brisa de Esperanza from Breeze of Hope (FUBE), A Breeze of Hope (ABH), the Network of Girls, Boys and Adolescents Against Sexual Violence (NNAS COVISE Network) and the Family Foundation Healthy (FAMISAL) request that this letter be used to supplement Bolivia's fourth periodic State Party report to the Committee. We are writing to express our concern about sexual violence laws and procedures in Bolivia that deny justice to survivors and constitute a violation of Bolivia's obligations under the International Covenant on Civil and Political Rights (ICCPR).

2. The legal provisions and practices detailed in this submission highlight the failure of the State to comply with its obligations under Article 2 (non-discrimination), Article 3 (equality for

men and women), Article 7 (prohibition of inhuman treatment) and Article 26 (equality before the law) of the ICCPR. Specifically, this submission details Bolivia's failure with regard to laws, procedures and practices related to rape and other forms of sexual violence which effectively deny survivors of sexual violence access to justice.

### **Information about the authors of the report**

3. **Equality Now** is an international human rights NGO with ECOSOC status with the mission to achieve legal and systemic change that addresses violence and discrimination against all women and girls around the world. Founded in 1992, Equality Now is a global organization with partners and supporters in every region. Ending sexual violence, ending sexual exploitation, ending harmful practices and achieving legal equality are the main areas of Equality Now's work.

4. **The Latin American and Caribbean Committee for the Defense of Women's Rights - CLADEM Bolivia** is a network of feminist activists that develops its actions at the national level using different expertise by undertaking legislative proposals, research, training, national and international litigation, internal monitoring of the State and government to ensure compliance with regional and international instruments on human rights and education in academic fields related to the defense of women's rights. The National Coordinator of CLADEM Bolivia is Patricia Brañez Cortez, with CI 2047386 LP.

5. **The Legal Office of Women (La Oficina Jurídica de la Mujer)** is a non-governmental development organization based in Bolivia 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 using a sociopolitical perspective, seeks to influence policies related to women.

6. **The Human Rights Community (Comunidad de Derechos Humanos)** is a group of civil society organizations based in Bolivia that have a feminist vision of democracy which includes social justice and gender equality that guarantees the full validity of human rights, in particular of women, girls, boys, adolescents and the LGBTI population. They develop capacities of guarantors and subjects of rights, construct proposals, generate information and promote the use of international mechanisms, as well as public accountability for human rights issues.

7. **A Breeze of Hope Foundation (ABH)** engages in regional and international advocacy to prevent sexual violence and improve access to justice and healing for child survivors of sexual violence throughout Latin America with a special focus on Bolivia.

8. **The Fundación una Brisa de Esperanza (FUBE)** is Bolivia's premier center for child survivors of sexual violence. Since 2004, FUBE has provided free legal, social, and psychological services to child survivors of sexual violence and their non-offending, supportive family members. FUBE also engages in sexual violence awareness and prevention activities in Bolivia, as well as national legal reform efforts.

9. **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 are experiencing sexual violence to

break the silence, denounce and prosecute their aggressors so that their right to health can be restored.

10. **The Family Foundation Healthy (FAMISAL)** works in Bolivia for the construction of a society that has families who are trained and equipped to take care of issues relating to their health, where children and especially infants play a central role enjoying appropriate conditions for their development.

11. We reiterate and support the Concluding Observations on the third periodic report of Bolivia<sup>1</sup> and underscore, in particular, the recommendations urging Bolivia to:

- (a) Step up its efforts to prevent and eliminate all forms of gender-based violence by ensuring the effective application of the legislative framework at all levels of the State and providing the necessary resources for that purpose. The State party should investigate acts of violence against women promptly and effectively, prosecute the perpetrators of such acts and punish them appropriately. The State party should also expedite the updating of the National Information System on Domestic Violence so as to make it possible to adopt suitable measures in that regard. In addition, the State party should ensure that victims are able to avail themselves of their right to redress, which includes fair and adequate compensation, and their right to protection by, inter alia, increasing the number of shelters, particularly at the municipal level;<sup>2</sup>
- (b) Step up its efforts to eliminate gender stereotypes and conduct awareness-raising campaigns to that end. It should also adopt any temporary special measures necessary to continue to increase women's — and particularly indigenous women's — participation in public life at all levels of the State and their representation in decision-making positions in the private sector. The Committee encourages the State party to take practical steps on an urgent basis to issue implementing regulations for the new Act on Political Harassment and Violence against Women so as to ensure that the perpetrators of political harassment and murders of women are investigated, tried and punished in an appropriate manner and that victims are properly protected;<sup>3</sup>
- (c) Redouble its efforts to ensure the effective application of the legal and regulatory framework for the elimination of child labour and child sexual exploitation and should ensure that violations of the relevant legislation are effectively investigated and those responsible are tried and punished;
- (d) Lift the requirement for prior court authorization for therapeutic abortions and abortions following rape, statutory rape or incest in order to effectively guarantee access to legal, safe abortions;<sup>4</sup>

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<sup>1</sup> Human Rights Committee Concluding observations on the third periodic report of the Plurinational State of Bolivia, CCPR/C/BOL/CO/3

<sup>2</sup> Id. at para 10

<sup>3</sup> Id. at para 8

<sup>4</sup> Id. at para 9

- (e) Refrain from prosecuting women who have had an illegal abortion because of the difficulties involved in obtaining the required prior court authorization.<sup>5</sup>

### Scale and nature of sexual violence in Bolivia

12. 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>6</sup> Four out of ten women suffer sexual violence in Bolivia and 80% of cases of sexual crimes against women, girls and adolescents go unpunished. Data from the State Attorney General's Office indicate that in 2019, 1,020 complaints of crimes of sexual violence were registered, 90% of which corresponded to girls and adolescent women. In 2020, 2,091 complaints were registered, 93% corresponded to girls and adolescent women. For the 2021 administration, 2,078 cases of rape of infants, girls, boys and adolescents were reported; 2,638 cases of sexual abuse; 1,548 cases of rape; 2,249 cases of rape of women, 217 cases of sexual harassment.<sup>7</sup> In the first five months of 2020 alone, 352 cases of rape against children and adolescents were reported.<sup>8</sup>
13. 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 lockdowns 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. The latest data we found is from a report issued by the Inter-American Commission on Human Rights in 2007, revealing 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>9</sup>

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<sup>5</sup> Id. at para 9

<sup>6</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>7</sup> See: <https://www.fiscalia.gob.bo/index.php/fiscalia/1719-fis-genero-y-juvenil>; <https://plan-international.org/es/news/2021-10-06-violencia-sexual-y-fisica-afectan-las-ninas-y-adolescentes-en-bolivia>; and <https://www.fiscalia.gob.bo/index.php/4565-ministerio-publico-bolivia-registro-113-casos-de-feminicidios-en-el-ano-2020>

<sup>8</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>9</sup> Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia, Inter-Am. C.H.R., para. 348 (2007).

**Legal and other provisions which are discriminatory towards women and girls, allow for impunity for perpetrators of sexual violence, and enable rather than prevent violence and deny the right to remedy and redress**

### *Force-Based Definition of Rape*

14. Definitions of rape which are based on force or the threat of force, as opposed to lack of consent to the sexual intercourse, fail to meet international human rights standards<sup>10</sup> and are problematic for a number of reasons. For instance, force-based definitions of rape risk leaving certain types of rape unpunished, contribute to rape myths and the perception that it is the responsibility of victims to protect themselves, significantly limiting the extent to which crimes of rape can successfully be prosecuted, and leave room for significant impunity.
15. The definition of rape in the Penal Code of Bolivia is based on force, requiring intimidation, physical or psychological violence, taking advantage of a severe mental disease or insufficient intelligence of the victim, or any other disabling cause which prevents the victim from resisting.<sup>11</sup> Furthermore, the law does not define the term “consent” or provide presumptions against consent.

### *Estupro*

16. The crime of *estupro* usually describes cases in which an adult has sexual relations with a minor above the legal age of consent by means of seduction or deceit. The penalties for *estupro* are normally far lower than applicable penalties for rape. The existence of this discriminatory offense in relation to teenage girls contributes to impunity for rapists, as it ignores the unequal power dynamics between adults and adolescents, perpetuates harmful myths and stereotypes about adolescents, and allows adults who rape adolescents to avoid the full consequences of their crime. The existence of *estupro* provisions deny adolescent victims access to justice and the United Nations Special Rapporteur on Violence Against Women has recommended that *estupro* provisions, where they exist, should be abolished.<sup>12</sup> Repeal of discriminatory *estupro* provisions, however, must be accompanied by a complete overhaul of sexual violence laws, including adopting consent-based definitions of rape, to ensure that adolescent girls are protected from sexual violence in all circumstances.
17. In addition, the lesser offense of *estupro* is often used to circumvent rape charges, thereby denying justice to adolescent victims of rape and weakening the overall statutory scheme

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<sup>10</sup> See Inter-American Court of Human Rights, *Sentence in the Caso J. vs. Peru*, 27 November 2013, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_275\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_275_esp.pdf) at para. 358; Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, §5.

<sup>11</sup> Article 308, Penal Code of Bolivia, [https://www.oas.org/dil/esp/Codigo\\_Penal\\_Bolivia.pdf](https://www.oas.org/dil/esp/Codigo_Penal_Bolivia.pdf)

<sup>12</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, A/HRC/47/26, 19 April 2021, paras 84-85.

against sexual violence. Bolivian courts have been using the *estupro* law to allow adults who rape adolescents to avoid the full consequence of their crime.

18. Specifically, the Penal Code of Bolivia contains an *estupro* provision, whereby having carnal access to a person between the ages of 14-18, through seduction or deceit, is considered as *estupro*.<sup>13</sup> The offense of *estupro* is punishable with a lower penalty of imprisonment between 3-6 years, as compared to imprisonment of 15-20 years for rape. This approach suggests a notion of a hierarchy of rape where some perpetrators are deemed less guilty than others for effectively the same crime and some victims are implied to be less harmed by the experience and so less deserving of justice. Such a hierarchical approach to the same crime -- non-consensual sexual intercourse -- has a normative effect, which in turn has an impact on the way rape is regarded and treated within the criminal justice system generally. Non-consensual sexual intercourse should be treated universally as a serious crime and any aggravating circumstances, such as additional use of violence, should be accounted for with penalties applied for aggravating circumstances.

### ***Statute of Limitations***

19. Short limitation periods during which rape cases may be brought forward impede access to justice for survivors, particularly given the various factors which cause delays in reporting. The Penal Code of Bolivia has a limited statute of limitations for all offenses, including rape. A rape victim is only afforded 8 years to come forward and report the crime before prosecution is no longer possible.<sup>14</sup> The statute of limitations for crimes related to sexual violence for minor victims is extended and only starts to run four years after majority (which is 18).<sup>15</sup> Therefore minor victims of rape have until they reach the age of 30 to file a case. Statutes of limitations place an overwhelming burden on victims and allow perpetrators to evade punishment. The trauma, stigma, damage, and sometimes continuing threat and fear experienced as a consequence of sexual violence can prevent the victim from reporting the crime or delay reporting. This might be particularly true in the context of childhood sexual violence when violations might not even be recognized as such by the victim until many years later, or in coercive domestic violence or intimate partner situations, or for example in the context of conflict, political violence or social disturbance.
20. The filing by a minor of a complaint of sexual violence is nearly impossible as it requires either parental authorization or the assistance of a service organization or ombudsman. This is problematic as often the perpetrators themselves are family or community members, and other family members thus may not be willing to assist the survivor in reporting the incident. This contributes to a general lack of reporting of sexual violence against minors which in turn adds to the culture of impunity in such cases. 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.

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<sup>13</sup> Article 309, Penal Code of Bolivia, [https://www.oas.org/dil/esp/Codigo\\_Penal\\_Bolivia.pdf](https://www.oas.org/dil/esp/Codigo_Penal_Bolivia.pdf)

<sup>14</sup> Article 29, Code of Criminal Procedure.

<sup>15</sup> Article 30, Code of Criminal Procedure.

### *Lack of Effective Implementation of Existing Laws and Barriers to Survivors Accessing Justice and Protection*

21. In addition to gaps in legal protection, there is also failure to effectively implement laws on sexual violence and a systemic practice of enabling impunity for perpetrators of sexual violence, especially when committed against underage girls. Those women and girls who do manage to report their abuse often face significant obstacles to achieving justice, including re-victimization, delays in prosecution, and unwillingness by police to believe survivors and take effective action to investigate sexual violence crimes. Further, prosecutors and judges are not commonly sensitized to structural sex inequality and are influenced by harmful rape myths and gender stereotypes. For instance, many judges still look exclusively for evidence of physical injuries and believe that rape cannot have taken place in the absence of such physical injuries.<sup>16</sup>
22. 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 where the perpetrator is 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 survivors of rape the means to access justice.
23. The State does not comply with its obligation to guarantee access to justice for victims of sexual violence as it does not carry out investigations that comply with the national and international protocols. The State has not fully complied with the provisions of paragraph III of Article 15 of the Political Constitution of the State nor has it complied with the jurisprudence of the Inter-American Court regarding the guarantees of due diligence that must be extended to the investigation acts prior to the judicial processes.<sup>17</sup> Furthermore, the State, through the Public Ministry which is responsible for the investigation of crimes of gender-based violence, has not complied with number 2 of Article 61 of Law No. 348, referring to the collection of the necessary evidence in order to find out the truth or Article 64 referring to the specialty required for forensic doctors.
24. 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

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<sup>16</sup> See Zulema Alanes Bravo, *Sexual Violence against Girls and Adolescents: The Pending Idea of (In)justice*, Fides Agency, 10 December 2017.

<sup>17</sup> The Ombudsman Report, *On the principle of due diligence during the investigation stage in cases of sexual violence*, Bolivia 2020.

creation of programs such as the Comprehensive Plurinational Justice Service (SIJPLU),<sup>18</sup> the Defenders of Children and Adolescents, Specialized Centers for Prevention and Therapeutic Care dependent on Departmental Services of Social Management (SEDEGES), and that low-income victims have access to justice through the Plurinational Victim Assistance Service, such services are not widely available due to a lack of service providers and proper funding by the State. Such lack of availability, coupled with the fact that very few legal organizations offer pro bono services, forces many survivors to turn to private lawyers whose high fees are prohibitive to many.

25. Further, the State's initiatives to prevent gender-based violence and to protect and support survivors of gender-based violence have had little support from the government institutions charged with overseeing these efforts and also suffer from a lack of financial resources.
26. 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>19</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 restraints and the high-rate of turnover since employees are hired as short-term consultants.
27. 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.
28. 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 women, adolescent and 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>20</sup> Reports from women, adolescents and girls who have undergone forensic medical examinations following complaints of sexual assault are that they are re-traumatizing. Training for judges and prosecutors is 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.
29. 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

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<sup>18</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>19</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

<sup>20</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), art. 8.

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 (STIs), since it is believed that those tasks should be carried out by a private doctor who the victims must see on their own. This can condemn the victim to unwanted pregnancy and motherhood or to dying from an undiagnosed or untreated STI.

### ***Forced pregnancy and lack of abortion access for survivors of sexual violence***

30. Other alarming situations, particularly 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 in 14 countries in Latin America and the Caribbean, including Bolivia. 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. 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.
31. Women, and particularly, adolescent girls who become pregnant as a result of sexual violence may not be able to access an abortion and be forced to carry a pregnancy to term. This is 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 (ILE).<sup>21</sup> Some obstacles identified<sup>22</sup> in accessing abortions in health centers and from other providers which have a discriminatory effect and are gender biased, include a) collective declarations by medical professionals conscientiously objecting to assist; b) ILE is not performed within 24 hours due to the fact that health providers do not comply with the regulations established in the Technical Procedure for the Provision of Health Services in the Framework of the Plurinational Constitutional Judgment 0206/2014 (Ministerial Resolution 0027/2015; Ministry of Health and Sports) that indicates that women, adolescents and girls must have access to the Legal Interruption of Pregnancy within 24 hours after the rape. c) Health providers also hold medical meetings to prove that the pregnancy is viable or that the gestation period has passed more than 22 weeks, even when there is no regulation indicating the gestation time limit for carrying out the ILE.; d) lack of supplies; e) lack of adequate information on the content of constitutional ruling 206/2014 and the Technical Procedure for the Provision of Health Services in the Framework of Plurinational

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<sup>21</sup> Opinión, 2022, “Embarazos adolescentes condenan a menores a servir a sus parejas”, available at [https://www.opinion.com.bo/articulo/pais/embarazos-adolescentes-condenan-menores-servir-parejas/20220109001655850593.html?fbclid=IwAR3qW0nhrICu7Y\\_4jRjzQ8liSvYZvJWx3-wL5OjaCm6nOwPUXTTI7egoQqI](https://www.opinion.com.bo/articulo/pais/embarazos-adolescentes-condenan-menores-servir-parejas/20220109001655850593.html?fbclid=IwAR3qW0nhrICu7Y_4jRjzQ8liSvYZvJWx3-wL5OjaCm6nOwPUXTTI7egoQqI)

<sup>22</sup> ILE, 2020, Informe Defensorial sobre el cumplimiento de la sentencia constitucional plurinacional 206/2014 y la aplicación del procedimiento técnico para la interrupción legal del embarazo en los servicios de salud a nivel nacional, La Paz, Bolivia.

Constitutional ruling 0206/2014 of health service providers. e) Judicial permission is required when only a simple copy of the complaint must be submitted, because health service providers continue to request judicial permission from rape victims who want to access the ILE, when constitutional ruling 206/2014 eliminates this requirement and states that with the simple copy of the complaint, the health center must proceed to carry out the ILE. f) requirement for signing an informed consent that is not an official requirement of the Ministry of Health but a form written by health providers blaming women and girls even with religious content; and g) lack of privacy and confidentiality to perform the abortion. 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 women and adolescent girls being forced to continue with the pregnancy. This generates new and serious violations of their rights to life, health, bodily and emotional integrity.<sup>23</sup>

32. Between 2014 and 2021, IPAS<sup>24</sup> registered 72,606 cases of incomplete abortion due to remains in the uterus that usually lead to intense bleeding and a total of 687 cases of ILE in public services. For its part, the National Health Information System (SNIS)<sup>25</sup> of the Ministry of Health reports that in 2018 prenatal care was provided to 2,949 girls under 15 years of age; in 2019: 2,591 and in 2020: 2,170. The data for the year 2020 is considered to be under-recorded due to restrictions as a result of the COVID-19 pandemic. Data relating to prenatal care further demonstrate that the health sector does not bring forward complaints to the Prosecutor's Office when pregnancies of girls under 15 years are detected, that is when under law there must have been sexual abuse. The SNIS reported that between January and October 2021, there were 2,020 pregnancies identified in girls under 15 years of age in the different health centers around the country. 34.8% of these child pregnancies had passed the fifth month, a time that - due to lack of clarity of the laws - is used to delay or deny a legal interruption of the pregnancy. The data show that, on average, there are seven pregnant girls every day, three more than in 2020, when the figure for a similar period was four a day.<sup>26</sup>
33. Many girls and adolescents are forced into marriage and early unions as a result of pregnancy, which violates the rights of the girl that are seen to be “transferred” between the family of the victim of rape and statutory rape and the aggressor. The data from the Population Census of 2011 of Bolivia show that there are unofficial unions or marriages of girls as young as seven, which in effect sanctions the rape of young girls. There is also

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<sup>23</sup> OEA, 2021, “La CIDH urge al Estado de Bolivia cumplir con su obligación de proteger a las niñas ya las adolescentes de la violencia sexual y garantizar sus derechos sexuales y reproductivos”, disponible en <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/287.asp>

<sup>24</sup> IPAS, 2021, Bolivia: Situación de los derechos sexuales y reproductivos en Bolivia, disponible en [https://www.ipasbolivia.org/noticias/situacion-de-los-derechos-sexuales-y-derechos-reproductivos-en-bolivia-durante-el-182-periodo-de-sesiones-de-la-cidh?utm\\_source=sendinblue&utm\\_campaign=Noticias%20de%20stacadas%20de%20diciembre&utm\\_medium=email](https://www.ipasbolivia.org/noticias/situacion-de-los-derechos-sexuales-y-derechos-reproductivos-en-bolivia-durante-el-182-periodo-de-sesiones-de-la-cidh?utm_source=sendinblue&utm_campaign=Noticias%20de%20stacadas%20de%20diciembre&utm_medium=email). Véase también Ipas. Bolivia: <https://www.ipasbolivia.org/>

<sup>25</sup> See <https://snis.minsalud.gob.bo/>

<sup>26</sup> Página siete, 2021, “50 denuncias de infanticidios y 2.020 niñas embarazadas en un año violento para la niñez”, disponible en <https://www.paginasiete.bo/especial02/2022/1/1/50-denuncias-de-infanticidios-2020-ninas-embarazadas-en-un-ano-violento-para-la-ninez-318918.html>

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.

### ***Discrimination, including sexual violence, of women and girls with disabilities***

34. The virtual platform of the National Single Registry System for Persons with Disabilities (SIPRUNPCD, 2019), dependent on the Ministry of Health, reported at the national level that there are 84,224 registered persons with disabilities, of whom 71,438 have a disability identity card.<sup>27</sup> Of the 9 departments in the country, those with the highest percentage of people with disabilities are La Paz, 31.7%; Holy Cross 23.5%; Cochabamba 15.9% and Potosí with 7.5%. Of the total of this population, 47.2% have visual disabilities; 17.1% physical motor disability; 14.9% hearing impairment; 9.4% verbal or communication disability; 7.4% have intellectual disabilities and 3.9% are unspecified (INE, 2016).
35. The Ombudsman's Office in its report "*State of the Situation of the Rights of Women with Disabilities*" (McD) in Bolivia,<sup>28</sup> recognises that women face double discrimination due to their disability and their status as women, placing them in a situation of high vulnerability and social risk, such as violence, exclusion and severe difficulties in exercising their rights.
36. Although Bolivian legislation provides for some benefits for people with disabilities, they do not necessarily have the required institutional and human resources, such as sensitive operators, to meet their demands. Therefore, a comprehensive policy is necessary at all levels of government to contribute social and state spaces of respect and appreciation and to create conditions for their personal development with autonomy, dignity and equality.
37. Sexual violence and sexual harassment are together at a level of 13.4%, highlighting the high degree of risk and vulnerability faced by women with disabilities, particularly in the family environment which is considered to be the most insecure space in which these abuses are perpetrated.
38. Women, adolescents and girls are particularly vulnerable to various forms of sexual violence. They face intersecting forms of discrimination based on their sex, gender and disability. Including when confronting legal and criminal justice response barriers and ways for overcoming them, as well as, stereotypes and vulnerabilities that make it difficult for survivors with disabilities to be believed when reporting incidents of sexual violence. "*Even though rape is about power and control, not about desirability, evidence provided by a woman with physical, mental, or intellectual disabilities may be considered unreliable based on discriminatory or stereotyped ideas. Examples of these may include such things as an assumption that her condition*

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<sup>27</sup> This refers to the disability card which provides bonuses or aid conditioned by the Bolivian State and channeled by the autonomous municipal governments throughout the Bolivian territory.

<sup>28</sup> Estado de situación de los derechos de las mujeres con discapacidad. Defensoría del Pueblo, Fondo de Población de las Naciones Unidas – UNFPA. La Paz – Bolivia: UNFPA, 2011.

*prevents her from providing an accurate account of the circumstances of the case or that a woman with disabilities would not be sexually desirable so could not have been targeted for rape”<sup>29</sup>*

39. Their caregivers, guardians, teachers or others with power over them may take advantage of their specific disabilities to abuse, coerce and control them, including, neglect; bullying, including verbal abuse and teasing; refusing to assist them in communication; refusing to mobilize them or help with daily activities of personal hygiene or menstruation; food or water retention; exercising control by restricting access to family, friends or other people; and committing various forms of sexual violence, psychological or economic violence, abuse of the defenselessness of the victim or all of the above.
40. Victims face a series of obstacles to report and prove that they suffered sexual violence such as, for example, that the evidence provided by a woman or adolescent with physical, mental or intellectual disabilities is unreliable. This is as a result of discriminatory myths, prejudice and stereotypes of members of the judicial branch which are reinforced when victims with disabilities are sometimes unable to consistently or comprehensively describe the facts of a crime.
41. In criminal proceedings, sexual violence against women with intellectual disabilities must be evaluated to determine if it has affected the victim's ability to testify in court or if the victim had the capacity to consent to sexual activity. It is essential that justice operators investigate whether the victim understands the sexual nature of the crime and whether she is capable of consenting to or rejecting the sexual act, as well as the possible risks and consequences of a pregnancy or a sexually transmitted infection.
42. Women admitted to psychiatric hospitals (public or private) under the tutelage and responsibility of the State are particularly exposed to situations of abuse due to their reduced ability to report or because others do not believe their word. According to the Inter-American Commission on Human Rights (IACHR), the characteristics of sexual violence in health institutions require special procedures for the complaint, investigation, and judicial process, considering the specific circumstances that the victims could face and the imbalance of power in the institutions, including doctor-patient relationships.

### **Recommendations:**

#### **Force-Based Definition of Rape**

- Ensure that the definition of rape is amended so that it is not based on a requirement to prove force, but rather covers all forms of penetration with a body part or object committed without the victim’s voluntary, genuine, and willing consent, and in a wide range of coercive circumstances.
- Ensure that the law recognizes there are circumstances where it is not possible to give voluntary, genuine, and willing consent and that it must look more broadly at the issue of

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<sup>29</sup> Equality Now, 2021, *Accessible Justice: Sexual Violence Against Women And Girls With Disabilities*, available at [https://www.equalitynow.org/news\\_and\\_insights/accessible-justice-sexual-violence-against-women-and-girls-with-disabilities/](https://www.equalitynow.org/news_and_insights/accessible-justice-sexual-violence-against-women-and-girls-with-disabilities/)

exploitation, including sexual violence in the context of family or other relationship where there is particular dependency and inequality of power relationships.

### ***Estupro***

- Repeal the *estupro* provision contained in Article 309 of the Penal Code. Repeal of discriminatory *estupro* provisions must be accompanied by a complete overhaul of sexual violence laws including adopting a consent-based definition of rape (as discussed above), to ensure that adolescent girls are protected from sexual violence in all circumstances.

This is again because the current law has a requirement to prove additional violence and resistance which is not always possible and does not take into account the many different reactions to being raped, such as freezing rather than fighting back or feeling confused in situations of exploitation of power relationships for example with respect to incest or rape by teachers.

- While existing *estupro* provisions remain in the statute books, prosecutors and judges should ensure that acts of sexual violence against adolescent girls which meet the threshold of the rape definition should always be prosecuted/charged as rape and not *estupro*.

### **Statute of Limitations**

- Ensure that the prosecution of rape, in cases of both adult and minor victims, is not subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict.
- 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 a minor filing the criminal complaint.

### **Lack of Effective Implementation of Existing Laws and Barriers to Survivors Accessing Justice and Protection**

- Ensure that all forms of sexual violence offenses are treated as matters of public interest, which have to be investigated and prosecuted by the State as a priority.
- Carry out investigations that comply with the provisions of paragraph III of Article 15 of the Political Constitution of the State, number 2 of Article 61 of Law No. 348, referring to the collection of the necessary evidence in order to find out the truth, and Article 64, referring to the specialty required for forensic doctors.
- Effectively implement laws on sexual violence, including by training justice system officials, including police, prosecutors and judges, to specifically deal with cases of sexual violence in a victim-centered and trauma-informed way and implement investigation and prosecution protocols to guide implementation of sexual violence legislation and processing of such cases in the judicial system. Ensure that such protocols also specifically address the needs of marginalized communities.

- 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>30</sup> for victims and their non-offending family members in cases of sexual violence.

### **Forced pregnancy and lack of access to abortion for survivors of sexual violence**

- Take all efforts to ensure women and girls can access safe and timely abortion services, including and especially those who were made pregnant by rape or incest.
  - Ensure that women have access to a legal procedure to report, investigate and sanction health employees who discourage, misinform or use religious beliefs or prejudices to blame women, adolescents and girls for accessing abortion services.
  - Train health personnel to respect women's, adolescents' and girls' sexual and reproductive rights.
- 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, particularly for girls under 15 years old.
  - Register the pregnancies of minor girls as a result of rape, incest, statutory rape and *estupro*, as well as monitor compliance with the constitutional Judgment 0206/2014 and the Pregnancy Care Protocol for Girls under 15 years of age in the Public Ministry and the health system, in order to ensure access to the termination of pregnancy when girls require it.

### **Additional recommendations to support survivors of sexual violence**

- Budget sufficient resources for programs and support services to prevent and address sexual violence, actively and integrally including civil society, women and girls, and survivors of sexual violence in policy planning and budgetary processes, and taking a survivor-centered, holistic approach with an additional special focus on the needs of girls and adolescents.
- Implement age-appropriate sex and relationship education programs in schools, and public information and awareness campaigns aimed at promoting equality, dismantling negative stereotypes, and ending violence against women and girls.
- Develop and fund awareness campaigns to inform the public, particularly women and girls, to understand their rights and improve knowledge of laws related to sexual violence, emergency contraception, and methods to preserve evidence prior to reporting.
- Take steps to ensure that the Ombudsman for Children and Adolescents has the necessary qualifications and expertise to be able to identify cases of sexual violence and child pregnancies, including of girls with disabilities, as well as allocate sufficient resources to identify risk situations or abusive behaviors; promote comprehensive sex education which promotes the understanding of sexual integrity and consent.

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<sup>30</sup> As defined by Article 12 of the Bolivian Code of Girls, Boys, and Adolescents.

## **Recommendations for women with disabilities**

- Take concrete measures to reform the protocols of the health and criminal justice system that support women with disabilities to establish a legal procedure for the complaint, investigation and subsequent judicial process for sexual violence victims, taking into account the psychological or economic violence due to the imbalance of power relationships, including but not limited to doctor-patient, caregivers, guardians, teachers or others relationships with power over them.
- Develop a national campaign with the Ministry of Women, Judicial Power, Police, hospitals and NGOs to raise awareness about the legal and other obstacles that women with disabilities confront in order to eradicate the discriminatory myths, prejudice and stereotypes of members of the institutions cited above.
- Ensure physical, cognitive and psychological recovery, rehabilitation and social integration services are made available for women, adolescent girls and girls with disabilities who become victims of violence, and in particular sexual violence.
- Involve women with disabilities of all ages in the formulation of policies addressing their needs and barriers, creating specific indicators to measure the implementation and achievement of the policies.