



**HEARTLAND
ALLIANCE**
GLOBAL INITIATIVE FOR
SEXUALITY AND HUMAN RIGHTS

Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Bolivia: A Shadow Report

**Submitted for consideration at the 109th Session of the United
Nations Human Rights Committee (Bolivia)**

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Executive Summary

This report is a joint submission by the *Red de Travestis, Transexuales y Transgénero de Bolivia* (Red TREBOL) and Heartland Alliance for Human Needs & Human Rights (Heartland Alliance) to the United Nations (UN) Human Rights Committee (“HRC” or “the Committee”) on the occasion of its consideration of the Plurinational State of Bolivia (“Bolivia” or “the State”)’s implementation of the *International Covenant on Civil and Political Rights* (“the Covenant” or “the ICCPR”) in Geneva, on October 14 and October 16, 2013. The purpose of this report is to highlight the widespread and systematic human rights violations against lesbian, gay, bisexual and transgender persons in Bolivia despite its Constitutional protections against discrimination on the basis of sexual orientation and gender identity. In particular, the report draws the attention of the Committee to the following breaches of the ICCPR:

- The State of Bolivia has failed to implement any public policies, national programs, or educational campaigns that would rectify the extreme discrimination that LGBT individuals suffer with regard to employment, education, health care, and other societal sectors, and would address the violence that LGBT individuals suffer at the hands of police and civilians on the basis of sexual orientation and/or gender identity (Articles 2 and 26).
- LGB and particularly transgender persons suffer from high levels of cruel, inhuman, and degrading treatment, including a constant threat of violence, from both State and non-State actors (Article 7).
- There is systematic and widespread misconduct against transgender women by law enforcement and judicial officials including cruel, inhuman and degrading treatment, and dangerous conditions within male detention facilities (Articles 6 and 7).
- The State of Bolivia fails to adequately prevent, accept reports, investigate, and prosecute violence and killings carried out because of the victim’s sexual orientation or gender identity (Articles 2, 6 and 26).
- Transgender women in Bolivia suffer attacks, violence and discrimination because of their choice of clothing and other expressions of their gender identity (Article 19).
- Transgender citizens suffer discrimination within health, education, employment sectors and a lack of equality before the law, violation of privacy and recognition of personhood before the law due to the lack of legal recognition of one’s gender identity on government-issued documents (Articles 2, 16, 17 and 26).
- LGBT individuals face a lack of equality before the law and a violation of their right to family life with regard to social security, inheritance, adoption and other areas of the law due to the lack of legal recognition of same-sex unions (Articles 2, 23 and 26).
- LGBT children and youth suffer discrimination in schools on the part of school officials and classmates on the basis of their sexual orientation and gender identity (Article 24).

The violations referred to above are each exacerbated by systematic under-reporting due to fear of reprisals and the failure of the State to keep official reports and statistics of the violence and discrimination against LGBT individuals.

The extent and severity of the State of Bolivia’s human rights violations as described here within amount to a clear breach of the terms of the Covenant.

I. Introduction

This shadow report on the human rights situation of Lesbian, Gay, Bisexual, & Transgender (LGBT) people in Bolivia was written and submitted through the collaborative efforts of Red TREBOL¹ and Heartland Alliance's Global Initiative for Sexuality and Human Rights (GISHR)², with significant input from the List of Issues³ drafted and submitted to the Country Task Force before the 107th session of the Committee in March 2013, by Red TREBOL, GISHR, and collaborators from the Vermont Law School Center for Applied Human Rights.

UN human rights treaty bodies⁴ and independent experts working within UN Special Procedures⁵ have consistently applied international human rights standards to address human rights violations that occur on the basis of sexual orientation and gender identity, asserting that States must implement protections to combat abuses against LGBT individuals.⁶ In June 2011, the Human Rights Council adopted Resolution 17/19, *Human rights, sexual orientation, and gender identity*, expressing grave concern about the acts of violence and discrimination against individuals because of their sexual orientation or gender identity and commissioning a study on the matter from the High Commissioner for Human Rights (OHCHR).⁷ Subsequently, the OHCHR found that the core obligations of States with respect to protecting the human rights of LGBT persons are to: (1) Protect individuals from homophobic and transphobic violence; (2) Prevent torture and cruel, inhuman and degrading treatment; (3) Repeal laws criminalizing homosexuality; (4) Prohibit discrimination based on sexual orientation and gender identity; and (5) Safeguard freedom of expression, association and peaceful assembly for all LGBT people.⁸

¹ Red TREBOL is a Bolivian organization based in Santa Cruz, Bolivia, formed as a network of 70 trans women in Santa Cruz on October 13, 2007.

² This report was drafted by Kimberly Beers, GISHR Program Officer, with significant input and contributions from Rayza Torriani, President of Red TREBOL and Marcelo Ferreyra, GISHR Latin America and Caribbean Coordinator, under the supervision of Stefano Fabeni, GISHR Managing Director.

³ See Suggested List of Issues Report Submitted to the Country Report Task Force on Bolivia before the 107th Session of the Committee, *The Human Rights Situation of Lesbian, Gay, Bisexual, Transgender Persons in Bolivia* (Jan. 2013), available at http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GISHR_Bolivia_HRC107_en.pdf

⁴ Treaty bodies include: the Human Rights Committee; the Committee on Economic, Social, and Cultural Rights; the Committee on Elimination of Discrimination Against Women; the Committee on Elimination of Racial Discrimination; the Committee on Children's Rights; and the Committee Against Torture.

⁵ Special Procedures experts include but are not limited to: Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment; Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions; Special Rapporteur on Violence Against Women, its Causes, and its Consequences; Working Group on Arbitrary Detention.

⁶ See generally, International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law, References to Jurisprudence and Doctrine of the United Nations Human Rights System* (April 2010), available at http://www.asiapacificforum.net/support/issues/acj/references/sexualorientation/downloads/Jurisprudence_and_Doctrine_of_UN_Human_Rights_System.pdf (comprehensive list of human rights bodies and experts applying human rights law to sexual orientation and gender identity).

⁷ See G.A. Res. 17/19, UN Doc. A/HRC/17/L.9/Rev.1, (June 25, 2011), available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19

⁸ See UN Human Rights Council, Report of the UN High Commissioner for Human rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation or gender identity, delivered to the General Assembly, UN Doc. UN A/HRC/19/41, (Dec. 15 2011) at ¶¶ 8-19, available at <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx>

Bolivia became a party to the International Covenant on Civil and Political Rights on August 12, 1982.⁹ As such, Bolivia is obligated to respect and enforce the rights guaranteed by the ICCPR for all persons within its jurisdiction. This requirement includes the duty to adopt legislative, judicial, administrative, educative, and other appropriate measures that are necessary to fulfill the ICCPR's legal obligations.¹⁰ Likewise, the HRC has repeatedly referred explicitly to sexual orientation and/or gender identity in its Concluding Observations issued upon the review of states.¹¹ In the course of Bolivia's Universal Periodic Review ("UPR") in 2010, members of the Human Rights Council Working Group on Human Rights made explicit recommendations to Bolivia to "include sexual orientation and gender identity in all laws and initiatives combating discrimination and promoting equality, and to develop public education and sensitivity programmes and make them available, including to police, military, judicial, prison and other authorities."¹²

The Bolivian Constitution is one of only a few in the world to make explicit reference to prevent and protect discrimination on the basis of sexual orientation *and* gender identity.¹³ In addition to

⁹ See OHCHR, Status of Ratifications, International Covenant on Civil and Political Rights, *available at* <http://www2.ohchr.org/english/> (last visited 29 August 2013).

¹⁰ See U.N. Human Rights Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* [80], UN Doc. CCPR/C/21Rev.1, (26 May 2004) at ¶¶ 6, 7, 10, 13, *available at* <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

¹¹ See, e.g., *Concluding Observations of the Human Rights Comm.: Barbados*, UN Doc. CCPR/C/BRB/CO/3, (11 May 2007) (requesting repeal of criminalization of same-sex consensual relations);

See also Concluding Observations of the Human RC: El Salvador, UN Doc. CCPR/CO/78/SLV, (22 Aug. 2003) (requesting effective protection for sexual minorities);

See also Concluding Observations of the Human RC: Belize, UN Doc. CCPR/C/BLZ/CO/1, (26 Apr, 2013) (requesting review its Constitution and legislation to ensure that discrimination on grounds of sexual orientation and gender identity are prohibited; requesting information on the outcome of the case challenging the constitutionality of section 53 of the Criminal Code and section 5(1)(e) of the Immigration Act; requesting that cases of violence against LGBT persons are thoroughly investigated and that the perpetrators are prosecuted);

See also Concluding Observations of the Human RC: Ukraine, UN Doc. CCPR/C/UKR/CO/7, (22 Aug. 2013) (requesting improvements to its anti-discrimination legislation to ensure adequate protection against discrimination in line with the Covenant and other international human rights standards; requesting to list sexual orientation and gender identity among the prohibited grounds for discrimination; requesting that those responsible for discrimination bear administrative, civil and criminal responsibility in appropriate cases; requesting to state that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, hate speech or discrimination or violence against persons because of their sexual orientation or gender identity; requesting to provide effective protection to LGBT persons and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity; requesting to take all necessary measures to guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT persons and defenders of their rights; requesting to amend order No. 60 and other laws and regulations with a view to ensure that: (1) the compulsory confinement of persons requiring a change (correction) of sex in a psychiatric institution for up to 45 days is replaced by a less invasive measure; (2) any medical treatment should be provided in the best interests of the individual with his/her consent, should be limited to those medical procedures that are strictly necessary, and should be adapted to his/her own wishes, specific medical needs and situation; (3) any abusive or disproportionate requirements for legal recognition of a gender reassignment are repealed; requesting not to permit the two draft bills "on propaganda of homosexuality" to become laws.).

¹² See *UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Plurinational State of Bolivia*, UN Doc. A/HRC/14/7 (15 Mar. 2010) at ¶¶ 98 Recommendation 26, *available at* <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G10/120/13/PDF/G1012013.pdf?OpenElement>

¹³ Article 14 of the Constitution of the Plurinational State of Bolivia reads: II. The State prohibits and punishes all forms of discrimination based on sex, color, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious belief, ideology, political affiliation or philosophy, civil status, economic or social

the ICCPR, Bolivia became a party to the Convention Against Torture on April 12, 1999¹⁴, and its Constitution has reiterated the right of every person to “life and physical, psychological and sexual integrity,” and each persons’ right to not be “tortured, nor suffer cruel, inhuman, degrading or humiliating treatment.”¹⁵ Furthermore, its Constitution acknowledges that all international treaties and conventions ratified by the Bolivian State which recognize human rights shall prevail over domestic Bolivian law.¹⁶ As such, Bolivia acknowledges its duty to follow international human rights law in the case that its domestic laws and policies do not meet the standards of protection and promotion of human rights as laid out in the international conventions to which it is a party.

Positive legislative developments have seen little traction in diminishing widespread discrimination and violence against LGBT persons without concerted governmental initiatives and public policies to combat these issues. In December 2008, the Bolivian Justice Ministry presented a National Plan for Human Rights 2009-2013 with a specific chapter on LGBT rights. In this plan, the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity are included as non-binding, and the need to “promote the Yogyakarta Principles as guidelines on how to apply the international legislation and standards to LGBT issues in Bolivia,” is suggested.¹⁷ Nevertheless, there has been no practical implementation of this plan with regard to addressing issues of sexual orientation and gender identity, beyond the criminalization of discrimination on the basis of sexual orientation and gender identity in Law 045 of the Bolivian criminal code. Although some Bolivian civil society organizations such as the *Mesa de Trabajo Nacional* (MTN) have received funding from third party donors and from the Bolivian governments’ Global Fund HIV prevention resources to conduct sensitization workshops on transgender issues with Bolivian police, military personnel, and medical school students¹⁸, there has been no national programs coordinated by the government to address widespread societal discrimination of LGBT persons through educational campaigns or other initiatives.

In spite of Bolivia’s stated commitment to uphold the spirit of the ICCPR, its own Constitution’s protection of sexual orientation and gender identity, and the inclusion of sexual orientation and gender identity in its National Plan for Human Rights, the Bolivian government has failed to prevent and appropriately respond to numerous rights violations that have been perpetrated against LGBT individuals by both state and private actors. In fact, Bolivian Ombudsman Griselda Sillerico has noted that while, “laws are in place, [the issue] remains how these laws are

condition, type of occupation, level of education, disability, pregnancy, and any other discrimination that attempts to or results in the annulment of or harm to the equal recognition, enjoyment or exercise of the rights of all people.
English translation of the Spanish original text of the Constitution of 2009.

¹⁴See OHCHR, Status of Ratifications, Convention Against Torture, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=21&Lang=en (last visited 28 August 2013)

¹⁵ Constitution of the Plurinational State of Bolivia Article 15 ¶¶ I.

¹⁶ See *Id.* at Article 13 ¶¶. IV.

¹⁷ Ettlbrick, P., Trabucco Zerán, A. (2010), *The Impact of the Yogyakarta Principles on International Human Rights Law Development: A Study of November 2007- June 2010*; available at: http://www.asiapacificforum.net/support/issues/sexual_orientation/downloads/yogyakarta-principles/Yogyakarta_Principles_Impact_Human_Rights_Law.pdf

¹⁸ See website of MTN at <http://mesadetrabajo.org/>, last accessed September 12, 2013; See also website of the Instituto de Desarrollo Humano at <http://www.idhbolivia.org/index.php/home>, last accessed September 12, 2013.

applied”¹⁹, or rather not applied, when cases of discrimination and violence frequently occur. At the same time, other laws which would support the full equality of LGBT persons and respect for their rights before Bolivian law are not under consideration or have not yet been passed. For example, the State has yet to approve a proposed gender identity bill to address structural impediments that would allow for the respect and enjoyment of rights by its transgender citizens.

II. Background

A. Sexual Orientation and Gender Identity

Sexual orientation refers to “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.”²⁰ This term includes lesbian, gay, bisexual, or heterosexual orientations.

A person’s sexual orientation is distinct from a person’s gender identity or gender expression. Gender identity refers to:

to a person's innate, deeply felt psychological identification as male or female, which may or may not correspond to the person's body or designated sex at birth (meaning what sex was originally listed on a person's birth certificate).²¹

The external manifestation of a person’s gender identity is called gender expression. Gender expression is typically associated with “masculinity,” “femininity,” or gender-variant behavior.²²

Gender expression refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine or neutral in one culture may not be assessed similarly in another.²³

¹⁹ With reference to a highly publicized case of a violent attack against a trans woman, Ombudsman Griselda Sillerico was quoted as saying, “*Podemos decir que tenemos toda la normativa necesaria; el problema es cómo se cumple la norma cuando hay este tipo de casos,*” in the article “*Denuncian impunidad en casos contra miembros de grupo TLGB*”, published in *La Razon* on May 13, 2013.

²⁰ International Commission of Jurists, *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, (March 2007), available at http://www.yogyakartaprinciples.org/principles_en.htm.

²¹ *Id.*

²² The Gay & Lesbian Alliance against Defamation (GLAAD), *Media Reference Guide* at 8 (8th Edition, May 2010), available at <http://www.glaad.org/reference>.

²³ Human Rights Campaign, *Sexual Orientation and Gender Identity: Terminology and Definitions*, available at <http://www.hrc.org/resources/entry/sexual-orientation-and-gender-identity-terminology-and-definitions> (last visited 28 August 2013).

Transgender is a term for people whose gender identity and/or gender expression and their sex at birth do not match.²⁴ Transgender people generally seek to make their gender expression match their gender identity, rather than their sex at birth.²⁵ In other words, a person whose sex at birth is male, but who has an internal sense of being female, may adopt a female gender expression and is considered a transgender woman. Altering one's birth sex is not a simple or short process, but rather a process that occurs over a long period of time known as "transition."²⁶ Steps towards transitioning may include: telling family and friends, name and sex change on legal documents, hormone therapy, and medical treatment including surgery. In Bolivia, transgender women often use the terms either "*trans*" or "*travesti*".

²⁴ *See Id.*

²⁵ *See Id.*

²⁶ *See Id.*

III. Substantive Violations

A. Articles 2(1) (Nondiscrimination) and 26 (Equality before the Law)

Relevant Law and Jurisprudence

Articles 2(1) and Article 26 of the ICCPR obligate each State party to ensure that all people within its jurisdiction enjoy their human rights without discrimination and with equal protection under the law.

Article 2(1) states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁷

Article 26 states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁸

The principle of non-discrimination, together with the principles of equality before the law and equal protection of the law without any discrimination, constitute the central and guiding tenants relating to the protection of human rights.²⁹ The Covenant's prohibition of discrimination limits States from instituting any distinction, exclusion, restriction or preference that has the *purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise by all persons of all rights and freedoms.³⁰ Thus, Article 2 ensures that every individual within a State's territory and jurisdiction enjoys each right that is enumerated within the ICCPR. Article 2 requires States to adopt negative measures, specifically refraining from violation of ICCPR rights, as well as positive legislative, judicial, administrative, educative, and other appropriate measures to protect these rights from governmental and private parties. In a similar vein, Article 26 prohibits discrimination in law or in fact in any field regulated and protected by State authorities.³¹ As

²⁷ International Covenant on Civil and Political Rights, (New York Dec. 16, 1966), 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, *entered into force* 23 March 1976. [hereinafter ICCPR].

²⁸ *Id.*

²⁹ See Human Rights Comm., *General Comment No. 18: Non-Discrimination*, UN Doc. HRI/GEN/1/Rev.1, (11 Nov. 1998) at ¶ 1, *available at* <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

³⁰ See *Id.* at ¶ 7.

³¹ See *Id.* at ¶ 12.

such, States are obligated to ensure that the content of *all* legislation as well as the enforcement of legislation is not discriminatory.³²

In the landmark HRC decision *Toonen v. Australia* in 1994, the Committee interpreted the reference to “sex” in Articles 2(1) and 26 to include sexual orientation.³³ This ruling was extended to include any distinctions based upon sexual orientation, which amount to a denial of the right to equality before law.³⁴ Thus, any governmental action or legislation that has the purpose or effect of limiting either the enjoyment of ICCPR rights on the basis of sexual orientation or the right to equal treatment under the law is prohibited, and States are required to enact proactive measures to ensure that the rights of sexual minorities subject to its jurisdiction are protected.

Under the Covenant, the government of Bolivia has a legal obligation to not discriminate on the basis of sexual orientation, in law or in practice, as well as to implement measures to protect the right of sexual minorities from non-state actors. In Bolivia’s reply to the 2010 UPR recommendations, it noted that the right not to be discriminated against on grounds of sexual orientation or gender identity is recognized in the Bolivian Constitution and that it is “endeavouring to combat discrimination against population groups with a different sexual orientation and gender identity, particularly among the police, the military and the judiciary.”³⁵

Although the authors commend the 2009 Constitution’s explicit protection against discrimination on the basis of sexual orientation and gender identity, as one of only two Constitutions in the world to include both such categories, this positive constitutional provision has not resulted in public policies to reduce societal discrimination on the basis of sexual orientation and gender identity. The Law 045, the “*Ley contra el racism y toda forma de discriminación*”³⁶ passed in October 2010 which codifies in Bolivian law the constitutional provision of non-discrimination on the basis of sexual orientation and gender identity, has only been sporadically enforced in a handful of cases to sanction discrimination on the basis of sexual orientation and gender identity when cases have received significant pressure from LGBT civil society. Likewise, police departments and the judicial system have responded inadequately and negligently in instances of human rights violations against LGBT individuals. Despite the State’s public discourse of a commitment to inclusion and diversity, Bolivia has failed to adequately meet its obligations under the ICCPR with regard to upholding and protecting the human rights of LGBT persons.

Violations of Articles 2 and 26(1)

Failure to prevent widespread discrimination

³² *See Id.*

³³ *See Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994).

³⁴ *See Edward Young v. Australia*, Communication No. 941/200, UN Doc. CCPR/C/79/D/941/2000 (2003).

³⁵ *See UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Plurinational State of Bolivia, Addendum, Views on Conclusions, and/or Recommendations, voluntary commitments and replies presented by the State under review*, UN Doc. A/HRC/14/7/Add.1, (15 March 2010) at ¶ 26, available at <http://daccess-dds-ny.un.org/doc/UN.DOC/GEN/G10/141/49/PDF/G1014149.pdf?OpenElement>

³⁶ *Presidente Constitucional del Estado Plurinacional de Bolivia, Ley N 045* (8 October 2010) available at <http://www.libertadglt.org/legislacion-/13-ley-contra-el-racismo-y-toda-forma-de-discriminacion/> (last accessed 30 August 2013).

Despite progressive recognition at the constitutional level and a national law which defines and criminalizes discrimination due to homophobia and transphobia,³⁷ societal discrimination and violence against LGBT persons is extremely high in Bolivia.³⁸ LGBT organizations have reported civilian and police violence against LGBT individuals and an unwillingness of police officers to aid LGBT individuals or receive their complaints.³⁹ Likewise, a 2011 study by the group *Conexión Fondo de Emancipación* found that 86% of LGBT persons surveyed in Bolivia reported having suffered physical or verbal abuse by police officers, while 85% reported discrimination within educational institutions, 78% within health facilities, and 65% within the workplace.⁴⁰ Transgender individuals were found to be particularly vulnerable to abuse and violence, with 75% of transgender persons surveyed reporting having being threatened with violence, and one third having suffered physical abuse.⁴¹ These alarmingly high percentages speak to the widespread discrimination suffered by LGBT individuals in Bolivia despite Constitutional and legal protections, as well as the government's need to take proactive steps to address these problems and apply the full weight of the law when cases of discrimination and violence are reported.

The testimonies of lesbian women in Bolivia collected through focus groups conducted by the Bolivian organization ADEIM-Simbiosis demonstrate the reality in terms of loss of livelihood and the psychological repercussions that these statistics represent for lesbian women in the workplace:

"I worked as a secretary at the Libros y Más bookstore in the city of La Paz. When my colleagues at work saw me hugging my partner, they told my boss. He called me into his office and told me I had to quit my job because my colleagues didn't want to share the workplace with someone like myself; besides, he told me that what I did was against all morality and he couldn't accept my life-style...my colleagues at work, after discovering my identity, and getting me fired, insulted me in all sorts of ways, saying how dare I work there when I was a pervert...after what happened to me before, I prefer not to appear in public anywhere with other lesbians, and when they ask me if I'm married, I say I am...Above all, it affects me emotionally: you tend to repress yourself and therefore you suffer mood swings, and it affects your personality." - Tania⁴²

³⁷ *Ley N 045 reads*: "Homofobia. Se refiere a la aversión, odio, prejuicio o discriminación contra hombres o mujeres homosexuales, también se incluye a las demás personas que integran a la diversidad sexual. Transfobia. Se entiende como la discriminación hacia la transexualidad y las personas transexuales o transgénero, basada en su identidad de género" ["Homophobia. Refers to the aversion, hate, prejudice or discrimination against homosexual men or women, and also includes other individuals with diverse sexual orientation. Transphobia. Refers to discrimination towards transexuality and transsexual and transgender persons, based on their gender identity."]

³⁸ Torre, R., Solsona, M. O'Kelly, M., (2012) *Ayuda eficaz para mejorar la salud y los derechos sexuales y reproductivos: el caso de Bolivia*, Fundación Carolina CeALCI: Madrid.

³⁹ See U.S. Dept. of State, *Country Reports on Human Rights Practices: Bolivia* (2012), available at <http://www.state.gov/documents/organization/204640.pdf>

⁴⁰ Conexión Fondo de Emancipación, *Encuesta Nacional de Condiciones de Vida, Discriminación y Derechos de las Poblaciones TLGB en Bolivia* (2011), available at

http://www.conexion.org.bo/archivos/ENCVDD_TLGB_Bolivia.pdf

⁴¹ *Id.*

⁴² Falú, Ana, and Blanca Dole Durón. (2006) "*Unnatural, unsuitable, unemployed!: lesbians and workplace discrimination in Latin America: a regional report focusing on Bolivia, Brazil, Colombia, Honduras and Mexico.* Bolivia: ADEIM-Simbiosis, pp. 75-76.

“I worked as a cashier at the Olimpia bookstore and in my free time I liked to coin phrases and write poems on lesbian topics. I didn’t notice it when some of my co-workers took the notebook I used to write in from my till. One day, I came in to work only to get the news that someone had taken my place. I went to see the staff manager immediately and asked why they had done that to me. He replied that I should be thankful he hadn’t told all my colleagues that I was a lesbian, and that I would be better off leaving right away and not complaining. I just picked up my things and left.” – Marta⁴³

“I worked as a teacher at Instituto América. One day, one of my students saw me with some lesbian friends, and the next day the rumors flew throughout the Instituto and, unfortunately, reached the ears of the Principal. He fired me without offering any explanation.” - Teresa⁴⁴

Within the judicial system and in prisons, LGBT persons can experience discrimination in their trials and sentencing, as well as discrimination and violence at the hands of fellow inmates and guards in detention centers. In late August 2013, 19 transgender women were arrested on charges of selling drugs and have been detained in a men’s maximum security prison while they await court hearings.⁴⁵ Given the non-violent, low level drug charges, the decision to send them to a maximum security prison is clearly an excessive and unwarranted penalty which will expose them to greater levels of violence and abuse that transgender women inmates are commonly known to experience in male prisons. As such, detaining transgender women in male prisons and jails represents a serious failing on the part of the State to protect the physical integrity of individuals within its custody. In one reported case, Marquesa Antonio, a transgender woman who was imprisoned in a male prison in Cantumarca, suffered severe physical and psychological damages at the hands of fellow inmates between September 2011 and January 2012. She was regularly beaten, insulted, deprived of food, and in one instance attacked by four inmates who attempted to strangle her with her own clothes.⁴⁶ Ultimately, her lawyer was able to have her moved to the women’s prison after these attacks.⁴⁷ The discrimination and violence that transgender inmates face in detention centers must be urgently addressed by the State and all measures should be taken to lessen the risk of violence that detained transgender individuals may face by housing them in detention facilities in congruence with their gender identity.

The LGBT community has also suffered violence and discrimination when making public protestations affirming their rights. Despite the government’s support for LGBT pride parades which have been occurring on the national Respect For Sexual Diversities Day, parade participants repeatedly have been pelted with rotten tomatoes, eggs, and ice cubes by people in the crowds surrounding the events.⁴⁸ More seriously, in 2007, the pride march in La Paz was disrupted when a dynamite charge was thrown at one of the floats at the end of the parade during

⁴³ *Id.*, p. 40.

⁴⁴ *Id.*, p. 41.

⁴⁵ Information provided by Rayza Torriani, head of Red TREBOL; notes on file with Heartland Alliance.

⁴⁶ The judge in Marquesa Antonio’s case Héctor Gómez, was quoted as saying, “*Sabemos que constantemente le golpeaban, lo insultaban, no le dejaban ni comer y son bastantes internos quienes lo molestan, por lo menos cuatro a cinco privados de libertad, incluso lo intentaron ahorcarlo,*” in the article “*Un reo homosexual fue violado en Cantumarca,*” (1 February 2012) in *La Razon*, available at http://www.la-razon.com/nacional/reo-homosexual-violado-Cantumarca_0_1552044825.html

⁴⁷ *Id.*

⁴⁸ See Bolivia: Demand Investigation into the attacks against the parade for respect for sexual diversities in La Paz city, published on the International Gay and Lesbian Human Rights Commission webpage (23 July 2007) available at <http://www.iglhrc.org/content/bolivia-demand-investigation-attacks-against-parade-respect-sexual-diversities-la-paz-city>

preparations for the celebration. As a result, six LGBT activists were wounded and to date the perpetrators have not been identified and punished.⁴⁹

The Bolivian government has also failed to systematically enforce anti-discrimination Law 045 to protect LGBT persons, and has failed to enact policies or other measure to reduce discrimination on the basis of sexual orientation and gender identity. In fact, since the law was passed in October 2010, there has been only one case of violence where the law has been applied due to discrimination on the basis of gender identity. This emblematic case occurred in July 2013, when four taxi drivers brutally attacked three transgender women in the street in Cochabamba.⁵⁰ With visual evidence of the crime identifying the perpetrators, the government swiftly detained the four male perpetrators of the attack,⁵¹ although they were later released on the grounds that a settlement had been achieved between the victims and the principle aggressor.⁵² LGBT civil society and Red TREBOL in particular denounced the prosecutor who granted this release and successfully disputed the claim of a settlement between the involved parties. With significant civil society pressure applied in this case and the Ombudsman in Cochabamba also speaking out against the taxi drivers' release, the principle aggressor of the crime was again detained and has been sentenced to three years' imprisonment on the basis of Law 045.⁵³ As a result, this highly publicized case has become the first instance after nearly three years in effect that Law 045 has been applied in a case of violence against the LGBT community to hold the perpetrators accountable before the law. Although the authors commend the government's action in this case, they lament that cases of discrimination and violence motivated by homophobia and transphobia are a common occurrence, and that these cases are not brought to justice. All other cases of violence or killings reported here within in addition to countless others, are marked by impunity.

Within this climate of high levels of homophobia and transphobia and of general impunity for acts of violence against LGBT persons in Bolivia, negative and sensationalist depictions of LGBT individuals in the media can be extremely pernicious as they risk further incitement to violence against this population. The government should apply Article 16 of anti-discrimination Law 045 which prohibits discrimination in the media in any case in which public media depictions of LGBT persons could be considered discriminatory or a direct or indirect incitement to violence. In July 2013, Bolivian news stations broadcasted video taken from the State's public security cameras of transgender women engaging in sex work. Considering the high levels of transphobia and the violence to which transgender women - particularly those who engage in sex work - are exposed, the commentary of news channels such as *Red Uno*, *Canal 11*, and their use of these videos is extremely dangerous as it fosters further discrimination within an already highly transphobic public. In this case, the government responded to advocacy by Red TREBOL banning the videos' public distribution based on Article 16 of Law 045.⁵⁴ Nevertheless, the video of *Red Uno*, *Canal 11*'s coverage depicting the security camera's footage remains accessible on the internet video streaming

⁴⁹ *Id.*

⁵⁰ See *Taxistas apalean a transexual en pleno Prado cochabambino*, La Razon (5 May 2013), available at http://www.la-razon.com/sociedad/Taxistas-apalean-transexual-Prado-cochabambino_0_1831016900.html

⁵¹ See *Policía captura a cuatro taxistas que golpearon a tres travestis*, Opinión Bolivia (12 May 2013).

⁵² See *Fiscal libera a taxistas que golpearon brutalmente a travestis*, El Tunari (13 May 2013), available at <http://www.eltunari.com/cochabamba/noticias-del-departamento/112-cochabamba-1/2395-fiscal-libera-a-taxistas-que-golpearon-brutalmente-a-travestis.html>

⁵³ See *Piden procesar a fiscal por dejar libre a taxistas*, Los Tiempos (26 July 2013), available at

⁵⁴ Information provided by Rayza Torriani, president of Red TREBOL; notes on file with Heartland Alliance.

site, YouTube. It was published on YouTube on July 17, 2013 by a user with the account name, “MinisterioDe GobiernoDe Bolivia” [Ministry of the Interior of Bolivia].⁵⁵ The government should ensure that all reproductions of the videos including those available online are duly removed from public view according to its banning of the videos’ distribution. Generally, the State should closely monitor media’s reporting of issues involving transgender and LGB individuals to ensure that Article 16 of the law is not violated, placing this already vulnerable community at further risk of violence.

Another case of media reporting on events relating to transgender women in Bolivia demonstrates a clear violation of Bolivian Law 3729 the “Law for the Prevention of HIV-AIDS, Protection of Human Rights and Integral Multidisciplinary Support for Persons Living with HIV-AIDS” on the part of Bolivian health care providers. According to information collected by Red TREBOL, a transgender woman was interned at the *Hospital de Clínicas* in La Paz having suffered serious injuries due to a transphobic violent attack which she suffered at the hands of individuals at a bar in El Alto. Although the newspapers reported that she was HIV positive and died as a result of AIDS,⁵⁶ independent verification of the case indicates that her death was the result of wounds received during the attack.⁵⁷ Setting aside the media’s erroneous reporting of the case, the fact that the hospital disclosed the HIV status of the individual is a clear breach of Chapter II, Article 5 of Law 3729 which guarantees the privacy and confidentiality of individuals’ HIV status.⁵⁸ The State should sanction any medical provider which discloses such information to the press or others.

Equality before the law

LGBT citizens experience a lack of equality before the law with regard to adoption, inheritance, property and tax law, and social security due to the lack of any form of legal recognition for same-sex partners. A lack of specific legislation to protect and uphold equal rights for LGBT citizens within these areas also impedes the fulfillment of their rights and equal recognition before the law. Furthermore, the Constitution’s recognition of marriage and de facto unions as only between a man and a woman⁵⁹ establishes a pre-condition of inequality before the law for LGBT individuals who unable to have recognition of their same-sex unions before the State. These issues will be further explored in Section III E regarding violations of Article 23 of the ICCPR, the Right to Family Life. LGBT persons are also discriminated against under Bolivian Family Law which allows for the invalidation of a marriage if one of the married partners is “discovered” to be homosexual. As such, an LGBT person or a person perceived to be LGBT who enters into an opposite-sex marriage can be denied any rights to a divorce settlement if the other partner employs this section of the law to dissolve the marriage. Additionally, the State’s failure to recognize the gender identity of its transgender citizens in official legal documents also constitutes a lack of equality before the law as well as a violation of Articles 16 and 17 of the Covenant (see Section III C of this report).

⁵⁵ YouTube video “*CÁMARAS DE SEGURIDAD DE LA POLICÍA REGISTRAN A TRANSEXUALES ROBANDO*” published by user “MinisterioDe GobiernoDe Bolivia” (17 July 2013) available at <http://www.youtube.com/watch?v=LAFxMaYaYI4>

⁵⁶ See *Un transexual de El Alto muere por enfermedad crónica*, La Razon (14 June 2013) available at http://www.la-razon.com/sociedad/transexual-Alto-muere-enfermedad-cronica_0_1851414869.html

⁵⁷ Information collected by Red TREBOL.

⁵⁸ See *Ley 3729 “LEY PARA LA PREVENCIÓN DEL VIH-SIDA, PROTECCIÓN DE LOS DERECHOS HUMANOS Y ASISTENCIA INTEGRAL MULTIDICCIPLINARIA PARA LAS PERSONAS QUE VIVEN CON EL VIH-SIDA”* Cap. II. § 5. available at <http://silep.vicepresidencia.gob.bo/SILEP/masterley/117991>

⁵⁹ See Constitution of the Plurinational State of Bolivia, Article 63 ¶ I – II.

Although the Bolivian government's National Plan for Human Rights 2009-2013 included a specific chapter on LGBT rights which referred to the Yogyakarta Principles, no measures have been taken by the government to implement the plans and policies outlined in the document. As part of this process, LGBT civil society has worked on several iterations of a proposed plan that would reduce discrimination against LGBT persons and generally improve the recognition and respect for their human rights. On August 16, 2012 several representatives of the LGBT community, including Rayza Torriani, the president of Red TREBOL, met with representatives of the Vice Ministry of Justice and Fundamental Rights to present a Plan of Action against Homophobia and Transphobia developed by certain sectors of LGBT civil society. The objective of the plan is to establish State policies that will improve the quality of life of LGBT persons. Since that time, LGBT groups have formed a Committee to revise and further improve the proposed plan, and expect to finalize a *Plan Plurinacional de Acción Contra La Discriminación Por Orientación Sexual e Identidad de Género* in November 2013 to be presented to the government. Although groups are hopeful to have government support, particularly from the *Viceministerio de Descolonización*, it is discouraging that no significant measures of the government's 2009-2013 National Plan for Human Rights have been implemented to date with regard to improving the situation of LGBT persons in Bolivia.⁶⁰

B. Articles 6 (Right to Life) and Article 7 (Freedom from Cruel, Inhumane or Degrading Treatment)

Relevant Law and Jurisprudence

The HRC has affirmed that the right to life is the supreme right from which no derogation is permitted.⁶¹ Article 6 states that: “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of...life.”⁶² Article 7 protects both the inherent dignity and the physical and mental integrity of every human being. It provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁶³ In addition to refraining from committing rights violations, the State is also required to enact positive measures to ensure that private citizens do not violate these fundamental rights. The HRC notes that parties to the ICCPR must take measures to prevent and punish deprivation of life by enacting and prosecuting under criminal legislation.⁶⁴ This duty includes “closely monitor[ing] allegations of extrajudicial killings,” and ensuring that allegations are “investigated in a prompt and effective manner with a view to eradicating such crimes, bringing perpetrators to justice and hence fighting impunity and providing effective remedies to victims.”⁶⁵

⁶⁰ *Id.*

⁶¹ See Human Rights Comm., *General Comment No. 6: The Right to Life*, UN Doc. HRI/GEN/1/Rev.1, (30 April 1982) at ¶ 1, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>

⁶² ICCPR, § 6.

⁶³ ICCPR, § 7.

⁶⁴ *See Id.*

⁶⁵ Human Rights Committee, *Concluding Observations: Jamaica*, ¶ 16 (2004) UN Doc. CCPR/C/JAM/CO/3.

Similarly, to ensure freedom from cruel, inhuman, and degrading treatment, the State must afford every person within its territory and jurisdiction protection through legislation against the acts prohibited by Article 7 of the ICCPR.⁶⁶ In particular, the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment noted that members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment...and have been subjected to harassment, humiliation and verbal abuse relating to their real or perceived sexual orientation or gender identity and physical abuse, including rape and sexual assault.⁶⁷

Furthermore, Bolivia ratified the Convention Against Torture on April 12, 1999⁶⁸ and its Constitution affirms the right of every person to “life and physical, psychological and sexual integrity,” and each persons’ right to not be “tortured, nor suffer cruel, inhuman, degrading or humiliating treatment.”⁶⁹ As such, both domestic and international law bind the Bolivian government to protect the right to life and the freedom from torture of all its citizens. As transgender and LGB individuals are disproportionately the targets of such violations, the State is also obliged to take all necessary measures to put an end to violence, killings and torture on the basis of sexual orientation and gender identity, and to properly investigate and bring perpetrators to justice in instances where these abuses and violations occur.

Violations of Articles 6 and 7

Killings of LGBT Persons

Sexual minorities in Bolivia live in the midst of hostile societal conditions, and continue to be victims of violent physical attacks and sexual assault, which are often not reported to or investigated by the police. Although documented and verifiable statistics are not available over the past decades due to lack of reporting by the police and government and the limited ability of LGBT civil society to document cases until more recent years, the president of a coalition of Bolivian LGBT organizations, David Aruquipa, reports that there have been 55 killings motivated by sexual orientation and gender identity over the past ten years, that only 12 of these cases have undergone an investigation of any type, and that zero cases have led to the arrest and prosecution of the perpetrators.⁷⁰ By another source, the local civil society organization, the Civil Association of Social Development and Cultural Promotion (ADESPROC), reports that at least 30 gay men in Bolivia have been killed in the last two decades, while again, none of the perpetrators have been brought to justice.⁷¹

⁶⁶ See *General Comment No. 20*, at *supra* note 39, at ¶ 2.

⁶⁷ *Report of the Special Rapporteur on the question of torture and other cruel, inhuman, or degrading treatment or punishment*, U.N. Doc. No. A/56/156 (3 July 2001) at ¶ 3, available at <http://www.un.org/documents/ga/docs/56/a56156.pdf>

⁶⁸ See OHCHR, *Status of Ratifications, Convention Against Torture*, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=21&Lang=en (last visited 28 August 2013).

⁶⁹ See Constitution of the Plurinational State of Bolivia Article 15 ¶¶ I.

⁷⁰ See *Por año registran 5 asesinatos por homofobia o transfobia* La Razon (14 May 2013) available at http://www.la-razon.com/sociedad/ano-registran-asesinatos-homofobia-transfobia_0_1832816735.html

⁷¹ Information provided by Alberto Moscoso, Executive Director of ADESPROC, on file with Heartland Alliance;

In recent years, there are several incidents of homophobic and transphobic violence, torture and killings in Bolivia that have been documented by Red TREBOL. Between 2009 and 2011, the organization reports that seven transgender women were assassinated while engaging in sex work in the cities of Santa Cruz, Yacuiba, and Trinidad.⁷² The perpetrators of these killings have not been identified.

In one reported incident, Mini Britany, a transgender woman, was killed in Santa Cruz in the early morning of January 22, 2011. A witness reportedly saw the alleged perpetrators dispose of Mini's body in the Universidad Gabriel Rene Moreno neighborhood, on Portachuelo Street. Red TREBOL holds that the crime was motivated by transphobia. The perpetrators have still not been identified or brought to justice.⁷³

A similar reported incident occurred in March 2012, when a mob of approximately 400 people in the Villa Ingenio zone of District 13 of El Alto tortured, burned, and lynched 42 year old Juana Apaza Mayta.⁷⁴ The chief of Homicides of the Police Task Force on Crime, Major Osvaldo Fuentes, explained that when locals saw this "man" dressed as a "cholita" [indigenous woman] a mob formed and murdered "him" simply because "he" was a transgender person. Despite the presence of hundreds of people at this murder in broad daylight, no charges have been filed to date and there are no suspects.⁷⁵ On 6 October 2012, Luisa Duran, another transgender woman, was stabbed 52 times and killed in Santa Cruz.⁷⁶ Despite reporting to the police and available evidence, no investigations of these incidents have been pursued.

Transgender women within the penal system are particularly susceptible to experiencing violence while imprisoned in male prisons and jails. In one case which occurred in Oruro in June 2013, Mayra Claro, a 27 year old trans woman and former human rights defender with Red TREBOL who was serving a sentence in the men's prison Penal San Pedro was found dead with significant signs of torture.⁷⁷ Transgender women in these settings should receive the fullest protection of the State to safeguard them from violence and killings by detaining them in female rather than male prisons.

Many victims of violent attacks do not seek recourse because of fear of reprisal and general societal hostility towards them. The full extent of violence against LGBT individuals in Bolivia is difficult to ascertain due to the lack of reporting through official channels. Therefore, these homophobic and transphobic incidents of violence and killings of LGBT persons are woefully

See also Brazil and Peru number of gay people killed in 2011 revealed, The Argentina Independent (18 May 2012), available at <http://www.argentinaindependent.com/currentaffairs/newsfromlatinamerica/brazil-and-peru-number-of-gay-people-killed-in-2011-revealed/>

⁷² *See Siete travestis, asesinados en los últimos dos años* El Deber (2011, no date specified) available at <http://www.eldeber.com.bo/imprimir.php?id=110203005227>

⁷³ Reports on file with Red TREBOL.

⁷⁴ Transgender Europe (TGEU), *List of 248 reported trans persons murdered in 2011*, available at:

<http://www.transrespect-transphobia.org/uploads/downloads/TMM/TvT-TMM-TDOR2012-NameList-en.pdf>

⁷⁵ Reports on file with Red TREBOL.

⁷⁶ *Id.*

⁷⁷ *Id.*

See also Diario Alarma (25 June 2013) no online version available; newspaper article on file with Red TREBOL.

underreported. In Bolivia, Red TREBOL and other NGOs have been asking for public condemnation of killings of trans people. They are also requesting neighborhood patrols as well as public awareness campaigns about the LGBT community and of the treatment they suffer from other Bolivians.⁷⁸ The Bolivian government's failure to investigate these crimes and hold perpetrators accountable results in these individuals being denied their right to effective remedies and recourse, and fosters a context of impunity in which these types of violations and abuses are perpetuated. To date, the government has not initiated any training programs for police, judicial and other public officials nor any educational campaigns directed at the general public that would address these issues.

Torture of Transgender Persons

The seven transgender women killed between 2009 and 2011 in Santa Cruz, Yacuiba, and Trinidad, mentioned in the preceding section, were all reportedly tortured before they were killed. The president of Red TREBOL, Rayza Torriani, spoke with people near the scene of the crimes to confirm reports of the events.⁷⁹

In addition, in the killing of Juana Apaza Mayta, the chief of homicides of the Police Task Force on Crime, Major Osvaldo Fuente, reported that the body was found with signs of torture. Multiple wounds inflicted by sharp objects were found throughout the body, as well as second and third degree burns. The chief of police said the probable cause of death was a traumatic brain injury.⁸⁰

The body of transgender inmate Mayra Claro in Oruro who was killed in June 2013 shortly after arriving at San Pedro, a male prison in Oruro, also demonstrated clear signs of torture. Marya Claro, who had been a trans activist with Red TREBOL⁸¹ was serving a sentence for having killed her former partner in the course of a fight between them, was found dead in the prison with her breasts cut off, her hair shaved, her face notably disfigured, and with a glass bottle inserted in her anus. The signs and methods of torture employed clearly convey that the killing was motivated by her gender identity. When Red TREBOL called attention to this horrific killing, it was described by the police as an act of vengeance for the killing of her former partner, a police officer, demonstrating an implicit justification of the act on the part of the police. This case is ongoing and has yet to be resolved.⁸²

Luisa Duran, the transgender woman who was killed in Santa Cruz in October 2012, was stabbed 52 times before she died.⁸³ The clear signs of torture in these ten cases demonstrate a clear pattern of egregious violence and torture perpetrated against the transgender community in Bolivia. The State should identify the perpetrators and prosecute to the fullest extent.

⁷⁸ See Red TREBOL website, available at <http://transredbolivia-trebol.blogspot.com/>

⁷⁹ See *Siete travestis, asesinados en los últimos dos años*, El Deber (2011, no date specified) available at <http://www.eldeber.com.bo/imprimir.php?id=110203005227>

⁸⁰ Reports on file with Red TREBOL.

⁸¹ See *Posición de la Iglesia Católica causó molestia entre LGBT*, La Patria (29 May 2012) available at <http://www.lapatriaenlinea.com/?t=posicion-de-la-iglesia-catolica-causo-molestia-entre-lgbt¬a=108484>

⁸² *Id.*

⁸³ *Id.*

C. Article 16 (Recognition as a Person Before the Law) and Article 17 (Right to Privacy)

Relevant Law and Jurisprudence

Article 16 provides that “everyone shall have the right to recognition everywhere as a person before the law.”⁸⁴ Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with their privacy. Article 17 further provides that the State must adopt legislative and other measures to give effect to the “prohibition against...unlawful attacks on...honor and reputation”⁸⁵ by both public officials and private individuals.

While the lack of recognition of a person’s gender identity, and consequently the denial of the socio-legal acknowledgement of the individual according to her/his social name and gender in identity documents, question the ability of the society and the state authority to recognize the basic personhood of trans individuals, the continuous exposure of the individual’s gender identity in everyday life constitute a significant violation of the right to private life. To this extent, the European Court of Human Rights has repeatedly ruled that the failure of a state to recognize the legal status of transsexual individuals constitutes, inter alia, a violation of the right to private life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁸⁶ In particular, in the case *B. v. France*⁸⁷ the judges highlighted how a transgender person whose gender identity is not recognized by the law “finds herself daily in a situation which, taken as a whole, is not compatible with the respect due to her private life.”⁸⁸

Violations of Article 16 and Article 17

Lack of Recognition of Gender Identity of Transgender Individuals

The State’s failure to recognize the gender identity of its transgender persons in official legal documents constitutes a violation of both Article 16 and Article 17 of the Covenant. Without the passage of a gender identity law which would allow for the legal recognition of one’s gender identity through modification of birth certificates, national identity cards, passports, and in medical records, the personhood of Bolivian transgender individuals is not recognized by the State, and they are stripped of their right to privacy. Lacking documents that represent the gender identity of transgender persons, they cannot freely participate in the political and civil system and are marginalized and often placed at risk within the health, education, and other sectors. Their ability to act as a recognized person before the law is inhibited by the lack of official recognition of their gender identity. Likewise, their right to privacy is violated in each instance of daily life when they must provide official identity documents as the incongruence between their sex at birth as listed on documents and their gender identity and expression is exposed. This exposure is

⁸⁴ ICCPR, § 16.

⁸⁵ ICCPR, § 17.

⁸⁶ See European Court of Human Rights (ECHR), *B. v. France* (25 March 1992); *Sheffield and Horsham v. the United Kingdom* (30 July 1998); ECHR, *Christine Goodwin v. the United Kingdom*, Appl. no. 28957/95, (11 July 2002); ECHR, *Grant v. the United Kingdom*, Appl. no. 32570/03, (23 May 2006).

⁸⁷ Application no. 13343/87, Judgement 25 March 1992.

⁸⁸ *B. v. France*, at 63.

not only a violation of Article 17, it also places these individuals at greater risk of suffering discrimination and violence.

Bolivian LGB and particularly transgender citizens face pervasive societal discrimination in areas such as employment, housing, health, media, immigration, family matters, exercise of the right to vote, and daily life; the lack of recognition of gender identity further marginalizes transgender persons within these areas. It also represents a significant barrier to full equality before the law for Bolivian transgender citizens remains in these areas. Specifically, the lack of recognition of gender identity for transgender persons can lead to serious health consequences, as evidenced by the case of Mariana, a thirty-two year old transgender woman who died from a poor-quality silicone injection in April 2012. She was admitted to the Japanese Hospital in Santa Cruz after suffering respiratory damage after having obtained a silicone injection consisting of airplane fuel oil, performed by another transgender woman who is not a doctor. She suffered a coma as a result and subsequently died.⁸⁹ Mariana had been unable to find a medical professional to carry out a procedure to align her gender identity with her physiological sex. Without legal recognition of the identity of transgender persons, their access to both very basic medical care as well as to hospital treatments for gender modification surgeries are denied.

On November 24, 2011, Red TREBOL proposed the *Ley de Identidad de Género* [Gender Identity Law], to the Vice Minister of Equal Opportunities, Gardy Costas, which has been supported by UNFPA and UNDP. This proposal consists of five articles that would allow for legal recognition of name changes, sex and gender status changes, and legally recognize transgender people by the gender with which they identify.⁹⁰ To date, the Gender Identity Law is still under consideration by the Bolivian government, and is currently being reviewed and analyzed by legislators. It is also under review by the Parliament's Human Rights and Health commissions. In support of the approval process, UNFPA, UNDP, and UNAIDS have organized a meeting to be held on October 13th between Bolivian legislators, the president of the legislature, and Argentinian and Uruguayan legislators who were involved in passing gender identity laws in their respective countries.⁹¹

The lack of recognition of gender identity is tantamount to inequality of transgender individuals before Bolivian law, a violation of right to privacy, a denial of personhood before the law, and consequently, a denial the citizenship of transgender individuals in Bolivia. The Bolivian government should swiftly enact legislation to alter official identity documents to be congruent with the gender identity and expression rather than the sex as determined at birth of transgender individuals so that their personhood, privacy and citizenship are respected and upheld before the law.

D. Article 19 (Freedom of Expression)

Relevant Law and Jurisprudence

⁸⁹ See *Inyectan silicona industrial a travesti y queda en coma*, El Deber (11 April 2012), available at <http://www.eldeber.com.bo/nota.php?id=120410223530>

⁹⁰ See Presentación del Anteproyecto de Ley de Identidad de Género a la Viceministra de Igualdad de Oportunidades published on UNFPA Bolivia's website, available at <http://bolivia.unfpa.org/node/1157>

⁹¹ Information provided by Razya Torriani, President of Red TREBOL; notes on file with Heartland Alliance.

Article 19 of the Covenant affirms the rights of free expression and opinion.⁹² The Committee has stated that this article represents the “foundation stone for every free and democratic society.”⁹³ The right extends to expression of “information and ideas of all kind, as well as the freedom to ‘seek’ and ‘receive’ them ‘regardless of frontiers’ and in whatever medium, ‘either orally, in writing or in print, in the form of art, or through any other media of his choice.’”⁹⁴ The Committee has used broad language to the effect that freedom of expression embraces every form of idea and opinion capable of transmission to others.⁹⁵ Expressions of identity through speech and appearance, including those that indicate sexual orientation or gender identity, fit comfortably within this broad right.

Violations of Article 19

The stigmatization of LGBT people has led to discrimination based on gender identity, dress, bodily characteristics, and other forms of protected expression. As previously noted, this discrimination has repercussions for LGBT people within schools, the workplace, hospitals and in all areas of daily life. Many LGBT people in Bolivia actively attempt to conceal their sexual orientation or gender identity from family, colleagues and society at large out of well-founded fears of reprisal.⁹⁶ Additionally, the numerous killings and the accompanying torture described under Section III B are clearly motivated by hostile and transphobic reactions to the expressed gender identity of transgender women. As the Bolivian State has failed to take appropriate measures in terms of public policies and programs to diminish the societal stigmatization and marginalization of LGB and particularly transgender persons, which in turn perpetuates violence in reaction to the simple expression of their sexual orientation or gender identity, the State has clearly violated Article 19 of the Covenant.

E. Article 23 (Right to Family Life)

Relevant Law and Jurisprudence

Article 23 provides that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”⁹⁷ The HRC recognizes the existence of various forms of family, and has asserted that family planning policies adopted by the state should not be discriminatory.⁹⁸ It has also called upon States to grant the same benefits to non-married homosexual couples as are already available to non-married heterosexual couples,⁹⁹ and has

⁹² See ICCPR, § 19.

⁹³ See Human Rights Comm., *General Comment No 34: Article 19: Freedom of opinion and expression*, UN Doc. CCPR/C/GC/34, (12 Sept. 2011), at ¶ 2.

⁹⁴ See Human Rights Comm., *General Comment 10: Freedom of Expression*, UN Doc. CCPR/C/GC/10, (29 June 1983) at ¶ 2.

⁹⁵ See *General Comment No. 34, supra note 87*, at ¶ 11.

⁹⁶ Falú, Ana, and Blanca Dole Durón. (2006) *“Unnatural, unsuitable,” unemployed!: lesbians and workplace discrimination in Latin America: a regional report focusing on Bolivia, Brazil, Colombia, Honduras and Mexico*. Bolivia: ADEIM-Simbiosis, pp. 75-76.

⁹⁷ See ICCPR, § 23.

⁹⁸ See Human Rights Comm., *General Comment 19: Protection of the family, the right to marriage and equality of the spouses*, at UN Doc. CCPR/C/GC/19, (27 July 1990), at ¶ 2, 5.

⁹⁹ See *Concluding Observations of the HRC: Japan*, UN Doc. CCPR/C/79/Add.102, (19 Nov. 1998), at ¶ 29.

affirmed in *Young v. Australia*¹⁰⁰ and *X v. Columbia*¹⁰¹ that excluding same-sex partners from certain state-sponsored benefits that opposite-sex partners enjoy is discriminatory.

Violations of Article 23

LGB persons, transgender individuals and partners of the same-sex and their families, are denied a broad range of entitlements that are available to their married, opposite-sex couple counterparts. Article 63 of the Bolivian Constitution defines marriage as exclusively between a man and a woman,¹⁰² and there is no provision for same-sex domestic partnerships, consequently limiting the possibility of same-sex couples to benefit from the state benefits afforded to married partners of the opposite sex.

For example, Article 38 of the *Código de Seguridad Social*, Law 13214, regulates the Social Security provisions of survivor's benefits for surviving spouses and children, or parents and siblings of deceased persons.¹⁰³ However, same-sex couples are not eligible to receive these benefits as their unions are not recognized by the State. Neither is the surviving partner of a same-sex couple able to receive any transfer of pension benefits as would apply in the case of the widow of an opposite-sex, married couple. LGBT couples are similarly marginalized with regard to inheritance law: the Bolivian Civil Code defines legal intestate inheritors as the State and the surviving children, parents and spouse of the deceased.¹⁰⁴ As such, if a decedent with a partner of the same-sex dies intestate, failing to confer his or her assets to designated beneficiaries in his or her will, the surviving partner will have no right to receive any part of the estate, regardless of the longevity of the relationship. In each of these cases, the Bolivian Constitution's explicit definition of both marriage and "de facto unions" as only between a man and a woman¹⁰⁵ creates a pre-condition within the law of unequal treatment of LGBT individuals who are unable to enter into such legally recognized unions.

Additionally, same-sex couples are discriminated against with regard to adoption. Article 80 of the Bolivian *Código Niño Niña y Adolescente* allows only for adoption by opposite sex couples,

¹⁰⁰ *Young v. Australia*, supra note 36.

¹⁰¹ *X v. Columbia*, Communication No. 1361/2005, U.N. Doc CCPR/C/89/D/1362/2005 (2007).

¹⁰² See Constitution of the Plurinational State of Bolivia, Article 63 ¶ I.

¹⁰³ See *Reformas al Código de Seguridad Social*, Article 38, available via *Sistema de Información Legal del Estado Plurinacional de Bolivia (SiLEP)*: <http://silep.vicepresidencia.gob.bo/SILEP/masterley/118615>

¹⁰⁴ See *Código Civil, Libro 3 °, Título 1 °, Capítulo 11, Artículos 502 y 503* [Bolivian Civil Code, Book 3, Title 1, Chapter 11, Articles 502 and 503] available via SiLEP:

<http://silep.vicepresidencia.gob.bo/SILEP/masterley/125275>;

Article 502 states: "Los hijos, y descendientes legítimos, por su orden y grado, son herederos forzosos de sus padres, y ascendientes en todos sus bienes...los padres, y ascendientes son también herederos forzosos de sus hijos, y descendientes, en caso que estos no tengan posteridad legítima ó natural reconocida;"

Article 503 states: "Son herederos legales los parientes del difunto dentro del cuarto grado, el esposo sobreviviente, y el estado, según se dirá en el orden de suceder ab intestato, salvo que este instrumento tenga preferencia por la ley, independientemente de su fecha."

¹⁰⁵ See Constitution of the Plurinational State of Bolivia, Article 63 ¶ I – II.

or unmarried individuals without reference to sexual orientation or gender identity.¹⁰⁶ Thus, it is of course possible for LGBT individuals to apply for adoption as a single person, without disclosing and/or by actively concealing their sexual orientation or gender identity; similarly, same-sex couples could apply to adopt a child by having only one partner apply, and by again concealing their unrecognized union before the State. That LGBT persons are forced to resort to such measures in order to be considered for the adoption a child is a violation of their equality before the law and their right to freedom of expression, as well as an extreme limitation to their right to family life.

The exclusion of same-sex partners from receiving these benefits and entitlements is discriminatory on the basis of sexual orientation, violating the right to family, and further marginalizing a group that is already vulnerable within Bolivian society. The Bolivian government should develop legislation to regulate unions between persons of the same-sex or with different gender identities, and ensure they are afforded the same rights with regard to pensions, inheritance, social security and adoption law.¹⁰⁷

F. Article 24 (Special Protection of Children)

Relevant Law and Jurisprudence

Article 24 recognizes “the right [of every child] to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”¹⁰⁸ The Human Rights Committee’s General Comment No. 17 states that, “in the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression.”¹⁰⁹

Violations of Article 24

LGBT Youth

Discrimination and other human rights abuses against LGBT individuals are especially troubling when the victim is a child, as they are particularly vulnerable. Many of the violations against children and youth occur in school settings, places where they should receive the utmost protection. Discrimination against young LGBT people in school seriously hinders their access to education. Social exclusion and discrimination of transgender individuals in particular often

¹⁰⁶ See generally Children and Adolescent’s Code [Código Niño Niña], Article 80 available via SiLEP: <http://silep.vicepresidencia.gob.bo/SILEP/masterley/118288>

Article 80 states: “Las personas solteras y las parejas que mantengan una unión conyugal libre o de hecho de manera estable, podrán ser adoptantes. Estas últimas deberán demostrar previamente su unión conyugal en proceso sumario seguido ante el Juez Instructor de Familia.”

¹⁰⁷ Colectivo Gay, Lésbico, Bisexual, Transexual, Transgénero, Travesti de Bolivia, *Texto Base de Propuestas Del Colectivo GLBT’s de Bolivia Plan de Acción de los Derechos Humanos de Bolivia 2008-2013* (July 2008), available at http://ypinaction.org/files/02/18/Texto_Base_de_Propuestas_GLBT27s_de_Bolivia.pdf

¹⁰⁸ See ICCPR, § 24.

¹⁰⁹ See Human Rights Comm. General Comment No. 17: Article 14: Rights of the child UN Doc. CCPR/C/GC (7 Apr 1989) at ¶ 3.

begins at a young age within their communities and schools: young trans individuals are driven away from their homes and/or out of the educational system during childhood or adolescence, placing them on a path marked by limited occupational opportunities and poverty.¹¹⁰

According to a 2011 national study by the *Conexión Fondo de Emancipación*, among LGBT students in Bolivia, 10.9% of students have been expelled from an education institution due to their sexual orientation; 11.9% have been denied access to an educational institution; 48.1% have been discriminated against by the parents of other students; 84.6% have been discriminated by classmates; and 53.2% have been discriminated against by teachers.¹¹¹

In July 2009, a seventeen year-old boy was suspended and subsequently expelled from Bolivia IV high school in Sopocachi, La Paz, for holding his boyfriend's hand while on school grounds. The official school statement described the infractions "a violation of internal school rules." Other gay students at the high school attested in confidence that they were since restraining from any public displays of affection in order to avoid disciplinary action.¹¹² This action clearly violated the right to expression of the student and of other gay students attending the school, and right to education of the expelled individual. In this case, with significant advocacy by the organization ADESPROC, the Bolivian government conducted an investigation determining that his expulsion was due to discrimination on the basis of his sexual orientation, consequently fired the director of the school, and allowed the student to be reinstated, though he ultimately transferred schools.

Although the authors commend the government's intervention and the ultimate resolution of this case, it is the only known example when the government has taken appropriate action in response to school-based discrimination against LGBT youth. The reality of the situation as reported in the *Conexión Fondo Emancipación* study, is that these cases of school bullying, discrimination, and even expulsion are much more frequent than the government is able to effectively respond to, especially considering its sporadic application of non-discrimination laws. The government should of course respond with appropriate investigations and punishments in every case brought to its attention, as in the Sopocachi case. Nevertheless, to ensure the protection of the right to education for LGBT youth in Bolivia, the government should also allocate funding for and carry out national sensitization campaigns targeting both the general public as well as specifically targeting school personnel and youth.

To further this goal of reducing discrimination against LGBT youth within the education system, the topic of sexual diversity should also be included in schools' human rights curriculum as part

¹¹⁰ Cabral, M., Ferrerya, M. (Ed.) (2009), *Latin American Trans Women Living in Extreme Poverty*, IGLHRC: NYC.

¹¹¹ Conexión Fondo de Emancipación, *Encuesta Nacional de Condiciones de Vida, Discriminación y Derechos de las Poblaciones TLGB en Bolivia* (2011), available at http://www.conexion.org.bo/archivos/ENCVDD_TLGB_Bolivia.pdf
See also, *Ocho de cada 10 gays son rechazados en escuelas de Bolivia: encuesta*, CNN México (7 July 2011), available at: <http://mexico.cnn.com/mundo/2011/07/07/ocho-de-cada-10-homosexuales-son-rechazados-en-escuelas-de-bolivia-sondeo>

¹¹² *Colegial gay es expulsado por "empanadear"* Caracol (9 September 2009), available at <http://www.caracol.com.co/noticias/actualidad/colegial-gay-es-expulsado-por-empanadear/20090908/nota/874977.aspx>

of the comprehensive sexuality in education material. An adoption of this curriculum would uphold Principle 16 of the Yogyakarta Principles, which affirms that states should, “ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds.”¹¹³ Nevertheless, successful dialogue with the Ministry of Education around the inclusion of sexual orientation and gender identity in schools’ human rights education material has been blocked by conservative opposition from parents and teachers groups. The Ministry of Education should uphold its responsibility to protect the rights of LGBT youth within its schools, and should not be deterred to do so as it has in the past by opposition from parents and teachers founded on discriminatory and mistaken beliefs about homosexuality.¹¹⁴

Family Life

As previously mentioned in Section III E regarding the Right to Family Life, only married spouses are allowed to file a joint application for adoption. This effectively prohibits same-sex couples from legally adopting a child together, as their unions are not recognized, and there are no provisions recognizing nontraditional families. Thus, only one person within a same-sex couple may be listed as the child’s parent, whether the child has been adopted or is the biological child of one of the partners of the couple.

By failing to formally recognize these families the Bolivian government is infringing on the human rights of children within these familial structures. The refusal to recognize and honor children's relationships with their parents causes trauma to children (and parents), and can deprive children of stability and critically important emotional and financial support.¹¹⁵ Furthermore, the lack of formal recognition stigmatizes the children within these families in Bolivian society, leaving them vulnerable to further human rights violations. There are practical concerns as well: as is true between same-sex couples generally, a non-adoptive parent cannot make critical judgments, such as medical or educational decisions, on behalf of his or her child. Likewise, in the case that the partner with legal guardianship of a child were to die, the child would be placed under the custody of the state or blood relatives of the deceased, rather than with the surviving partner, as this individual holds no legal rights over the child.

¹¹³ See International Commission of Jurists, Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity, (March 2007), at § 16 available at http://www.yogyakartaprinciples.org/principles_en.htm

¹¹⁴ See *Gays piden incluir diversidad sexual en currículo escolar*, *La Razon* (26 June 2012) available at http://www.la-razon.com/sociedad/Gays-incluir-diversidad-curriculo-escolar_0_1639636062.html

¹¹⁵ See Lambda Legal, *Adoption and Parenting*, available at <http://www.lambdalegal.org/issues/adoption-andparenting>.

IV. Final Recommendations

As a State Party to the ICCPR, Bolivia is bound to uphold the rights contained within the Covenant for all of its citizens, regardless of sexual orientation or gender identity. Yet, as illustrated in this report, Bolivia is currently failing to comply with its obligations under the ICCPR with respect to its lesbian, transgender, bisexual and gay citizens. In order to comply with the Covenant, Bolivia must adopt legislative, administrative, judicial, and policy measures to ensure protection and promotion of human rights. To that end, the Human Rights Committee should recommend to Bolivia that it should:

1. Hold those responsible for discrimination on the basis of sexual orientation or gender identity to administrative, civil and criminal responsibility as codified under Article 5 of Bolivian Law 045 in appropriate cases;
2. Adopt the draft “Gender Identity Law” and take all necessary steps to see that is effectively implemented allowing for name changes and sex and gender status changes for transgender individuals, and for the legal recognition of transgender people by the gender with which they identify in official State identity documents.
3. Not tolerate any form of social stigmatization of homosexuality, bisexuality or transexuality, hate speech or discrimination or violence against persons because of their sexual orientation or gender identity;
4. Investigate the killings of Mini Britany, Juana Apaza Mayta, Mayra Claros, and victims of similar crimes, and provide information on whether the perpetrators of these crimes have been identified and prosecuted;
5. Provide effective protection to LGBT persons and ensure the investigation, prosecution and punishment of any act of violence or killing motivated by the victim’s sexual orientation or gender identity;
6. Ensure the investigation, prosecution and punishment of any act of torture or cruel, inhuman and degrading treatment of LGBT persons;
7. Take all necessary measures to guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT persons and defenders of their rights;
8. Recognize and regulate same-sex unions before the law, amending all relevant civil codes to ensure that same-sex couples are eligible to receive the same State benefits available to opposite-sex couples and are treated equally before the law in the areas of social security, inheritance, adoption and all others;
9. Safeguard the rights of LGBT youth by conducting widespread, anti-discrimination educational campaigns targeting the general public as well as school officials and school-age children, and by including sexual orientation and gender identity in schools’ human rights curriculum as part of the comprehensive sexuality in education material.

V. Questions to the State

1. What measures does the State intend to take to prevent human rights violations and violence on the grounds of sexual orientation and gender identity committed by state and non-state actors, and to end impunity for perpetrators of such crimes?
2. What measures does the state intend to take to respect the personhood of trans individuals, guaranteeing their right to privacy through the legal recognition of their gender identity?
3. What measures is the State taking to prevent, investigate, and punish attacks on transgender people who are targeted because of their choice of clothing and other expressions of their gender identity?
4. What plans does the State have to reduce discrimination of LGBT persons within the health, education, employment and other societal sectors?
5. What measures has the State taken to protect the right not to be discriminated against on the basis of sexual orientation and gender identity guaranteed in Article 14 of the Bolivian Constitution and protected under Articles 2 and 26 of the ICCPR?
6. What measures does the State intend to take to ensure that LGBT individuals or groups can exercise their rights to freedom of peaceful assembly and to expression without suffering discrimination and violence?
7. What measures does the State intend to take to safeguard the physical integrity of female transgender inmates within State detention facilities?