

Supplementary Information on the Plurinational State of Bolivia, Scheduled for Review by the U.N. Committee on the Elimination of Discrimination against Women during its 61st session (6-24 July 2015)

Women's Link Worldwide and FUNDERES

THE RIGHT OF WOMEN AND GIRLS TO A LIFE WITHOUT VIOLENCE (ARTS.1 and 3, CEDAW)

1. Introduction:

It is important to note that following the most recent reviews of the Bolivian government, the Committee stated:

[I]t continue “verifying extremely serious forms of sexual aggression by outsiders against women and girls have occurred, concluding in many cases in femicide” and has mentioned its concern regarding “women’s access to justice is limited because of their high rates of illiteracy, lack of information on their rights, lack of legal assistance tailored to their needs, lengthy legal proceedings and related costs, and the insufficient understanding of the Convention by the judiciary”¹.

The Committee also urged the Bolivian State to “to ensure that existing legislation to combat violence against women and girls, especially domestic and sexual violence, is appropriately formulated and enforced, and give priority attention to the design and implementation of a comprehensive strategy to combat and eradicate all forms of violence against women [...]”²

However, advances in the prevention of violence and access to justice for women and girls in Bolivia are not encouraging. The Pan American Health Organization (2013) notes that Bolivia has one of the highest rates of physical violence among the 13 countries in the continent, second only to Haiti in sexual violence³. Official data shows that 7 out of 10 women suffer some form of sexual violence in Bolivia, placing it as one of the states with highest sexual violence in Latin America⁴. It is likely the rate of violence is much higher as estimates suggest only 17% of women in situations of violence report the incident⁵.

A local report issued by the *Comité Impulsor de la Agenda Legislativa desde las Mujeres* of Bolivia (2013), a committee devoted to promoting women’s rights, citing the Observatory of Violence against Women’s (CIDEM) findings that between 2007 to 2011 in 9 capital cities and the city of El Alto en el Quinquenio registered a total of 247.369 complaints from female victims of violence while only 51 aggressors were prosecuted and received a final sentence during this period⁶. The lack of procedural celerity with failures that occur at different stages of the criminal justice process impedes women and girls access to the prompt and effective response from the justice system to which they are legally entitled.

The case of Patricia Flores clearly demonstrates these pervasive patterns of Bolivian judicial system.

¹ CEDAW. *Concluding comments of the Committee on the Elimination of Discrimination against Women*. CEDAW/C/BOL/CO 8 March 2008, Par. 16.

CEDAW. *Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women* CEDAW/C/BOL/2-4. 27 March 2006, Par. 50.

² CEDAW. *Concluding comments of the Committee on the Elimination of Discrimination against Women*. CEDAW/C/BOL/CO 8 March 2008 CEDAW/C/BOL/CO/4, 8 March 2008, Par. 25.

³ Comité Impulsor de la Agenda Legislativa desde las Mujeres (2013) *Acceso A La Justicia Para Mujeres En Situación De Violencia*. P. 3 Available at: <http://www.comunidad.org.bo/assets/archivos/herramienta/7b2e04d58bcff54e1cd9538409469613.pdf> (Access 6th June 2015)

⁴ *Erbol* “7 de cada 10 mujeres sufren alguna vez abuso sexual” (The Ombudsman reports that seven out of ten women were sexually abused at some time in their lives) (31st July 2013)

El Deber “7 de cada 10 mujeres fueron víctimas de abuso sexual en Bolivia” (According to data released by the UN on Women's Day, Bolivia is considered the second Latin American country with the highest rate of sexual violence) (3rd March 2013)

⁵ Comité Impulsor de la Agenda Legislativa desde las Mujeres (2013) *Acceso A La Justicia Para Mujeres En Situación De Violencia*”. P. 3 *Ibid*.

⁶ *Eiusdem*.

1. Acts.

On August 27, 1999, the parents of the 10-year-old girl Patricia Flores reported her disappearance to the Family Protection Brigade, the police, and the media. At 8.30h on the morning of August 27th 1999 Mrs. Martha Velásquez had accompanied her daughter, Patricia, into her school. Patricia was in third grade at the *Vincente Juariste Eguino* public school located in La Paz city⁷. Over the following three days teachers and school staff did not know the location of the child and differing versions of the story were proffered to the family, including among others, that Patricia had left the school and/or had been seen walking in the street⁸. The police search was initiated by the “Family Protection Brigade”, which provided little assistance to Patricia’s family while she was still missing.

For its part, the Technical Judicial Police (later replaced by the Special Force Against Crime) refused to instigate an immediate search on the basis that the complaint was initially made by the Patricia’s aunt and not her parents. Officials expressed that they would only begin proceedings if the complaint was formally made by Patricia’s parents, Mr. and Mrs. Flores, who did so accordingly on Monday August 30th. It took until Tuesday August 31st, four days after the initial report of her disappearance, before an investigating case officer was finally assigned to Patricia’s case. That same day, just after 11pm, a school security guard found Patricia’s body in a sports storage deposit on the ground floor of the school, showing signs of sexual abuse and torture.⁹ Before this time, the police had not undertaken a thorough search of the school grounds. The removal of the body was carried out on September 1st 1999.

The initial autopsy conducted shortly after the discovery of her body indicated that "the girl's body had different types of bruises, hematomas, multiple trauma, sexual violence and asphyxiation by strangulation"¹⁰.

2. The Judicial Response

Since August 1999, a series of prosecutions, appeals and annulments ensued culminating in a decision by the Supreme Court in 2009 ordering that the judicial process be restarted. The Supreme Court of Justice’s 2009 order to restart the judicial investigation stage and Superior Court of La Paz’s order to begin the judicial process again from the investigative stage is the result of finding several errors in the initial investigation. These significant errors included mishandling the initial complaint that Patricia Flores was missing and failure to immediately search for her; unjustified judges and prosecutors recusals; mishandling of evidence and lack of a chain of custody, as evidenced by sending evidence to laboratories abroad; the intentional loss of pages from the case file; intentional manipulation of the FBI expert reports; and subsequent emergence of new evidence boxes (in 2014) that were not analyzed from the beginning of the case.

In this regard, the Inter-American Commission on Human Rights (IACHR) stated that Bolivia is:

⁷ Patricia’s absence was first noticed at the beginning of class on 27th August by her teacher, Ms. Amparo Lunario Rueda. She did not attend any classes that day. There is no record of her teacher, supervisor or any school official taking official action based on Patricia’s absence. In fact, when her father arrived to collect her, the teachers and officials alleged that Patricia had never arrived at the school and attempted to place the responsibility for her disappearance with her parents.

⁸ Information available at Corte Superior del Distrito de la Ciudad de la Paz. *Resolución 13/03. Juzgado Sexto de partido en lo penal*. 14 de mayo de 2003.

⁹ *La Razón* “Murderer is on the streets, somebody should do something. A girl is raped and killed in the school” (*Asesino anda suelto, que alguien haga algo. Violan y matan a una niña en la Escuela*), (2nd September 1999).

Camacho, Santiago. Expert Report about the analysis of the crime scene in the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia (2012). This report was prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law)

¹⁰ Sagárnaga, Raúl Alberto. Internal Judicial Dossier: report by forensic doctor. See also the Court ordered expert report: Delgado, Claudia. Expert Forensic Report on the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia (2012). Prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law).

The autopsy also notes the presence of multiple abrasions and wounds, blunt-cutting at the face and aggravated bruising resembling the imprint of a belt buckle. Additionally, Patricia’s face and vaginal cavity were marked with blood, and severe abrasions were found on the left leg and right knee. Patricia’s body presented clear signs of both vaginal and anal rape.

“[O]ne of the main weaknesses in the Prosecutors Office is the disparity and lack of coordination with respect to criteria for criminal prosecution, and the lack of effective controls over the performance of the prosecutors [...] Particularly when it comes to rejecting complaints, prioritizing cases for investigation”.

The Commission recommended the Bolivian State “strengthen the institutional capacity of judicial bodies, such as the Prosecutors’ Office, the police, the courts and the tribunals, and the forensic medical services, in terms of both human and financial resources, to combat the pattern of impunity in cases of violence against women, through effective criminal investigations followed by appropriate judicial action, thus guaranteeing proper punishment and reparations [...]”¹¹

Thus in 2012, the Second Judge of First Instance in the Departmental Court of Law, ordered two expert reports, one which required the exhumation of Patricia’s body and subsequent examination and the other which involved an investigation of the storage deposit, the school as a whole and all available case files.

Fifteen years after the crime, on August 19, 2014, the Bolivian court issued the judgment 27/2014, which sentenced the prime suspect to 30 years in prison without the right of pardon for the crimes of rape and aggravated murder, and one year for dereliction of duty to protect children in custody of education authorities against the former director of the Public School¹². The decision does not mention reparations to the family of the victim, who have fought for Patricia’s case for 15 years. The decision also fails to measures of non-repetition. The judge failed to consider the protection of the rights of the girl child and did not apply a gender perspective in the judgment. The facts are not framed as a form of violence against women and girls, as stated by the regional conventions to which Bolivia is party. The Court does not address the lack of access to justice either. Also, no action was taken regarding the irregularities in the case, despite the powerful case law that exists in the region regarding the due diligence that must be followed in cases of violence against women, in its various manifestations.

By failing to provide justice and reparation to the family of the victim, the decision sets a disappointing precedent on the effective protection of girls and their right to life, personal integrity, and education in the context of sexual violence in educational institutions in Bolivia. In May 2015, the Departmental Court of La Paz issued sentence 89/2015 on appeal, which confirmed the first instance ruling and extended the sentence against the former director of Patricia’s School by "exist full proof of the crime of dereliction of duty and concealment".

Patricia’s family had to wait almost sixteen years to obtain a judgment in their daughter’s murder and, even now, the possibility that it can be appealed still remains.

3. Patricia Flores Legacy

Based on this crime and the judicial process in the case, the Bolivian State have adopted some legislative initiatives and policies to reduce violence against women and girls in Bolivia, however violence and particularly sexual violence continues to increase. According to official sources between January and June of 2015, 13 murders and 133 sexual abuse were reported against children¹³. According to the Special Forces to Combat Violence (*Fuerza Especial de Lucha contra la Violencia*) 42 femicide were recorded nationwide and 90 percent of 26,775 cases of violence received involve a woman as the victim¹⁴. Also, according to CIDEM, 103 femicides were

¹¹ IACHR. *Access To Justice And Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. OEA/Ser.L/V/II. Doc. 34. 28th June 2007.

¹² *Página 7* “Dan 30 años de cárcel a Odón Mendoza por caso Patricia Flores” (20 August 2014)

Decision is available at: http://www.womenslinkworldwide.org/wlw/sitio/docs_postulacion/55098079a398f_gjua_ninapatricia_es.pdf (access 8th June 2015).

¹³ *Página 7* “Denuncian asesinatos y abusos sexuales en menores” (1st June 2015)

¹⁴ *Los Tiempos* “Felcv reporta 42 feminidios en Bolivia hasta la fecha” (18th November 2014)

documented between January and October 2014¹⁵. The United Nations High Commissioner for Human Rights has expressed his concern:

[A]bout the number of femicides, the length of the related investigations and the low number of convictions [...] The adoption in 2013 of Comprehensive Law 348 guaranteeing women a life free from violence, and the publication of the corresponding regulation in October 2014, constitute an important step forward in the struggle against gender-based violence [...] Nevertheless, the delay between the promulgation of the Law and the promulgation of its implementing decree has not facilitated implementation [...]

[T]he High Commissioner is concerned at the high number of femicides, the long duration of investigations and the low number of prosecutions in 2014, despite the adoption of Act 348 in 2013 [...] ¹⁶

3. Questions to the Bolivian State

What has the Bolivian government done to effectively implement the legislation and thus reduce and eradicate violence against women and girls?

What has the Bolivian State done to revise their system of justice, in order to ascertain the facts and identify those responsible for the violence against women and girls and ensure they are punished?

In what ways has the State has offered reparations the family of Patricia Flores of its responsibility for the acts of torture, rape, and murder against the girl Patricia Flores at a public school in La Paz?

In response to the data on femicide by the different consulted sources, what is the Bolivian State doing to harmonize the criteria and methodology for addressing the application of the newly defined crime of femicide?

¹⁵ *El Deber* "103 feminicidios registra Bolivia hasta octubre" (20th November 2014)

¹⁶ Report of the United Nations High Commissioner for Human Rights on the activities of his office in the Plurinational State of Bolivia. A/HRC/28/3/Add.2. 16 March 2015. Para. 23 – 24. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/050/77/PDF/G1505077.pdf?OpenElement>