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REPORT OF THE COALITION OF  
CIVIL SOCIETY'S HUMAN RIGHTS  
ORGANIZATIONS TO THE  
UNITED NATIONS HUMAN  
RIGHTS COMMITTEE

BOLIVIA, 2022

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## Introduction

On October 14 and 16 of 2013, The Human Rights Committee reviewed the third periodic report submitted by Bolivia (CCPR/C/BOL/3) at its 3010th and 3011th meetings (CCPR/C/SR.3010 and 3011). In March 2019, Bolivia presented its fourth periodic report.

This "Alternative Report" has been prepared by a coalition of civil society organizations in Bolivia that present the human rights situation in relation to the obligations arising from the International Covenant on Civil and Political Rights (ICCPR). Its elaboration was based on the evaluation of the implementation of the recommendations received by Bolivia from the Committee in the previous exam and the revision of the list of issues, through a participatory process.

Recognizing the adoption of important measures described in the report of the Plurinational State of Bolivia during the reporting period. But it is also necessary to point out that there are great challenges to face in order to fulfill the obligations that derive from the ICCPR.

Bolivia has continued with the development of its normative framework in several fields, however, in criminal matters it is necessary that figures such as torture, the crime of rape, hate crimes, abortion and others be modified in accordance with human rights standards. Also, to the same end, regulations such as the law on jurisdictional demarcation, the law on the granting of legal personalities and the Family Code should be revised. As well as the adoption of a legal framework on the right of indigenous peoples to consultation, access to public information and equal marriage, compliance with international human rights determinations and the protection of human rights defenders, among others. Discrimination, especially racial and gender, has deep roots and persists in the country. The lack of judicial independence, corruption and the delay of justice are manifestations of the deep crisis of the justice system in Bolivia. Pre-trial detention, violation of due process and torture in order to extract confessions from prisoners continue to be systematically applied. Forced marriages and pregnancies of girls have not yet been addressed by the State. Hate crimes against trans people and gender-based violence against women are compounded by lack of access to justice and impunity. In 2020, the GIEI was installed, a mechanism created to assist in the investigations of acts of violence and human rights violations in Bolivia between September 1 and December 31, 2019, based on the Agreement signed by the Plurinational State of Bolivia and the IACHR on December 12, 2019.<sup>1</sup> The GIEI report confirms serious human rights violations during the political and social crisis in Bolivia in 2019, requiring a plan to implement the recommendations and a follow-up mechanism for their compliance.

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<sup>1</sup> <https://www.cancilleria.gob.bo/webmre/comunicado/3884>

## Article 1

### Prior consultation with indigenous peoples

1. The Political Constitution of the State (CPE), in force since 2009, in Article 30, paragraph II-15 specifies that indigenous peoples have the right "to be consulted through appropriate procedures, and in particular through their institutions, whenever legislative or administrative measures likely to affect them are foreseen".<sup>2</sup> Regarding natural resources, the Constitution provides consultations with indigenous peoples.
2. Between 2012 and 2013, efforts were made in the country to build a participatory proposal for a Framework Law for Consultation of Indigenous Peoples and Farmers, however, when the Executive Body presented to the Legislative Assembly a proposal it was subsequently observed due to the lack of consensus between the indigenous organizations involved and the government,<sup>3</sup> collecting international standards in the matter<sup>4</sup>. To date, the proposal has not been submitted to the corresponding legislative debate.<sup>5</sup>
3. However, it is observed that consultation with indigenous peoples has been reduced in several cases to administrative processes aimed at validating projects and programs in their territories that do not meet the criteria of being prior, free, and informed.
4. There is a regulatory framework in mining and hydrocarbons that has been the subject of observations and caused several socio-environmental conflicts.<sup>6</sup> In several of these conflicts, international standards of prior consultation were not fully complied with in violation of the principle of good faith, they have not been prior, and the information provided has been insufficient. According to reports from indigenous organizations<sup>7</sup>, multiple invasions of indigenous territories authorized by the State are being recorded with "settlement authorization resolutions".<sup>8</sup>
5. Currently, women have taken the lead in the defense of the environment facing the intensification of the extractivist<sup>9</sup> economic development model. Due to that role and the patriarchal system, women must face greater degrees of structural,

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<sup>2</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

<sup>3</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

<sup>4</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

<sup>5</sup> <https://www.cejis.org/la-consulta-previa-y-la-consulta-publica-son-dos-formas-totalmente-distintas-de-consulta/>

<sup>6</sup> Alternative Report of the Organizations of the Indigenous Peoples of the Highlands and Lowlands of the Plurinational State of Bolivia for the Universal Periodic Review (UPR) 2019, CEJIS, <http://www.cejis.org/examen-periodico-universal-epu-2019/>, Pag 15

<sup>7</sup> Alternative Report of the Organizations of the Indigenous Peoples of the Highlands and Lowlands of the Plurinational State of Bolivia for the Universal Periodic Review (UPR) 2019, CEJIS, <http://www.cejis.org/examen-periodico-universal-epu-2019/>, Pag 15

<sup>8</sup> It is the dotation of fiscal land available to rural communities that do not own land or own insufficiently.

<sup>9</sup> <https://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>, Segundo Informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas, 31 de diciembre de 2011

systematic and staggered violence that is intermingled with harassment, intimidation, persecution, criminalization and judicialization<sup>10</sup>, violating the right to live a life without violence<sup>11</sup>, as well as national regulations for the protection of women's rights, as well as international regulations<sup>12</sup>.

### **Recommendations:**

6. Adopt adequate consultation procedures to obtain the free, prior and informed consent of indigenous and Afro-Bolivian peoples on any legislative or administrative measure likely to directly affect them, that includes a gender perspective to evaluate differentiated impacts and create a specialized state body for this purpose with the participation of civil society and indigenous, native and peasant nations, to ensure that the processes are carried out properly and in compliance with international regulations and standards. The Ombudsman Office must accompany the prior consultation processes by providing assistance to indigenous peoples who request them.
7. National legislation on mining, hydrocarbon and infrastructure construction should be brought into line with the international framework for prior and informed consultations, in order to safeguard the culture and not displace indigenous peoples.
8. The Ministry of the Environment and Water must implement plans for access to information and participation in environmental decisions framed in the guidelines of the Escazú Agreement, also guaranteeing the reinforced protection of indigenous nations and indigenous peoples who defend environmental rights.

## **Articles 2 and 4**

### **Legislation**

9. In mid-2014, within the framework of its second Universal Periodic Exam, the Bolivian State voluntarily committed itself to the "Creation of an inter-ministerial space in human rights for the preparation of periodic reports", which has been fulfilled, although the processes of consultation with civil society should be expanded and strengthened.

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<sup>10</sup> <https://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>, Segundo Informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas, 31 de diciembre de 2011

<sup>11</sup> There are several public complaints of intimidation of leaders of the TIPNIS sub-plant, who have opposed the construction of a TIPNIS road, women who led the defense of the Tariquíá National Reserve of Flora and Fauna, where it is intended to carry out activities of exploration and exploitation of hydrocarbons and also against defenders who opposed the construction of the Chepete and Bala megahydroelectric plants that intend to be built on the Beni river.

<sup>12</sup> <https://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>, Segundo Informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas, 31 de diciembre de 2011

10. With the support of the OHCHR, the State created the Human Rights Indicators System, unfortunately, this system does not have updated data since 2015<sup>13</sup>. The System for Follow-up, Monitoring and Statistics of human rights recommendations accepted by the State, called SIPLUS - Bolivia, was also created.<sup>14</sup>
11. Article 139 of the Political Constitution of the State establishes that states of emergency shall be regulated by law. The Legislative Branch promoted the Draft Law C.S. No. 199/2019-2020 on the Regulation of the State of Emergency<sup>15</sup> sanctioned on June 17, 2020<sup>16</sup> and sent it to the Executive Branch for promulgation, the Government of that time appealed against this rule as unconstitutional. The Plurinational Constitutional Court through Constitutional Order 0103/2020-CA dated July 3, 2020 rejected the consultation filed for lack of legitimacy of President Jeanine Añez for the interposition of consultation, the law was published by the Official Tabloid on October 29, 2020<sup>17</sup>.
12. Bolivia does not have a normative framework that formally establishes effective mechanisms to ensure that a determination by the Human Rights Committee or other bodies is complied with in a systematic and expeditious manner. Only the mechanism for complying with pecuniary measures and reparation of judgments of the Inter-American Court of Human Rights can be described as successful, although in most cases compliance takes a long time<sup>18</sup>.
13. In 2020, human rights organizations presented to the Ministry of Justice and Institutional Transparency a bill to regulate compliance with determinations of international Human Rights bodies (opinions, judgments, precautionary and provisional measures, friendly settlement agreements, etc.). whose impulse was publicly announced but, subsequently, was observed by some authorities, arguing that compliance with the determinations of the treaty monitoring bodies as they are non-binding recommendations, their compliance is a decision of the State and that character should not change, being that the proposed bill established mandatory compliance mechanisms for all international determinations on human rights, not only the judgments of the Inter-American Court, it also proposed resorting in first instance to conciliation to agree on the amount of economic reparation in the cases in which it is possible. This project was also aimed at establishing coordination mechanisms between public bodies and institutions for the execution of legal, administrative, and judicial measures established in these decisions. The IACHR in

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<sup>13</sup> Human Rights Council, Working Group on the Universal Periodic Review, 34th Session, 4-15 November 2019, Digest on the Plurinational State of Bolivia, Report of the Office of the United Nations High Commissioner for Human Rights, p.2

<sup>14</sup> <http://www.siplusbolivia.gob.bo>

<sup>15</sup> <https://web.senado.gob.bo/sites/default/files/PL-N%C2%B0%20199-2019%20APROBADO.PDF>

<sup>16</sup> <http://www.diputados.bo/prensa/noticias/diputados-sancion%C3%B3-ley-de-estados-de-excepci%C3%B3n>

<sup>17</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

<sup>18</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

its 2020 annual report highlighted this announcement as an important advance by Bolivia, ignoring that the proposal had been discarded<sup>19</sup>.

14. It is important to note that two decisions issued by the Human Rights Committee in 2018 have not been complied with <sup>20</sup>. At one point, the then Attorney General of the State<sup>21</sup> expressed: "[t]he opinions (of the Human Rights Committee) are not binding, they are not judgments."<sup>22</sup>
15. On the other hand, Bolivia does not have a national law on access to public information, although it does have lower regulations (DS N° 28168 and DS 0214).

### ***Recommendations:***

16. Disseminate the Covenant on Civil and Political Rights and national and international mechanisms for their protection and defense.
17. Periodically update the System of Human Rights Indicators and Follow-up and Monitoring of International Human Rights Recommendations so that it complies with the objectives for which they have been created, and that the information generated is current, public, and accessible.
18. Adopt an adequate normative framework for the implementation of the principles of the Human Rights Committee and other international human rights mechanisms in good faith, in accordance with the commitments assumed by the State, the obligations arising from the ratification of the main human rights treaties and the recognition by Bolivia of the competence of the bodies for the protection of human rights.
19. Agree and approve a law on access to public information, as well as improve the quality of data on judicial management, incorporating good practices and introducing mechanisms for data opening and judicial electronic government.

## **Article 3**

### **Illegality and the fight against discrimination**

20. In compliance with Law No. 045 of 8 October 2010 against Racism and All Forms of Discrimination, the National Council Against Racism and All Forms of Discrimination (CNCRD) approved the Policy of the Plurinational State of Bolivia against Racism and All Forms of Discrimination (Plan of Action 2012-2015) <sup>23</sup>. In 2017, OHCHR reported

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<sup>19</sup> The IACHR in its report states: "110. With regard to human rights institutions, the Commission noted, with satisfaction of the bill announced by the Government on December 10, 2020, to regulate the procedure to comply with the reparations ordered by international bodies before the declaration of international responsibility for human rights violations".

<sup>20</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

<sup>21</sup> <https://www.noticiasfides.com/nacional/politica/maldonado-y-ceballos-refutan-a-procurador-los-dictámenes-del-comite-si-son-vinculantes-396831>

<sup>22</sup> Delgado and Maldonado refute Procurador: Un rulings are binding | The Times

<sup>23</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

that the National Committee against Racism and All Forms of Discrimination had promoted the implementation of the 58 concrete measures included in the plan. The limited resources made available to the Committee had a negative impact on the planned activities<sup>24</sup>. Subsequently, the Multisectoral Plan of the Plurinational State of Bolivia against Racism and All Forms of Discrimination (2016-2020) was approved with similar limitations.

21. At the judicial level, the creation of the Gender Committee of the Judicial Branch and the Plurinational Constitutional Court and the implementation of the "Protocol for Judging with a Gender Perspective", adopted by the Judicial Branch, is something to point out. This protocol promotes the enjoyment and exercise of fundamental rights and jurisdictional guarantees from a gender equality perspective, to avoid discrimination in the justice system against women and LGBTI persons.<sup>25</sup>
22. Until 2017, 340 complaints<sup>26</sup> for crimes specified in Law No. 045 reached the penal scope, and only two processes have concluded, one through conciliation and the other with a condemnatory sentence. Two other cases had sentences in first instance that have been appealed, which means that of the 100% of cases known in criminal proceedings, only 0.6% concluded with a sentence passed in the authority of res judicata, which shows that criminal proceedings for discrimination do not prosper in judicial stands<sup>27</sup>, although several complaints about facts that lack criminal identity are also known, because despite the several years of Law No. 045, the meaning and scope of racism and discrimination and when they constitute a crime are still not fully understood<sup>28</sup>.
23. Regarding the cases of discrimination processed in the administrative route,<sup>29</sup> from 2013 to July of the 2019 administration, there are 1,370 cases submitted to the National Directorate Against Racism and All Forms of Discrimination, of which only 172 were resolved, corresponding to 13%, this percentage reveals the little effectiveness of this route.
24. The constitutional recognition of the secular character of the State has been a great step for Bolivia, although it has not yet been managed to be integrated into public management. In different governmental instances there is a general lack of knowledge about secularism and its substantive principles<sup>30</sup>. In particular, during the transitional government of Jeanine Añez, not only was the secular character of

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<sup>24</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

<sup>25</sup> Report of the Coalition of Civil Society Organizations on the Human Rights of the LGBTI Population for the Universal Periodic Review (UPR) of Bolivia, p. 17

<sup>26</sup> The Attorney General's Office sent a report that shows that of the 100% of known cases in criminal proceedings, only 0.6% concluded with a sentence passed in the authority of res judicata.

<sup>27</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

<sup>28</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

<sup>29</sup> Human Rights Community. 2020. Balance and the Implementation Of The Law Against Racism and All Form and Discrimination - Law No. 045. Bolivia, p 161. Available at: <https://comunidad.org.bo/assets/archivos/publicacion/5087af147a2fc1113e9b4f99bc52cbe1.pdf>

<sup>30</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>



the State ignored, but public actions were taken that involved the use of State resources and statements with religious content were issued <sup>31</sup>.

25. In recent years, religious and conservative fundamentalist organizations have carried out actions to influence public policy and hinder advances and guarantees for gender equality, and sexual and reproductive rights. Campaigns such as "Con mis hijos no te metas" or "Plataformas por la vida y la familia", supported by political actors, generate disinformation, and encourage hate speech, misogyny, homophobia, transphobia and discrimination, misinforming, stigmatizing, hindering, seeking setbacks, violating, and ignoring current regulations and human rights standards recognized in the country.
26. Several acts of discrimination and racism occurred during the conflicts that arose after the elections of October 20, 2019, an exacerbation of discrimination (predominantly racial) was observed. The case of the group called "Resistencia Cochala" that banned the entry of women in pollera to a square in Cochabamba; the insults and assaults on women in pollera in Santa Cruz and the case of controls and the prohibition of entry to the city of El Alto to citizens from Santa Cruz; these are some examples.

### ***Recommendations:***

27. Guarantee compliance with the constitutional precepts and other current regulations that criminalize acts of discrimination and incitement to hatred and violence, investigating and punishing the perpetrators of such acts.
28. Promote the secular character of the State, and public institutions and their officials must refrain from using religious criteria and precepts in the elaboration and implementation of public policies, especially when they are against human rights.
29. Adopt and implement a new Multisectoral Plan against Racism and All Forms of Discrimination with sufficient resources, create Departmental Committees where they do not exist yet and strengthen the existing ones; guarantee the participation of civil society and implement affirmative action measures in favor of vulnerable groups.
30. Implement awareness campaigns from the State, combat disinformation and fight against all forms of racism and discrimination
31. Include in the educational system anti-discrimination content promoting a culture of respect for the dignity of all people, the inclusion of gender equity and secular education.

### **Discrimination against the LGBTIQ+ population**

32. According to the Ombudsman's Office, in the 2006 to 2016 period there were 64 murders of LGBTI people in Bolivia; of them only 14 reached an investigation process and none obtained a sentence, not to mention cases of discrimination and violence

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<sup>31</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

not reported or abandoned for fear of reprisals, or those that are not accepted for investigation.<sup>32</sup>

33. Between 2017 and 2021<sup>33</sup> only two cases of murder of trans women would have obtained convictions, the cases were accompanied by activists and LGBTIQ+ and human rights organizations.
34. The administration of justice instances do not have official statistics on cases of LGBTI people, who were victims of crimes against their lives and personal security because of their sexual orientation and gender identity, and less on the status of the processes.<sup>34</sup>
35. On May 21, 2016, Law No. 807, the Gender Identity Law, was promulgated, which aims to establish the procedure for changing the name, sex data and image data of transsexual and transgender people in all public and private documentation related to their identity, allowing them to fully exercise the right to gender identity. However, Constitutional Judgment 0076/17 and Constitutional Order 0028/17 regarding an action of unconstitutionality filed by assembly members against several articles of the Gender Identity Law, declared "<sup>35</sup>*the unconstitutionality of paragraph II of article 11 of the Gender Identity Law*"; it indicated that "*the change of proper name, sex and image data will allow the person to exercise all fundamental rights, political, labor, civil, economic and social, as well as the obligations inherent in the gender identity assumed.*"<sup>36</sup> On the other hand, the Court in the Complementary Plurinational Constitutional Order (ACP) 0028/17, establishes that the issue of marriage, adoption, parity in electoral processes and confidentiality must be raised

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<sup>32</sup> Ombudsman's Office, [http://www.defensoria.gob.bo/dp/noticias\\_proc.asp?Seleccion=2537](http://www.defensoria.gob.bo/dp/noticias_proc.asp?Seleccion=2537)

<sup>33</sup> In 2017, a court sentenced to 30 years in prison a man who tortured and slit the throat of a young transsexual woman, this case is considered emblematic for the lesbian, gay, bisexual, transsexual and intersex communities for being the first to reach a sentence on the bench. In 2021, a second sentence was obtained for the murder of another woman trans assaulted because of their gender identity in a nightclub.

<sup>34</sup> Report of the Coalition of Civil Society Organizations on the Human Rights of the LGBTI Population for the Universal Periodic Review (UPR) of Bolivia, p. 17

<sup>35</sup> Assemblymen Carlos Pablo Klinsky Fernandez, Alternate Senator; Maida Peace Callau and July Grover Huanca Nina, Titular Deputies; and, Horace Poppe Inch, Amilcar Bladimir Barral Cabero and José Carlos Gutiérrez Vargas, Alternate Deputies, all of the Plurinational Legislative Assembly, demanding the unconstitutionality of articles 1, 3.2, 4.II, 7, 8, 9 in the phrase "change of sex data", 10, 11.II, 12.I and the First Final Provision of the Gender Identity Law, for being allegedly contrary to articles 8.II, 9.2, 14.I, II, III and IV, 58, 59, 60, 63, 64, 66 and 116 of the Political Constitution of the State (CPE).

<sup>36</sup> "After an escalation of protests by activists and institutions working in the defense of LGBTI rights, and even some authorities, the Court clarified through a complementary order "(...) that the Judgment at no time restricts the rights that persons by their own condition as human beings have proclaimed in the Political Constitution of the State, that is, civil and political rights as eligible or electors, or those that arise from private or commercial civil relations, the rights to health, to work, or property, but the unconstitutionality is based on the circumstances where the change of gender can lead to the affectation of the rights of third parties and the collective interest". In addition, the Court emphasizes limitations on people who change gender identity to exercising emerging rights " of the biological condition or identity of a man or woman, as established by the Supreme Norm itself", in this sense, the exercise of gender identity for this court does not mean the exercise of all fundamental rights such as the right to marry or adoption, parity in electoral processes and confidentiality, among others.

in a democratic debate that involves the Plurinational Legislative Assembly, social, civil, public and private organizations, without taking into account that according to article 3.6 of the Law on the Plurinational Constitutional Court<sup>37</sup>, this body has the full power to make an interpretation in the light of Articles 13, 14, 256 and 410.II of the Political Constitution of the State, in consideration that the rights are dynamic, and there must be an interpretation in merit to the most favorable right for the population, exercising the control of conventionality based on international standards such as equality and non-discrimination.<sup>38</sup>

### ***Recommendations:***

36. Adopt a law that protects all the rights of the LGBTI population. Legislation should be passed on hate crimes against the LGBTI population and include the aggravating factor of sexual orientation and gender identity in crimes against life and integrity, especially in the cases of murder and femicide.
37. To urge the Plurinational Legislative Assembly to approve complementary norms to Law No. 807 on Gender Identity, which establish the recognition and respect of the gender identity assumed by transsexual and transgender children and adolescents, considering that the mentioned norm establishes that only persons of legal age can change their name, sex and image data and its implementation to its competent bodies.
38. Install a working group as a matter of urgency between the Plurinational Legislative Assembly and representatives of the LGBTIQ+ population, to comply with SCP 076/17 and ACP 28/17; to regulate through legislative measures the rights violated of the Trans population.
39. Generate permanent and inclusive spaces for consultation by the government with the LGBTIQ+ population, in order to establish a specific agenda according to their needs and demands, regardless of their political and party position.
40. To include clearly in the amendments on the Comprehensive Law to Guarantee Women a Life Free of Violence, Law No. 348, transsexual and transgender women, for them to be protected by this norm, regardless of whether or not they have completed their process of changing their own name, sex, and image data.
41. The Municipal Autonomous Governments must encourage and promote the creation of the Citizen Councils of Sexual Diversities in all the municipalities of the country and promote subnational policies to guarantee the rights of the LGBTIQ + population.
42. Implement an action protocol for cases involving LGBTIQ+ people and develop training and awareness processes aimed at public servants in charge of investigating and punishing crimes, especially hate crimes, to avoid revictimizing and discriminatory acts during the proceedings, which must be carried out with due

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<sup>37</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

<sup>38</sup>"The principles governing constitutional justice are as follows: 6. Independence. It explains that constitutional justice is not subject to any other organ of public power."

diligence to combat impunity and guarantee comprehensive reparation for the victims.

43. Implement a national mechanism to generate official statistical information on cases of violence based on sexual orientation and gender identity and develop awareness campaigns aimed at the entire population on the rights of the LGBTIQ+ population.

## Equal political participation of women

44. Since 1994, Bolivia has made progress in adopting a normative framework that favors women's political participation and access to public office. The greatest progress was made with the Political Constitution of the State (2009) and Law No. 026 of June 30, 2010, the Electoral Regime Law, which determines that Bolivian intercultural democracy guarantees gender equality and equal opportunities between women and men. Likewise, in 2018 Law No. 1096 on Political Organizations was approved, which obliges citizen parties and groups to include in their statute a regime of depatriarchalization that guarantees the equal participation of women in the formation of the organizational structure, leadership, and definition of candidacies, as well as mechanisms to address and punish harassment and political violence. The creation of the Observatory of Democratic Parity and the Gender Unit in the Plurinational Electoral Body is also highlighted.
45. In the 2020 National Elections, despite the regulations and greater control (computer system), of the five authorized political organizations, only three complied with the principles of parity and alternation. The verification and monitoring of compliance with parity at all stages of the electoral process was not fully complied with by the Supreme Electoral Tribunal.
46. After the official results of the 2020 General Elections, a total of 86 women and 89 men assumed functions as national assemblymen, which corresponds to 49.1% and 50.9%, respectively, of the total members of the national Legislature <sup>39</sup>.
47. As a result of the subnational elections, 117 women (43%) and 155 men (57%) were elected departmental assembly members. At the municipal level, 970 women and 1034 men were elected municipal councillors.<sup>40</sup>
48. But much remains to be done along the same lines within the executive sphere, since, of the 336 municipalities in the country, only 22 are presided by women, who represent 6.5%; of 17 ministries, only three have female representation, and there is no female governor.
49. The “Asociación de Concejalas de Bolivia” (ACOBOL) registered in 2018 the high number of 117 complaints of harassment and political violence against councilors; in 2019, a total of 127 cases, and in 2020 it reached 157 complaints, of which 14 were filed in criminal proceedings, 10 in the constitutional mechanism, 124 by

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<sup>39</sup> [ww.noticiasfides.com/nacional/politica/en-4-decadas-la-participacion-de-las-mujeres-en-el-legislativo-se-quintuplico-413406](http://ww.noticiasfides.com/nacional/politica/en-4-decadas-la-participacion-de-las-mujeres-en-el-legislativo-se-quintuplico-413406)

<sup>40</sup> Gender Observatory - Protagonists, Women's Coordinator based on data from the Supreme Electoral Tribunal

administrative processes and 4 were raised in the electoral route <sup>41</sup>. The first case that received a first instance sentence was only in 2021<sup>42</sup>, a case that, in addition, is not relevant in relation to this problem <sup>43</sup>. These data reveal, on the one hand, that many women do not report these facts for fear of reprisals and, on the other, that impunity in this area is alarming.

50. As of November 2021, ACOBOL's Center for Attention and Monitoring of Harassment and Political Violence received 76 complaints, 50 were filed by the outgoing authorities (2015-2021) and 26 by the new authorities (2021-2026). Of the total, 69 chose to seek an administrative solution, four went to the prison, two raised the complaint to the electoral instance and one took the constitutional route. The Public Ministry registered in 2021 a total of 58 complaints for harassment (33) and violence (25) policy against women.
51. An emblematic case of political harassment and femicidal violence against elected women authorities is the case of Councilwoman Juana Quispe, who was murdered on Tuesday, March 12, 2012, 32 days after being restored in her political rights and after suffering political persecution, discrimination and constant verbal and physical aggression. His body was found a day later in the Orkojahuira River <sup>44</sup>, with hanging marks, allegedly with the seat belt of a minibus seat <sup>45</sup>. Until December 2021 the case has not been solved so this crime remains in impunity.
52. The Law on Political Organizations and Instruction 047/2021 issued by the Supreme Electoral Tribunal (TSE), establishes that political parties and citizen groups had until December 31, 2021 to adapt their organic statutes and other constituent documents, including the regime of depatriarchalization and mechanisms against harassment and political violence. With four days to go until the deadline, only five political organizations of national scope, out of a total of 11, adapted their statutes to the provisions established in this standard<sup>46</sup>.

### **Recommendations:**

53. Guarantee the implementation of the Law Against Harassment and Political Violence against Women, Law No. 243, and implement an intersectoral strategy, which contributes to the elimination of prejudices and gender discrimination in the political sphere and the public function. Strengthen legal support services for victims and the mechanisms for protection and urgent action provided for in Law No. 243 and its regulations.

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<sup>41</sup> ACOBOL. Centro de atención y monitoreo de acoso y violencia política, disponible en: <http://www.acobol.org.bo/denuncias-por-via/>

<sup>42</sup> Cf.: [https://correodelsur.com/seguridad/20210212\\_dictan-dos-anos-de-carcel-para-rafael-quispe-por-acoso-politico-contra-felipa-huanca.html](https://correodelsur.com/seguridad/20210212_dictan-dos-anos-de-carcel-para-rafael-quispe-por-acoso-politico-contra-felipa-huanca.html)

<sup>43</sup> The case corresponds to a ruling against indigenous leader Rafael Quispe for a process for political harassment initiated by the official peasant leader Felipa Huanca, whom Rafael Quispe denounced for alleged involvement in the irregular management of a state fund for indigenous projects.

<sup>44</sup> City of La Paz

<sup>45</sup> <https://bolivia.unfpa.org/sites/default/files/pub-pdf/3-consulta-diagnostico-participativo-PIP.pdf>

<sup>46</sup> <https://www.ahoraelpueblo.bo/solamente-cinco-partidos-adecuaron-sus-estatutos/>

54. The Plurinational Electoral Body must comply with the Third Transitory Provision of Law No. 1096, guaranteeing the inclusion of a regime of depatriarchalization in the internal regulations of political organizations, which contributes to the fight against violence against women in the political sphere, to the exercise of political rights, to political equality, in short, to the consolidation of parity and intercultural democracy.
55. Strengthen the Gender Mechanism and the Observatory of Democratic Parity of the Supreme Electoral Tribunal, which allows progress with respect to regulations, policies and measures aimed at consolidating parity and advancing in the construction of parity democracy.
56. Implement an institutional policy and a comprehensive system for the prevention, care, protection and eradication of harassment and political violence, which is mandatory for the Plurinational Electoral Body.
57. Adopt measures to combat patriarchal practices, stereotypes, and discrimination in the political sphere and generate effective measures to guarantee the participation of women and the sufficient protection of their rights in access, permanence, and political career, on equal terms with men, especially indigenous and Afro-descendant women.
58. Promote strategies for political participation, representation, and leadership of women, under conditions of equality, promoting the co-responsibility of care.
59. Efficiently implement public policies against harassment and political violence against women; being necessary to guarantee the development of a culture of institutionality that applies due diligence in the attention of cases, which will only be possible if it is supported by specialized operators, sensitized, and committed to the fight against violence against women who are exercising political-public functions.<sup>47</sup>
60. Develop training processes for the personnel of the FELCV, SIJPLU, SEPDAVI, Public Prosecutor's Office, Judicial Branch, social and political organizations on the political rights of women, Law No. 243, and its Regulatory Decree, in addition to evaluating the effectiveness of these public entities in the treatment and processes developed within the framework of the mentioned regulations.
61. The State must investigate and punish the murder of Councilwoman Juana Quispe after having suffered violence and political harassment, as well as all acts of harassment and political violence denounced and act ex officio.

## **Articles 6 and 7**

### **Abortion**

62. Plurinational Constitutional Judgment No. 0206/2014 of February 5, 2014, declared the unconstitutionality of the requirement of prior judicial authorization for access

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<sup>47</sup> ACOBOL Association of Councilors of Bolivia, Status of the Main Bottlenecks that Hinder the Application of Law No. 243, 2018, p. 53

to Legal Interruptions of Pregnancy (ILE) in cases of rape, statutory rape and incest and when there is a risk to health and life for women, grounds allowed in the current Criminal Code under the figure of unpunished abortion. Subsequently, the Ministry of Health, through Ministerial Resolution No. 0027, approved the Technical Procedure for the Provision of Health Services within the framework of the mentioned judgment on January 29, 2015, and Ministerial Resolution No. 1508 "Model of Comprehensive Care for Victims of Sexual Violence"<sup>48</sup> on November 24, 2015, thus complying with the committee's recommendation.

63. Despite the fact that abortion is legal on the grounds set forth and that the requirement of judicial authorization has been eliminated, the right to access to the ILE continues to be violated; a statement that is shown in the Ombudsman's Report "Situation of the Legal Interruption of Pregnancy as a Human Right of Women"<sup>49</sup>, identifying that the main obstacles to access to services, are generated by the competent state bodies, for instance, the Bolivian Police, by denying a copy of the complaint for the crimes described that constitutes a requirement to request the ILE in the health services; and by health personnel, who do not objectively inform users about the services of the ILE, either because they are conscientious objectors, prejudices, ignorance of the norm or arbitrary decisions and non-observance of the minimum rules for the filing of conscientious objection, among others.<sup>50</sup>
64. The same report states that the main impediments to access to the ILE are the lack of infrastructure, equipment, supplies and medicines; failure to comply with deadlines to carry out the procedure (24 hours after requesting the service); additional requirements contrary to the current standard; as well as the violation of the right to privacy in the attention and realization of the ILE.
65. It is public knowledge; that representatives of conservative and fundamentalist religious groups, public servants, medical, psychology or social work personnel of hospitals and/or third parties, are violating women's right to privacy and to not suffer arbitrary and abusive interference, in a systematic manner in the making of their decisions and consents to access the ILE, especially in cases of minors; also failing to comply with the right to be cared for "in a friendly, respectful environment, free from religious pressures and stigmas"<sup>51</sup>; with the aim of convincing them not to continue with the procedure, through revictimizing actions and unjustified delay of access to medical service; as was the case in the "case of the 11-year-old girl from Yapacani"<sup>52</sup>. There has also been a change in the single model of informed consent in some hospitals, aimed at discouraging and misinforming girls and women. In this

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<sup>48</sup> Cf. <https://www.comunidad.org.bo/assets/archivos/herramienta/d0fe93060eb1bbcaf7fc40c90ffcd9ea.pdf>

<sup>49</sup> Ombudsman of the People. Assistantship for the Validity and Exercise of Human Rights of Girls, Boys, Adolescents, Women and Populations in Situations of Vulnerability with the technical and financial support of: Ipas Bolivia. (2020)

<sup>50</sup> Ibid.

<sup>51</sup> Ministerial Resolution No. 0027 of January 29, 2015. Retrieved from: <https://comunidad.org.bo/assets/archivos/herramienta/3268d0d95eb0330b3f3eef1cb4024bcc.pdf>

<sup>52</sup> <https://www.paginasiete.bo/especial02/2022/1/1/la-nina-de-yapacani-mostro-el-drama-de-la-violacion-el-embarazo-infantil-318917.html>

regard, the IACHR, in view of the violations described, issued Communiqué No. 287/2021, in which it states: "The IACHR urges the State of Bolivia to comply with its obligation to protect girls and adolescents from sexual violence and guarantee their sexual and reproductive rights."<sup>53</sup>

66. Likewise, on December 13, 2021, in a general hearing, the IACHR reiterated to the Bolivian State that "the use of conscientious objection does not eliminate the State's obligation to guarantee the exercise of sexual and reproductive rights and must guarantee access to the interruption of pregnancy." In addition, the IACHR called on the State to guarantee adequate training in this area, both for those who provide medical services, as well as for the police and justice operators, highlighting the importance of comprehensive sex education and the need to have a differentiated approach to children and adolescents and indigenous peoples.<sup>54</sup>
67. In relation to the criminal prosecution of abortion, it continues to be used systematically to control and protect women's bodies, forcing women to perform unsafe abortions, thereby increasing the risks to their health; this reality translates into a high rate of unsafe and clandestine abortions in precarious conditions, which constitutes the third cause of maternal mortality in Bolivia.<sup>55</sup>
68. In 2017, the Penal System Code, Law No. 1005<sup>56</sup>, was promulgated, which expanded the grounds on which women could access abortion but was repealed on January 26, 2018 by Law No. 1027<sup>57</sup>, in response to observations to other articles of the norm that mainly mobilized the medical sector regarding the criminalization of medical malpractice<sup>58</sup>.
69. Between 2020 and 2021, 168 women have been criminally prosecuted for the criminalization of abortion<sup>59</sup>; which represents 7 women per month who have been prosecuted in this period; being a violation of human rights, recommendations, and international instruments.
70. In the period between 2014 and 2021, Ipas Bolivia has registered 72,376 cases of incomplete abortion and a total of 508 cases of ILE in public services, the main causes being: rape 59.9% (304 cases); fetal malformation 22% (112 cases), by women's health 8.63% (41 cases), by risk of life of women 1.1% (8 cases) and without data 8.45% (43 cases). The data referred to in percentage represent girls (11%); adolescents (45%) and women over 18 years (44%)<sup>60</sup>. The data referred to in the

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<sup>53</sup> Retrieved from <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/287.asp>

<sup>54</sup> 182nd Period of Sessions of the IACHR. hearing "Situation of Sexual and Reproductive Rights in the Plurinational State of Bolivia". December 13, 2021. <http://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/press/releases/2021/344a.asp>

<sup>55</sup> <https://www.minsalud.gob.bo/2347-el-aborto-es-la-tercera-causa-de-muerte-materna-en-el-pais>

<sup>56</sup> Retrieved from: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/107563/132461/F-1560886031/ley%201005%20GACETA%20OFICIAL%201021%20de%2020%20diciembre%20201.pdf>

<sup>57</sup> Retrieved from: <https://www.lexivox.org/norms/BO-L-N1027.html>

<sup>58</sup> <https://www.noticiasfides.com/nacional/politica/conozca-los-13-articulos-del-codigo-penal-que-causan-polemica-y-movilizan-a-sectores-384814>

<sup>59</sup> Retrieved from: <https://www.fiscalia.gob.bo/index.php/estadisticas/137-violencia-familiar-o-domestica/4559-delitos-de-la-ley-348-27-12-2020>

<sup>60</sup> Ipas. Bolivia. <https://www.ipasbolivia.org/>



preceding paragraph is inconsistent with the cases of sexual violence reported between 2018 and 2021, which represent in total: 7. 437 cases of rape; 5. 941 rape of infants, children and adolescents; and 4. 489 cases of statutory rape, which in a significant percentage their consequences are unwanted pregnancies; interpreting that women prefer to go to unsafe services rather than go to a public service where they are stigmatized, mistreated and revictimized.

71. Unsafe abortion accounts for 13% of maternal mortality in Bolivia (direct causes). Linked to this, from 2016 to September 2018, a total of 9,552 girls under 14 years of age were pregnant; and between 2018 and 2020, prenatal care was provided to a total of 7170 pregnant girls under the age of 15, according to information presented by IPAS Bolivia to the IACHR in a general hearing on December 13, 2021.
72. There is no official or public information on ILEs at a national level, since the National Health Information and Epidemiological Surveillance System is not publishing data from the reports of the "Monthly Notification for Epidemiological Surveillance – 302" by department, which to date includes the indicator on legal interruption of pregnancy. On this point, the Attorney General's Office informed the IACHR based on the previously mentioned source that, "from January to September 2021, 94 cases of ILEs <sup>61</sup> have been registered"; however, it is reiterated that such information is not public knowledge.
73. The "Census-based Maternal Death Study" <sup>62</sup>, conducted in 2015, in Bolivia, reported that maternal deaths in children under 14 years of age represent 10.7%<sup>63</sup>; and the Demographic and Health Survey 2016, included in a referential way, that 427 women of 14 years were already mothers; that they were pregnant for the first time or that they were once pregnant <sup>64</sup>. On the other hand, the National Health Information System (SNIS), reported that in 2018 prenatal care was provided to a total of 2,949 pregnant girls under 15 years of age; in 2019, 2,591 girls were treated and 2,170 during 2020; a situation of high vulnerability in the lives of girls <sup>65</sup>.
74. Regarding the knowledge and use of contraceptive methods (MAC), according to the Demographic and Health Survey 2016 (EDSA) <sup>66</sup>, 98% of women between 15 and 49 years old, know the modern MAC, but only 45.1% use them. The use of modern MAC <sup>67</sup>reaches 58% of unbound and sexually active women, and in the case of women in

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<sup>61</sup> 182nd Period of Sessions of the IACHR. hearing "Situation of Sexual and Reproductive Rights in the Plurinational State of Bolivia". December 13, 2021.

<sup>62</sup> National Institute of Statistics. 2017. Demographic and Health Survey EDSA 2016, Prioritized indicators. La Paz, Bolivia.

<sup>63</sup> Ibid.

<sup>64</sup> National Institute of Statistics, Ministry of Health, Census-based Maternal Death Study, Bolivia, 2016.

<sup>65</sup> Note that the information does not use the same criteria, there is data for children under 15 years of age and 14 years of age, and it does not differentiate between girls and adolescents.

<sup>66</sup> National Institute of Statistics (INE) and the Ministry of Health. Demographic and Health Survey 2016. Prioritized Indicators of the Demographic and Health Survey.

<sup>67</sup> Modern MACs are considered to be: Female sterilization, male sterilization, pill, IUD, injections, implants, male condom, female condom, diaphragm, foam or jelly, lactational amenorrhea method (MELA) and emergency contraception.

union it does not reach 50%. Access to information and methods of pregnancy prevention is very scarce, especially in rural and indigenous populations.

75. In terms of public policies, plans on sex education such as the Plurinational Plan for Comprehensive Sexuality were not implemented in the reported period, due to pressure from conservative and religious fundamentalist groups; the Strategic Plan for Sexual and Reproductive Health 2016-2020 was not put into use either, and there is no Law on Sexual Rights and Reproductive Rights or an alternative norm.
76. In times of pandemic, sexual and reproductive health services were suspended, ignoring the provisions of Consideration 53 of Resolution 001/2020 of the SACROI of the Inter-American Commission on Human Rights<sup>68</sup>, which says that *the availability and continuity of sexual and reproductive health services must be guaranteed during the pandemic crisis*, giving place to problems for the life and health of women, especially those in the gestation stage.
77. A report by the Plurinational Plan for the Prevention of Pregnancy in Adolescents and Young People 2015-2020 concludes that pregnancy in adolescents and young people is the result of limited opportunities to exercise their rights to education and sexual health that allow them to make informed decisions aware of the consequences.

### **Recommendations:**

78. Approve and Promulgate a Law on Sexual and Reproductive Rights that complies with the fifth exhortation of the Plurinational Constitutional Court of the SCP 0206/2014, the recommendations of international human rights mechanisms addressed to the State and applies the international human rights standards to solve the problem of unsafe and unhealthy abortions that generate serious health problems and cause the death of women, including the modification of criminal legislation in order to guarantee legal, safe and effective access to the voluntary interruption of pregnancy.
79. Approval of the Strategic Plan for Sexual and Reproductive Health 2021-2025 and the National Plan for the Prevention of Teenage and Youth Pregnancies, which includes girls under 15 years of age, with sufficient budgetary allocation for its implementation at all levels of the health system in the country.
80. Eliminate the obstacles that prevent access to ILE and that woman who resort to this practice are not criminally responsible or persecuted guaranteeing the confidentiality of medical care and expressly allow themselves to deny or postpone abortion, forced continuation of pregnancy, as well as abuse and mistreatment of girls and adolescents, shall be classified as torture, cruel, inhuman and degrading treatment, as the CEDAW committee has pointed out.
81. Ensure adequate training processes on sexual and reproductive rights and ILE for those who provide medical services, such as police and justice operators.
82. Instruct the National Institute of Statistics, the Ministry of Health, and other bodies called by law, to periodically publish official data on pregnancies of girls and

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<sup>68</sup> IACHR, Resolution 1/2020 "Pandemic and Human Rights in the Americas." Year 2020.

- adolescents under 15 years of age and urge the SNIS, publish in different media, official data on the reports of the "Monthly Notification for Epidemiological Surveillance – 302" by department, on legal terminations of pregnancy carried out at the national and departmental levels.
83. Instruct the highest authorities of the Bolivian Police, to issue an instruction that determines the obligation of the police to provide without any restriction, the copy of complaints of sexual violence <sup>69</sup>.
  84. Train health providers, who must interpret the clause that allows access to the ILE, in the cases that present a risk to women's health. During this training, it has to be clear that the term "health" does not only include physical well-being, but it also includes mental and social elements and that are closely related to rights such as life, dignity, and equality"<sup>70</sup>.
  85. To urge the Ministry of Health to instruct the acquisition of Mifepristone and Misoprostol in health system services to provide abortion care with evidence-based technology and to amend Law No. 1152, incorporating the ILE as a health service product at all three levels of care, considering that this regulation limits the service to the second and third levels.
  86. Approve the Protocol for Pregnancy Care in Girls Under 15 years of age by the Ministry of Health without gestational limit and as Comprehensive Health Clause providing for safe access mechanisms to the ILE.
  87. Take the necessary measures to ensure that no third party interferes with or hinders the access of women - especially girls and adolescents - victims of sexual violence to the Legal Interruption of Pregnancy stipulated in current national regulations and punish those who incur in this.
  88. Design, approve and implement throughout the Plurinational Education System a public policy of Integral Education in Sexuality, according to each maturing stage of the development of children and adolescents that incorporates a gender, diversity, disability, human rights and intersectional perspective.
  89. Carry out communication campaigns to raise awareness about the importance of Comprehensive Sexuality Education, the use of safe and affordable modern contraceptive methods <sup>71</sup>.
  90. Ensure access to safe modern contraceptive methods for the entire population of childbearing age free of charge or at affordable prices.
  91. Declare sexual and reproductive health services as essential to guarantee their continuity, with quality and warmth, even in times of health emergency.

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<sup>69</sup> The Code of Criminal Procedure establishes that the copy of the complaint must be delivered to the complainants.

<sup>70</sup> World Health Organization.

<sup>71</sup> Committee for the Elimination of Discrimination against Women, Concluding Observations on the combined Fifth and Sixth Periodic Reports of the Plurinational State of Bolivia, U.N. Doc. Doc. CEDAW/C/BOL/CO/5.6, par. 29b).

## Articles 3 and 6

### Gender-based violence against women

92. In 2013, the Comprehensive Law to Guarantee Women a Life Free of Violence (Law No. 348) was enacted, which establishes mechanisms for prevention, care, punishment, and reparation. The Law determines the creation and operation of specialized bodies for the care of victims, among them are the Special Force to Combat Violence (FELCV), the Municipal Integral Legal Services (SLIMs), the Shelters, Community Houses in rural areas and Temporary Shelters, the Specialized Prosecutor's Offices, and the Specialized Courts.
93. The Plurinational Comprehensive System for the Prevention, Care, Punishment and Eradication of Gender-Based Violence (SIPPASE) has been created under the supervision of the Ministry of Justice and Institutional Transparency. This System, among other responsibilities, is responsible for creating a single Registry of violence that to date only managed to implement a system to which slims, instances promoting the complaint that provides legal, psychological, and social support to victims, have access. Given this, each institution in charge of the attention to the victims has developed its own system whose interoperability is in process, with important advances from the Attorney General's Office, although the Police and the Judicial Organ have not advanced at the same time as this institution.
94. Supreme Decree No. 2145 regulating Law No. 348 was issued, and subsequently amended by Supreme Decrees Nos. 2610 and 4399 referring to the resources of the Direct Tax on Hydrocarbons that must be used to strengthen the police, comprehensive services, and shelters. However, the percentages of investment established in the norm are not met, for example in the 2020 management, although the nine governorates allocated resources for the fight against violence, they did so below the provisions of the norm, and the percentage of execution only reached 30.8% of total resources.<sup>72</sup> When Law No. 348 was enacted, there was no additional budgetary allocation for the institutions of the justice system responsible for the care of victims, so the increase of almost 30% of procedural burden in the criminal justice system has been very difficult to manage, which also results in the transfer of costs to victims.
95. There is limited coverage of care services, especially in rural areas, although the law establishes the attention of a multidisciplinary team, the staff is reduced by having only one or a professional lawyer or psychologist and most of the professionals have little professional experience, they are subject to temporary contracts, often non-specialized and frequently broken, to which is added the precariousness of many of the services. Only 27 courts and tribunals were crated in capital cities and El Alto,

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<sup>72</sup> Coordinadora de la Mujer. Newsletter "Balance on Budgets against Violence." 2021.

which are oversaturated by the procedural burden and are not exclusive in terms of violence against women because they also deal with cases of corruption crimes.<sup>73</sup>

96. On January 16, 2019, Supreme Decree No. 3774 created the Plurinational Service for Women and Depatriarchalization "Ana María Romero", whose purpose is to monitor and evaluate compliance with public policies on violence and discrimination against women.
97. On May 3, 2019, Law No. 1173 on the Abbreviation of Criminal Procedure and the Strengthening of the Comprehensive Fight against Violence against Children, Adolescents and Women was promulgated, which incorporates and modifies criminal procedural institutes on violence against women. However, this rule that provides that pretrial detention is subject to compliance with deadlines set by judges, as well as the Law on the Execution of Sentences would be used to provide for the cessation of preventive detention of persons sentenced in the first instance even for crimes of femicide and rape, without considering procedural risks, in particular that of flight, which must include the analysis of the conditions of vulnerability of the victims.<sup>74</sup> A recent case<sup>75</sup> of a man who was sentenced to 30 years of deprivation of liberty for the crimes of murder and rape in 2013 had access to house arrest without custody in 2019 for an alleged medical treatment<sup>76</sup> of 18 months at the end of which he did not return to prison, without any follow-up measures by the authorities. He was known when he was apprehended and the police discovered the bodies of two teenagers buried in his home, who suffered multiple acts of rape and exhortation<sup>77</sup>.
98. Violence against women in Bolivia continues to be installed as one of the main problems of the country, the greatest obstacles to be faced are linked to the lack of access to justice translated into the prevailing impunity, as a result of the limited coverage of care services, the lack of infrastructure and adequate equipment, the lack of psycho-socio-legal support to the victims, the complexity of criminal proceedings, the delay in justice, the transfer of expenses to victims, the lack of job stability and specialization of the personnel who care for victims who often relativize violence, re-victimize women, and do not act with due diligence.

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<sup>73</sup> In the remaining 330 municipalities, ordinary courts are competent to resolve these cases, Law No. 1173 promulgated in May 2019, indicates that the Judicial Branch must adopt a Plan for the Reorganization of Courts and Tribunals in order to guarantee the specialty required by Law No. 004, "Law on the Fight against Corruption, Illicit Enrichment and Investigation of Fortunes "Marcelo Quiroga Santa Cruz", and Law No. 348, "Comprehensive Law to Guarantee Women a Life Free of Violence", according to the possibilities and existing procedural burden.

<sup>74</sup> [https://www.comunidad.org.bo/index.php/reforma/detalle/cod\\_reforma/604](https://www.comunidad.org.bo/index.php/reforma/detalle/cod_reforma/604)

<sup>75</sup> <https://www.paginasiete.bo/sociedad/2022/1/26/hallan-cuerpos-de-iris-lucy-asesinadas-por-un-violador-serial-con-77-victimas-321733.html>

<sup>76</sup> <https://www.paginasiete.bo/sociedad/2022/1/27/juez-alcon-dejo-libre-en-2019-al-violador-serial-por-una-enfermedad-incurable-321850.html>

<sup>77</sup> <https://www.lostiempos.com/actualidad/seguridad/20220128/lima-denuncia-que-desaparecio-expediente-vinculado-al-caso-del>

99. According to the Survey of Prevalence and Characteristics of Violence against Women (EPCVcM), carried out in 2016 by the Ministry of Justice and the National Institute of Statistics INE for every 100 women, 75 reported having suffered some type of violence by their partner during their relationship.
100. The cases of femicide registered<sup>78</sup> from 2013 to December 2021 reach 895, on average a femicide occurs every three and a half days, and only 31% have obtained a sentence despite a significant percentage of cases in which alleged perpetrators have been identified and are in process, so the delay of justice is evident. According to data from the Attorney General's Office, 108 cases were registered in 2021, of which women between 21 and 30 years of age are the main victims of femicide and although the last two years present a small decrease<sup>79</sup> in the number of cases, there is no significant change.
101. According to a 2020 study<sup>80</sup>, 90% of cases correspond to intimate femicides (77%) and family femicides (15%). On the other hand, several cases (16%) have occurred after the filing of a complaint<sup>81</sup>, so it's evident that the protection systems are deficient. There is no effective policy or mechanisms for assistance to the sons and daughters of victims or protection for families.
102. According to the Attorney General's Office of the State during the 2021 management, 46,774 cases related to crimes of Law No. 348 were registered, the main criminal act was Family or Domestic Violence with 37,613 cases, then there is Sexual Abuse with 2,638, Rape of Infant, Girl, Child or Adolescent 2 078, Rape 2,249, Statutory Rape 1,548, Sexual Harassment 217, among others.
103. According to data from the Special Force to Fight Violence (FELCV), in 2013-2021, since Law No. 348 is in force, 336,272 complaints of crimes of violence against women were registered, an average of 37,363 complaints per year and 102 per day.
104. During the strict quarantine due to COVID-19, obstacles to filing complaints increased. Furthermore, services for victims of violence were not declared essential services.
105. Regarding the most frequent crime, family or domestic violence is the most recurrent, not only among the crimes of violence against women, but in relation to the other crimes reported in the country. Next in line are robbery, serious and minor injuries, theft, fraud, aggravated robbery and finally threats<sup>82</sup>. The number of 37,613 complaints registered in 2021 is one of the highest since the enactment of Law No. 348; in 2020, 30,824 cases were registered and in 2019, there were 31,293.

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<sup>78</sup> Los tiempos. With 116 femicides, 2019 is one of the most fatal years. Available at: <https://www.lostiempos.com/actualidad/cochabamba/20191229/116-femicidios-2019-es-uno-anos-mas-fatales#:~:text=La%20tipificaci%C3%B3n%20del%20femicidio%20se,2018%20y%20116%20el%202019.>

<sup>79</sup> In 2019 there were 117 cases and in 2020 there were 113 according to data from the Attorney General's Office.

<sup>80</sup> Comunidad de Derechos Humanos. 2021. Study on the characteristics of femicide cases and the response of the justice system in the nine capital cities and El Alto. UNFPA. Bolivia. p. 36. Available in: <https://comunidad.org.bo/assets/archivos/publicacion/59e91e32f3b9901492c67b76126d4622.pdf>

<sup>81</sup> Ibid., p. 42

<sup>82</sup> Comunidad de Derechos Humanos. 2021. Human Rights Progress Monitoring System SIMOPREDH.

106. 64 % of the processes for violence against women in the period 2015-2018 (January-March) have concluded, however, only 1.62 % of the closed cases resulted in a conviction after an ordinary trial<sup>83</sup>. 3.3 % obtained it through an abbreviated process, totaling 4.92% between them. This is a sign of the high prevalence of impunity that exists in the country, causing victims to feel insecure as well as to lose faith and trust in the administration of justice.
107. The processes that concluded with rejections by the Public Ministry represent 84.96 % of the closed cases. If we add to this the alternative outcomes of conciliation and the conditional suspension of the process (0.21 %), the criteria of regulated opportunity<sup>84</sup> (5.34 %) and dismissals (4.54 %), it is possible to affirm that at least 95.05 % of the cases for crimes of violence were closed without a sentence. In other words, only in 5 of every 100 closed processes was a sanction ordered in an ordinary oral trial or an abbreviated process<sup>85</sup>.
108. Due to gender bias, reported events are usually minimized, especially in the family and domestic sphere, and not investigated with due diligence, especially in cases of psychological violence. The vast majority conclude with rejections, the justification being abandonment of the case or lack of procedural initiative by the victims, ignoring the obligation to investigate ex officio. On other occasions, a lack of evidence was pointed out, without an exhaustive investigation having been carried out. This even happened when there was sufficient evidence, without taking into account that these decisions, in addition to promoting impunity, entail legal action against the plaintiffs for allegedly false complaint. All of this despite the fact that the Plurinational Constitutional Court issued constitutional judgment 0017/2018-S2, which establishes that the duty of ex officio investigation of any judicial or administrative process linked to gender-based violence cannot depend on the victim's procedural initiative and that the burden of proof falls on the Public Ministry, otherwise it would violate not only the rule contained in art. 59 of Law No. 348.
109. Victims of violence must also face revictimization, bad or no information; the lack of effective protection and support, the failure to comply with procedural deadlines, the lack of interdisciplinary support and comprehensive reparation for the damage, which ultimately translate into impunity<sup>86</sup>. Reports of threats, since

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<sup>83</sup> Ombudsman's Office. 2018. Ombudsman's Report: Status of Compliance with the Care and Protection Measures for Women in Situations of Violence in the Framework of Law No. 348. Available at: <https://www.defensoria.gob.bo/uploads/files/informe-defensorial-estado-de-cumplimiento-de-las-medidas-de-atencion-y-proteccion-a-mujeres-en-situacion-de-violencia-en-el-marco-de-la-ley-n-348.pdf>

<sup>84</sup> Procedural figure provided for in art. 21 of the Code of Criminal Procedure, through which the prosecutor requests the judge to dispense with criminal prosecution. In the case of violence, the cause that is usually given is that of little social relevance due to the minimal affectation of the protected legal right.

<sup>85</sup> Alianza Libres sin Violencia, "Balance sobre la Implementación de la Ley Integral para garantizar a las Mujeres una Vida Libre de Violencia 2013 - 2018 ", Bolivia, 2018.

<sup>86</sup> Coordinadora de la Mujer. Departmental governments allocate insufficient budgets to gender. Available at:

<http://www.coordinadoradelamujer.org.bo/observatorio/index.php/tematica/2/destacado/2/registro/75>

they have not resulted in physical aggression (yet), remain attended by the Police or other instances, thereby ignoring the risk the victims may be in.

110. Preventive actions are still few and far between. Many do not address the central problems of the occurring violence.

### ***Recommendations:***

111. Implement a comprehensive and sustained national prevention, awareness-building and information strategy for the deconstruction of patriarchal structures, inequalities and gender gaps, in combination with sufficient resources, which includes intersectoral prevention policies, plans and programs with a gender and interculturality approach. Furthermore, institutionalize legal audits in cases where irregularities are reported, coordinate mass media campaigns to inform and raise awareness about the causes, forms and impact of violence against women and create state programs that promote the economic empowerment of women as well as the assistance to victims so that they can escape from the cycle of violence.
112. Strengthen the Plurinational Service for Women and Depatriarchalization by granting it sufficient resources and personnel to develop its awareness-raising activities for the eradication of violence against women and ensuring the monitoring of compliance with Law No. 348. Also, the General Directorate for the Prevention and Elimination of All Forms of Gender-Based and Generational Violence under the Ministry of Justice must be consolidated, making it necessary to prioritize the gender mechanism.
113. Increase the human and financial resources of State institutions responsible for combating violence against women and gender stereotypes, both in terms of prevention and access to justice.
114. At the municipal level, dissemination and awareness raising initiatives regarding all the components of Law No. 348 should be strengthened in coordination with public institutions, communities and civil society, both in urban and rural areas, to overcome the obstacles identified. Carry out a qualitative evaluation on the application of Law No. 348 in indigenous, native and Afro-Bolivian communities to address this problem<sup>87</sup>.
115. Conclude the process of amending Law No. 348, Comprehensive Law to Guarantee Women a Life Free of Violence, so that prevention, care, protection, punishment and reparation policies and mechanisms are consolidated, allocating sufficient resources to its implementation at all state levels.
116. Investigate ex officio all complaints of violence against women and girls, complying with due diligence standards and preventing these acts from going unpunished, making the necessary legislative amendments to strengthen the mechanisms for informing users about their rights and services at their disposal; shorten and speed up criminal proceedings; avoid the delay of justice; enforce

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<sup>87</sup>Alianza por la Solidaridad. Qualitative assessment of the application of Law No. 348 in indigenous, native and Afro-Bolivian communities. La Paz, Bolivia, 2015.



protective measures for victims and dependents; impose sanctions on the aggressors and ensure comprehensive reparation for the damages suffered by the victims.

117. The Public Prosecutor's Office and the Judicial Branch must implement specialized prosecutor's offices and courts throughout the country, that dedicate themselves to cases of violence exclusively. Likewise, the personnel of the national and municipal state institutions that provide services to victims of violence must be firmly established to guarantee their permanence.
118. Consolidate the training of the police force, prosecutors, forensic doctors, judges and other justice operators from a human rights and gender perspective, in order to eradicate discrimination based on gender stereotypes and overcome the lack of awareness about the situation of women who suffered violence.
119. Implement as a priority the Single Registry of Victims of Violence that integrates the databases of all the services of the victim care chain, which is not limited to the complaints register, but must show the response that the victims receive from the justice system during the process in all its stages until its conclusion, based on uniform criteria and indicators established for this purpose, which would allow the generation of official, timely and reliable statistics; but, in addition, it is necessary for the institutions to be interconnected so that the records made by each of them within the same process are cumulative and not repeated. Statistics must be disaggregated.
120. Rigorous criteria must be applied for the selection of personnel and designation of authorities of the institutions that are part of the chain of care for victims. They need to go through processes of awareness-building, training and specialization with a gender perspective, in addition to being institutionally established and subject to periodic evaluations of their work; this in order to put an end to temporary contracts that greatly harm judicial processes and consequently the victims of violence.
121. Promote the model of comprehensive care for victims in adequate infrastructure that can accommodate all the institutions in charge of care. These need to be decentralized in order to be more accessible to women, especially in the "Comprehensive Police Stations". Furthermore, mobile police units able to reach rural areas where services do not yet exist must be implemented.
122. Expand coverage and strengthen the Anti-Violence Special Task Force (FELCV), Municipal Comprehensive Legal Services (SLIM), Ombudsmen for Children and Adolescents, and Forensic Services for the care of girls and women, especially in the peri-urban, rural and small municipalities. Continue with the readying of safe houses and shelters, guaranteeing the safety and protection of the victims.
123. The State must implement specific mechanisms for accountability, on budget allocation and execution, the actions carried out and the results achieved in terms of eradication of violence, as well as respond to requests for information from civil society organizations in order to exert social control.

## Sexual violence, pregnancy and forced motherhood in children

124. Criminal legislation provides for the crime of rape of an infant, girl, boy or adolescent (under 14 years of age) and statutory rape, the latter of which implies carnal access with those under 18 and over 14 years of age, in which the penalty it is less than that provided for in case of rape because it is not committed with violence or intimidation but through seduction and deception to achieve the consent of the victim. The criminal definition of statutory rape is discriminatory and ignores the dynamics of unequal power between adolescents and adults and makes adolescents especially vulnerable to victimization. In this sense, the Inter-American Court has indicated that the criminalization of rape is based on gender stereotypes and blames the victim for the "seduction". This shows a vision of the girl as a "provocateur"<sup>88</sup>. Similarly, the Committee against Torture ordered Bolivia to repeal the crime of statutory rape.
125. The figures of sexual violence against minors are quite high. According to data from the State Attorney General's Office in 2019, 1,020 cases of sexual violence against children (36 %) and adolescents (64 %) were registered, of which 90 % were girls and adolescent women. In 2020, 2,091 complaints of sexual violence against children (38 %) and adolescents (62 %) were received, of which 93 % were women<sup>89</sup>. In spite of the high numbers of complaints registered, few are the cases that conclude with a sentence<sup>90</sup>.
126. In the 2021 administration, according to data from the Attorney General's Office, 2,078 cases of rape of infants, children and adolescents were reported; 2,638 cases of sexual abuse; 1,548 cases of rape; 2,249 cases of rape of women and 217 cases of sexual harassment.
127. In the context of the COVID -19 pandemic, children and adolescents are exposed to a greater risk of suffering sexual assaults. Factors such as the suspension or reduction of face-to-face classes in educational units, the increase in hours that girls and adolescents spend connected on social networks or with their potential aggressors in the family environment increase vulnerability and exposure in childhood and adolescence to violence and the risk of violation of their sexual and reproductive rights.
128. When it comes to child pregnancies, there are no official data, which is why they are off the record, since the data generally includes children under fifteen (15) years of age. According to the Ministry of Health's National Health Information System (SNIS), from January 2016 to September 2018, a total of 9,552 girls under 14 years of age were pregnant. Specifically, the SNIS reported that in 2018, prenatal

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<sup>88</sup> Inter-American Court, Case of Guzmán Albarracín et al. v. Ecuador. Fund, Reparations and Costs. Judgment of June 24, 2020. Series C No. 405, para. 191.

<sup>89</sup> Information provided by the State Attorney General's Office.

<sup>90</sup> According to the International Justice Mission, a sample carried out in 2018 showed that only 2.5 % of cases of sexual violence against children and adolescents would have reached a sentence through the common procedure and 4.5 % through an abbreviated process. The high figures of sexual violence have an impact on child and adolescent pregnancy and are aggravated by forced maternity.

care was provided to a total of 2,949 pregnant girls under 15 years of age; 2019 to 2,591 girls and 2020 to 2,170. However, the 2020 data is likely underreported, considering the limitations to identify child pregnancies due to the restrictions resulting from the COVID-19 pandemic. According to the epidemiological vigilance service SNIS-VE, Between January and October 2021, 2,020 pregnancies in girls under the age of 15 were registered in the country's health centers. 34.8 % of these child pregnancies had passed the fifth month, a time that is used to delay or deny a legal interruption. This fact serves as a warning that, on average, every day seven girls get pregnant, three more than in 2020, when the number for a similar period was four a day.

129. There are cases that have been made public due to the lack of timely attention to girls and adolescents who have been forced to continue their pregnancy despite the fact that their lives were at risk and their fundamental rights were being violated. Child pregnancy and motherhood are acts of torture that violate the fundamental rights of girls.
130. Establish the protection of children and adolescents against sexual violence as a priority of the state, implementing policies aimed at preventing all forms of sexual violence against children and adolescents, as well as guaranteeing a budget for the implementation of comprehensive educational strategies and programs on sexuality, bodily autonomy, sexual and reproductive rights.

### ***Recommendations:***

131. Adopt a comprehensive strategy for the prevention of sexual violence against children and adolescents and train personnel in charge of dealing with cases of sexual violence involving this population, avoiding revictimization and ensuring legal, social, psychological and and health services that are comprehensive in scope, can be accessed permanently and timely, are based on the best interests of children and adolescents and guarantee the investigation, prosecution and punishment of aggressors.
132. Remove the criminal offense of statutory rape so that acts of sexual intercourse with minors are sanctioned by the crime of rape and declare the imprescriptibility of these crimes; modify the criminal offense of rape excluding elements such as the resistance of the victim and the requirements of use of force or intimidation in order to include any type of coercion exercised against the victim.
133. Generate official data by the National Institute of Statistics, the Ministry of Health, and other competent instances on: pregnancies of girls and adolescents under 15 years of age, in compliance with article 58 and article 66 of the Constitution.
134. Approve the Pregnancy Care Protocol for Girls Under 15 years of age by the Ministry of Health without gestational limit, providing safe access mechanisms to legal abortion.
135. Include the guidelines stipulated in CEDAW Committee's General Recommendation No. 35 on gender-based violence against women in public

policies; in order to determine that denying or postponing abortion, the forced continuation of pregnancy, as well as the abuse and mistreatment of girls and adolescents, will be qualified as torture, cruel, inhumane and degrading treatment.

136. With the Strategic Plan for Sexual and Reproductive Health 2016-2020, a strategy that must be prolonged until 2025, the unmet needs for contraception for adolescents must be taken into account, including girls under 15 years of age<sup>91</sup>; it has to counteract unwanted pregnancy in adolescents as well as forced pregnancy in girls, ensure the provision of emergency contraception, antiretrovirals for HIV, rapid treatment for hepatitis B and Sexually Transmitted Infections.

## Article 7

### Tortura y otros tratos o penas crueles, inhumanos y degradantes

137. The Political Constitution of the State (CPE) promulgated in 2009 establishes an important framework of protection against torture. Nevertheless, criminal legislation still does not meet the standards established in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention"). Article 295 of the Bolivian Penal Code defines the crime of "insults and torture"<sup>92</sup>, however it has several deficiencies, as it does not describe the basic acts of harassment, torments and tortures to which it refers, nor does it mention the purpose of the criminal conduct. The article does not contemplate acts committed by a person other than a public official, in the exercise of public functions, at his instigation, or with his consent or acquiescence; nor are sanctions in accordance with the seriousness of the crime defined, since the established prison sentence is from six months to two years for the official who harasses, or allows or orders to harass a detainee; between two and four years in those cases in which torments or torture are inflicted; up to six years in case of injury, and up to ten years in case of death. Currently, there are no legislative initiatives under way aimed at establishing a criminal definition of torture in accordance with the provisions of Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

138. Regarding the regulations of the Armed Forces, they did not harmonize their Armed Forces Act with the constitutional text to address issues of discrimination and

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<sup>91</sup> According to the National Plan for the Comprehensive Health of Adolescents and Youth (2009), the unsatisfied need for contraception is higher in adolescents (38%) and young women between the ages of 20 and 24 (27 %), with the national average being 20 %. According to data from the Ministry of Health (2016), only 13 % of young people use some contraceptive method, being much lower in adolescents. And, according to the Demographic and Health Survey (INE 2016), the use of modern contraceptive methods reaches 58 % of unmarried and sexually active women, and in the case of women in a union it does not reach 50 %.

<sup>92</sup> Code of Criminal Procedure passed into law through Supreme Decree No. 10426 of August 23, 1972. Available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/buscar/10426>

other human rights violations within the Armed Forces, such as torture, ill-treatment, racism and inequality of rights.

139. Through Law No. 474 of December 30, 2013, the Service for the Prevention of Torture (SEPRET) was created. The Subcommittee Against Torture observed, during its visit to Bolivia in 2017, that the gaps in the legal framework of SEPRET as national preventive mechanism had a direct impact on its work, as it was not perceived as an independent body. Nevertheless, the State systematically refused to consolidate the independence of SEPRET and comply with the recommendations received. Even the recommendations made in this regard in 2019 as part of the Universal Periodic Review did not receive its support, the State classifying it as “noted”. However, after similar recommendations from the Interdisciplinary Group of Independent Experts (GIEI)<sup>93</sup>, the Legislature passed on September 14, 2021 the bill designating the Ombudsman’s Office as the National Mechanism for the Prevention of Torture in the State of Bolivia, assuming the functions of the Service for the Prevention of Torture SEPRET, which we human rights organizations accept with satisfaction<sup>94</sup>.
140. In this sense, it is essential that SEPRET be able to carry out visits and monitoring efforts in prisons without facing restrictions and obstacles. The Interdisciplinary Group of Independent Experts (GIEI) documented restrictions of SEPRET personnel, for example, in the case of people arrested on November 11, 2019 in El Alto and tortured in police facilities in El Alto and La Paz<sup>95</sup>.
141. In 2019, 80 % of the cases of torture investigated by the SEPRET targeted police officers and had been committed in cells or prisons. According to the report of the Ombudsman's Office "Turning the Look to the Prisons"<sup>96</sup>, people are tortured in police cells or prisons, by having bags placed on their heads choked with spray, submerged in water (submarine) or prods are applied to them (electric shocks), in addition to blows to the head<sup>97</sup>.
142. Women and girls are particularly exposed to torture and ill-treatment in situations of deprivation of liberty, both in the criminal justice systems and in other settings, in particular cases of sexual assaults committed by police personnel have been revealed.
143. Regarding impunity, the Bolivian justice system consistently fails to document, investigate and prosecute when the victim files complaints for torture. The authors of this report are not aware of any cases of torture that have led to the prosecution of the perpetrators. Courts and prosecutors do not admit or rely on medicolegal

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<sup>93</sup> Mechanism created to assist in the investigations of the acts of violence and human rights violations in Bolivia between September 1 and December 31, 2019, based on the agreement signed by the Plurinational State of Bolivia and the IACHR on the day December 12, 2019.

<sup>94</sup> Law No. 1397. Law of September 29, 2021.

<sup>95</sup> Report of the Interdisciplinary Group of Independent Experts (GIEI). 2021, p. 372.

<sup>96</sup> Press release in “Opinión”. “La Policía cometió el 80 por ciento de los casos de tortura que se investigan”. April 29, 2019. Available at: <https://www.opinion.com.bo/articulo/cochabamba/polic-iacute-cometi-oacute-80-ciento-casos-tortura-investigan/20190429061100648196.amp.html>

<sup>97</sup> <https://www.defensoria.gob.bo/uploads/files/informe-defensorial-volcar-la-mirada-a-las-carceles-2018.pdf>

evidence produced by independent experts, such as those of civil society organizations.

144. There are known cases in which victims seeking to file complaints are discouraged by public defense lawyers, arguing that this will prolong their time in detention or house arrest. This trend was documented by international organizations and civil society organizations regarding the victims of torture in November 2019, such as the ITEI, but it is a behavior that already existed before these events.
145. In 2019, amid a deep political and social crisis after the dismissal of the government of Evo Morales, widespread use of torture and ill-treatment was observed during arrests, according to the testimonies collected by the GIEI expert group. The Police and the Armed Forces were summoned by the transitory government for the preservation of public order, after violent acts against public and private property, and in the face of possible new clashes between civilians. However, within a few days they resorted to repression, the most serious cases being against the demonstrations of the coca growers of the Chapare in Sacaba on November 15, 2019, and against the population of El Alto, particularly in the Senkata area on November 19. of 2019. The racist connotation was preeminent<sup>98</sup>. Civilians were killed (more than 30 people), wounded (more than 1000) and tortured. The ITEI registered 129 cases of torture, visited detainees in police cells in La Paz (96 cases), in women's prisons (Obrajes, 2 cases), men's prisons (San Pedro, 9 cases), in the Youth Center (SEDEGES, 3 cases), in Villa Tunari (Cochabamba) (4 cases) and in its office (15 cases).
146. These events occurred after the government of Jeanine Áñez issued Decree 4078, on the actions of the Armed Forces, on November 14, 2019, which established that: *“The personnel of the Armed Forces that participates in the operations for the restoration of internal order and public stability will be exempt from criminal responsibility when they act in compliance with their constitutional functionst, in legitimate defense or a state of necessity, in observance of the principles of legality, absolute necessity and proportionality, in accordance with Art. 11 and 12 of the Penal Code, Law 1760 and the Code of Criminal Procedure”*. National and international human rights organizations expressed their concern, considering that the norm contravened the states’ obligation to investigate, prosecute, judge and punish human rights violations and that any act to be considered indictable had to be investigated and thus determined by the judicial authority and not a priori by decree. This rule was repealed on November 28 of the same year.
147. Organizations defending women's rights<sup>99</sup> made requests for a report to the Public Prosecutor's Office on the situation of women in preventive custody, who reported violations of their rights, especially in the case of Patricia Hermosa, which were not

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<sup>98</sup> Interdisciplinary Group of Independent Experts (GIEI). 2021, see recommendations 28 to 30 of the aforementioned report (p.469).

<sup>99</sup> Comunidad de Derechos Humanos, Fundación Construir and Coordinadora de la Mujer

addressed by the police authorities (2020). National<sup>100</sup> and international<sup>101</sup> organizations expressed their concern about this case.

148. In its report, the aforementioned expert group GIEI documented acts of torture or ill-treatment committed by state agents, or committed by private individuals with the acquiescence and tolerance of state agents, and recalled that the State has the obligation to investigate any act of torture and ill-treatment and guarantee the absolute prohibition of such conduct, must ensure that acts of torture and ill-treatment are not subject to any statute of limitations and strengthen the capacities of the institutions in charge of conducting the investigation.<sup>102</sup>
149. The victims of torture have never benefited from reparation measures by the State, given that, since the facts and the criminal responsibilities of the perpetrators have not been investigated, the possibility of requesting comprehensive reparation is impossible. Thus, the victims of torture in September/October 2003 and November 2019 have not received any reparation, even partial, unlike the relatives of the dead and wounded. Recently, the Minister of Justice and Institutional Transparency has announced measures to compensate victims of torture during the 2019 conflicts within the framework of the CAT recommendations.

### **Recommendations:**

150. Adopt a comprehensive law against torture and modify the definition of the crime of torture in the Criminal Code so that it covers all the elements contained in articles 1 and 4 of the “Convention”. This should be accompanied by training in accordance with the law at the national level amongst justice operators, the police and the Armed Forces, politicians and civil society.
151. Ensure that the Armed Forces Act is in line with the constitution, international human rights standards and national legislation.
152. Creation of a civil and political commission that is dependent on the Ombudsman's Office to review the reported cases of police obstruction and the justice of the reported cases of torture.
153. Adopt the necessary measures to guarantee a real, effective and safe possibility for persons in detention to present reports and complaints without the risk of retaliation. Ensure thorough investigations into all allegations of torture and ill-treatment at the hands of law enforcement and corrections officers.
154. Creation of a Specialized Prosecutor's Office for Human Rights, the establishment of mechanisms to increase access to information and the participation of victims and their families in investigations, and the increase in capacities for the application of the Istanbul Protocol and the Minnesota Protocol.
155. Strengthen the technical capacities and technological tools of the Forensic Investigations Institute (IDIF), increasing its human and financial resources, and

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<sup>100</sup> <https://twitter.com/catolicasbo/status/1271487197947072512>

<sup>101</sup> <https://www.oas.org/es/mesecvi/docs/CEVI-ComunicadoBolivia-2020-ES.pdf>

<sup>102</sup> Interdisciplinary Group of Independent Experts. 2021, p.382.

guaranteeing its institutional autonomy with respect to the State Attorney General's Office.

156. Create a special section in public defense and the victims' assistance service SEPDAVI for cases of torture with personnel specialized in the defense of victims of torture and other ill-treatment. Training of public defenders in international standards that regulate the absolute prohibition of torture and other ill-treatment is essential, as well as in the principles that regulate documentation of torture and other ill-treatment.
157. Ensure that all victims of torture have access to comprehensive reparation, with a specific focus on rehabilitation and the application of the decisions of regional and international human rights bodies.
158. Properly investigate all complaints of torture related to the 2019 elections and establish an independent process to determine the violations that occurred, establish the responsibility of the perpetrators and provide reparations to the victims.

## Article 8

### Human trafficking

159. There is Law No. 263 against Human Trafficking and Smuggling of July 31, 2012<sup>103</sup> and the Comprehensive Multisectoral Development Plan for the fight against Human Trafficking and Smuggling 2016-2020<sup>104</sup>. The Anti-Crime Special Task Force (FELCC) created the Human Trafficking and Trafficking Division<sup>105</sup>. Dissemination and education activities have also taken place<sup>106</sup>.
160. However, there are limitations in complying with national regulations, which, in turn, generates a gap in compliance with the obligations and commitments assumed by the State in the Conventions, Protocols and Recommendations of International Organizations in this regard.
161. From 2012 to 2016, 2,591 cases of human trafficking were registered. Of these, in only 44 cases (less than 10 %) a verdict has been reached<sup>107</sup>, which corresponds to 1.7 %. According to data from the Anti-Crime Special Task Force (FELCC), as well as records from the Police and the Human Trafficking Crime Observatory, in 2019, 526 cases of trafficking, smuggling and related crimes were recorded. In 2020, the figure was 451 cases, with La Paz being the department the

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<sup>103</sup> Available at: <https://tsj.bo/wp-content/uploads/2019/11/ley-263-integral-contra-la-trata-y-tra%CC%81fico-de-personas.pdf>

<sup>104</sup> Plurinational Council against Human Trafficking and Smuggling. Report on the Plurinational Policy to Fight Human Trafficking and Smuggling. La Paz, 2016.

<sup>105</sup> Ministry of Justice and Institutional Transparency. National Plan to Fight Human Trafficking and Smuggling, 2015-2019. La Paz, 2015.

<sup>106</sup> Ibid.

<sup>107</sup> <https://www.paginasiete.bo/seguridad/2017/7/31/2591-denuncias-trata-llegaron-sentencia-anos-146578.html>



area that registered the highest incidence of these crimes with 51.4 % of the cases reported at the national level<sup>108</sup>. The State Attorney General's Office indicates that from January 1 to July 30, 2021, Bolivia registered 842 offenses covered by the Comprehensive Law Against Human Trafficking and Smuggling No. 263 and related crimes. Of the 842 cases, 294 are cases of Trafficking in Persons. During the 2020 administration 1,185 complaints were received.

162. The Multisectoral Plan for Comprehensive Development to Fight Human Trafficking has not been fully implemented, service at migration posts is inadequate and border checkpoints are scarce. Neither are there specialized personnel nor enough shelters.
163. The care and protection of victims and the adoption of prevention measures that are limited to training and dissemination are marked by weakness, without direct impact on the structural causes of the problem. According to the Ombudsman's Office, "The centers responsible for caring for victims have not developed institutional capacities to provide a service that fully safeguards the rights of victims, in which they have access to psychological services, medical care, legal advice and continuous support in their recovery and reintegration process. (...) These limitations, in many cases cause re-victimization and an erroneous approach to the protection of the human rights of the victims, (...) the mechanisms that guarantee the reparation of the victims for the damages that have been caused to them are insufficient and do not necessarily contemplate short-, medium- and long-term criteria related to guaranteeing the recovery of their life projects."<sup>109</sup>.
164. There is a small number of care centers specializing in human trafficking and smuggling; yet, their infrastructure does not provide a comprehensive service (social, psychological, legal, and ideally even education and training in technical branches) that contributes to the recovery processes of the victims' life project and their integration into society with dignity"<sup>110</sup>. The attention, protection and reintegration in the family, educational and labor environment of victims of human trafficking and related crimes thus present limitations.
165. According to the authorities<sup>111</sup>, the cases of labor exploitation rise according to the demand in certain areas. For example, when the harvest season begins in Santa Cruz, minors are mainly transferred to the mining centers and to the Cochabamba tropics, where they are exploited by pimps. The authorities showed

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<sup>108</sup> Newspaper Los Tiempos (8/06/2021). Trafficking and Smuggling: the police receive more than 40 complaints daily. Available online: <https://www.lostiempos.com/actualidad/seguridad/20210608/trata-traffic-policia-recibe-mas-40-denuncias-diarias>

<sup>109</sup> Ombudsman's Office, 2020. Ombudsman Report: Compliance with the Creation of Specialized Reception Centers for Victims of Human Trafficking and Smuggling, and Related Crimes, p. 46.

<sup>110</sup> Ibid.

<sup>111</sup> Los Tiempos. Trafficking networks operate in 3 regions and target young people between the ages of 13 and 18. Available at: <https://www.lostiempos.com/actualidad/pais/20200910/redes-trata-operan-3-regiones-apuntan-jovenes-13-18-anos>

that there are many illegal brothels in the tropics, making this sector one of the most vulnerable areas for minors.

### **Recommendations:**

166. Consolidate the mechanisms for coordination, implementation and evaluation of public policy to combat human trafficking.
167. Implement comprehensive care protocols; harmonize the operational and legal instruments against trafficking and develop an instrument for monitoring cases in which public servants are involved.
168. Promote local inter-institutional networks for immediate care, sufficient shelters, especially in border areas; implement a Statistical Information System on Human Trafficking and Smuggling and related crimes and disseminate the information. Also, provide more resources for the prosecution of the crime and care for victims.
169. Investigate, prosecute and sentence traffickers, including complicit officials; provide adequate resources to law enforcement agencies to conduct anti-trafficking operations.
170. Adopt specific measures aimed at guaranteeing the training, specialization, awareness-building and training of personnel who provide care and protection to victims of human trafficking and smuggling, as well as related crimes.
171. Manage the institutional consolidation of specialized shelters for the care and reintegration of victims of human trafficking and smuggling, particularly in the Autonomous Territorial Entities, in order to guarantee physical and psychological care, as well as social, economic and cultural reintegration of said victims.
172. Reinforce border control through the expansion of services in the General Directorate of Migration since, despite cooperation agreements, the care provided at migration posts does not respond to the needs of the population (number of staff and hours of operation). Also, border control posts are scarce and the personnel must adopt mechanisms for the early identification of possible victims of human trafficking.

### **Decent work and fight against exploitation and servitude**

173. The State implemented the Comprehensive Mobile Offices in the remote regions of the country, so that the rural wage-earning workers belonging to the Guaraní indigenous people who inhabit the departments of Tarija, Chuquisaca and Santa Cruz, receive attention from the Regional Labor Headquarters from Camiri and Yacuiba<sup>112</sup>. There is no information on the results of the work carried out by the Comprehensive Mobile Offices for said Guaraní rural workers. No information could be found on the implementation of the Five-Year National Plan for the Prevention and Progressive Eradication of the Worst Forms of Child Labor and Protection of

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<sup>112</sup> Human Rights Committee, Fourth periodic report that the Plurinational State of Bolivia was required to submit in 2018 under Article 40 of the Covenant, p.33.

Working Adolescents, nor are the guidelines for prevention, protection and eradication of the worst forms of labour known. For its part, the Comprehensive Multisectoral Development Plan for the fight against Human Trafficking and Smuggling 2016-2020 is limited to the dissemination of rights, not to social, economic and protective policies.

174. A determining factor of indigenous peoples for exhibiting a higher degree of vulnerability and to be victims of exploitation and servitude is the lack of access to land that originally belonged to them and that in many cases was taken from them. Therefore, an important action for the vindication of the indigenous peoples' rights and the fight against exploitation and servitude are the property titles in rural areas. In 2017, in the departments of Chuquisaca, Oruro, Tarija and Pando, the title clearance process in rural areas was completed in its entirety, with the clearance in the departments of La Paz, Cochabamba, Potosí, Beni and Santa Cruz still to be completed<sup>113</sup>. According to official data from the National Institute of Agrarian Reform (INRA), 22 % of rural territories were pending legalization and titling<sup>114</sup>.
175. Faced with pressure from the population and the institutions that denounced irregularities in the agrarian and land titling processes, on Thursday, December 12, 2019, the Ministry of Rural Development and Land reported, through a press release, that it was determined to bring the processes of land distribution throughout Bolivia to a halt<sup>115</sup>.
176. The regulation and titling of land in Bolivia, initiated in 1996, through the INRA (National Institute for Agrarian Reform) Law, closed on October 31, 2017, with the regularization of 83% of a total of 106 million hectares susceptible to said process. For the remaining 17%, the task hasn't been completed yet<sup>116</sup>.
177. There is no updated official disaggregated information on the dimension and characteristics of child and adolescent labor in Bolivia. In 2018, the National Statistics Institute (INE) reported more than 396 thousand working children. However, according to data from UNICEF and the Ministry of Labor provided in 2017, the number of children and adolescents who are involved in some labor activity amounts to 848 thousand and almost half of them are below the global minimum age of 14 years<sup>117</sup>.

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<sup>113</sup> <https://www.defensoria.gob.bo/uploads/files/informe-defensorial-volcar-la-mirada-a-las-carceles-2018.pdf>

<sup>114</sup> <https://www.cenda.org/secciones/tierra-territorio-y-derechos-colectivos/item/546-saneamiento-y-titulacion-de-tierras-de-1996-hasta-2017>

<sup>115</sup> <https://elpais.bo/tras-cuestionamientos-el-inra-pausa-distribucion-de-tierras/>

<sup>116</sup> FUNDACIÓN TIERRA, <http://www.ftierra.org/index.php/tema/tierra-territorio/908-el-saneamiento-es-un-proceso-fallido>

<sup>117</sup> Report of the Coalition of Civil Society Organizations on the Human Rights of Children and Adolescents for the Universal Periodic Review (UPR) of Bolivia, p. 27.

## **Recommendations:**

178. Investigations need to be undertaken to find out whether there are still cases of exploitation and servitude of indigenous peoples and peasants in the different areas of Bolivia.
179. A technical audit on the title clearance process developed must be carried out due to the serious complaints of land trafficking, transfer of public land to private parties and irregular titling processes, in order to continue with the title clearing and endowment of land while preserving the rights of indigenous peoples.
180. Urgently implement public policies to eradicate labor exploitation and child labor that puts the health, integrity and education of children and adolescents at risk, exposing them to physical, psychological and moral abuse.
181. Investigate and take concrete actions in cases related to the worst forms of child labor. In addition to treating the labor exploitation of children and adolescents as cases of human trafficking, train those responsible for prevention, attention and punishment so that the correct procedure and the protocol are properly prepared, socialized and implemented, incorporating the inspectorates for working adolescents.

## **Articles 9 and 10**

### **Preventive custody, procedural guarantees and situation in correctional facilities**

182. The “Law of Decongestion and Effectiveness of the Criminal Procedure System No. 586” has been enacted in 2014, which reduced the time limits for the duration of preventive custody, as well as implemented various plans to decongest the criminal system. Furthermore, between 2012 and 2021, ten (10) Amnesty and Pardon Decrees have been enacted<sup>118</sup>. From 2012 to 2018, a total of 6,413 people have been pardoned, 1,549 of which are women, and 4,864 are men<sup>119</sup>. In a positive way, the application of amnesty to women with children under their care or with disabilities was determined.
183. In 2019, a prison census was carried out, whose objective was to establish the legal situation of the incarcerated population and the conditions in which the fifty prisons and three rural “carceleta” prisons in Bolivia operate<sup>120</sup>. In May 2019, a preliminary report was presented on the findings encountered during the prison census, indicating that sixty serious cases of violations of the detainees’ rights had been identified; among them: people imprisoned without an enforceable sentence

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<sup>118</sup> The list of provisions is as follows: i) DP N° 1445 (2012), ii) DP N° 1723 (2013), iii) DP N° 2131 (2014), iv) DP N° 2437 (2015), v) DP N° 3030 (2016), vi) DS N° 3516 (2018), vii) DS N° 3529 (2018), viii) DS N° 3576 (2019), ix) DP N° 4226 (2020), x) DS N° 4461 (2021).

<sup>119</sup> Report of the Coalition of Civil Society Organizations on the Human Rights of Children and Adolescents for the Universal Periodic Review (UPR) of Bolivia, p. 35

<sup>120</sup> <http://www.mingobierno.gob.bo/index.php?r=content%2Fdetail&id=585&chnid=11>

or who continue in the facility despite the fact that their sentence has already been served, imprisoned older adults with audiovisual or hearing disabilities, as well as people who suffer from mental illness or deteriorated health conditions, indigenous native peasant women who did not receive assistance in their native language and continue to be held<sup>121</sup>. To date, the final report of the census has not been published by any of the institutions that were part of the census, nor are the policies, guidelines and/or actions regarding the prison system that were proposed from its development known.

184. Currently, preventive detention continues to be applied excessively (66.11 % of detainees). It is the rule and not the exception, as stipulated by international standards. The investigation stage should not exceed six months, but justice operators prolong it, causing economic, social, physical, and psychological suffering to individuals and families in order to force a confession, regardless of whether the person is guilty or not. It is often used against people accused of crimes that do not justify preventive detention, and for prolonged periods, citing as an example the offense of theft, the sentence of which is less than the legal quantum established for preventive detention. However, as of March 2021, a total of 117 people were imprisoned for this offense; Another similar example can be given for the offense of threats, which for the same dates was given as justification for at least six (6) people taken into custody<sup>122</sup>. This presents problems regarding their access to justice, but also increases the risk of ill-treatment for the detainees.
185. Since November 4, 2019, the gradual implementation of Law No. 1173, on the Abbreviation of Criminal Procedure and the Strengthening of the Comprehensive Fight Against Violence against Children, Adolescents and Women began. This law makes preventive detention dependent on pending investigative actions and maximum deadlines set by the judicial authority, in order to help solve overcrowding in prisons by limiting the application of preventive custody.
186. Although efforts have been made to reduce the use of the penal system, the days of decongestion and the pardon decrees have promoted an excessive and arbitrary use of abbreviated procedures, a situation that has been observed by civil society and the Inter-American Commission on Human Rights in its "Report on Measures to Reduce Pretrial Custody in the Americas" of 2007, to the extent that the agreements that promote such processes are based on offers for people to plead guilty and confess to committing crimes and therefore receive lesser sentences in comparison with the sentence that could result in an ordinary process<sup>123</sup>.
187. According to the "Report on the Current State of Justice in Bolivia 2020" regarding the situation of persons in custody, Bolivia currently has 46 prisons, 20

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<sup>121</sup> <https://www.paginasiete.bo/seguridad/2019/4/15/censo-carcelario-revela-al-menos-60-casos-de-vulneracion-de-derechos-215187.html>

<sup>122</sup> According to data from the National Directorate of the Penitentiary System provided to civil society organizations for the development of the Report on the State of Justice 2021

<sup>123</sup> Most of the crimes in the Criminal Code have a minimum and a maximum sentence between which the sentence can fluctuate.

urban and 26 rural with a shelter capacity of 6,567 people, but as of May 2021, a total of 17,833 people were detained, which implies an occupancy level of 264%<sup>124</sup>. With this rate, Bolivia ranks third in overcrowding among the 35 countries belonging to the Organization of American States and eleventh in the world, according to a comparison of data from the International Centre for Prison Studies' observatory.

188. The measures adopted by the State to decongest the prisons have not been sufficient, nor have they been structural, since in the last 14 years, the capacity of the prisons increased by 2,065 people, from an estimated 4,700 people in 2007 to an estimated 6,765 people in 2021. However, the prison population increased by 10,150 people, that is, from 7,683 (year 2007) to 17,833 (year 2021). In the 19 years that have passed since the reform of the accusatory system became fully effective (in 2001), and despite the fact that one of the premises that founded this transition was also about reducing the use of prison, the prison population increased by 12,256 people. On the other hand, of the currently 46 -Bolivian prisons, only five (5) were built to exclusively house women, the rest has been adapted to separate men and women.
189. The ITEI has documented the systematic violation of due process guarantees as one of the most serious violations suffered by the people it counsels. It has analyzed data from 52 cases and has identified several recurring problems which, combined with poor detention conditions and the risk of torture, are used to extract confessions from detainees. These recurring problems include: failure to respect the presumption of innocence (52 cases), lack of rigorous investigation (52 cases), delay in justice (48 cases), extension of preventive custody beyond a period of 6 months (44 cases) or even beyond 3 years (10 cases), forced entry into private property without a search warrant (15 cases), torture (14 cases), threats to defense attorneys (12 cases). Arbitrary arrests, procedural delays, the lack of effective judicial responses, as well as the unjust arrest and conviction of innocent people, have had a detrimental effect on public confidence in the judicial system.
190. The 1,075 women in custody recorded in the statistics as of March 2020, represent an average of 6.03 % of the prison population. This figure may seem low, but in reality, the incarceration rate of women is higher than the world average, as international organizations have alerted. Furthermore, efforts to incorporate the gender approach in the penitentiary and penal system, in what corresponds to women in conflict with criminal law, have been insufficient. Thus, Law No. 1173 established the inadmissibility of pre-trial custody in the case of pregnant women; mothers nursing children under one (1) year of age; and when the accused person is the only one who has under her custody or care a girl or boy under six (6) years of age or a person with a degree of disability that prevents her from fending for herself. However, a modification through Law No. 1226 excluded cases of drug trafficking

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<sup>124</sup> Citizen Platform for Access to Justice and Human Rights. 2021. Report on the state of Justice in Bolivia. 2020. Build Foundation. Bolivia. p. 115. Found on: <https://www.fundacionconstruir.org/wp-content/uploads/2021/11/INFORME-SOBRE-EL-ESTADO-DE-SITUACION-JUSTICIA2020.pdf>

and controlled substance offenses, since a significant number of women are detained due to micro-trafficking processes.

191. There have been human rights violations committed by state agents of the Bolivian Police against female detainees in official correctional facilities or those arbitrarily taken into custody in order to take advantage of them during the custody procedures. Complaints rarely receive satisfactory and timely responses from the institution or the Justice System and for this reason many victims choose to remain silent, not to report what happens to them in prisons, or once they have done so, they are forced to withdraw their complaints due to the threats to which they are subjected by the defendants, their relatives or colleagues.

- In 2015, two soldiers were sent to the San Pablo prison in Quillacollo for the rape of a woman during their service.
- In March 2016, three policemen in Tarija intercepted a young woman, forced her to get into the police vehicle, took her to a remote place and then took turns raping her.
- In August of the same year, five agents of Cochabamba's Police Operations Tactical Unit were sentenced to 16 years in prison for abusing a young woman with a disability.
- In December 2018, two police officers were accused of raping a young Paraguayan woman aboard a police patrol; a Santa Cruz judge ordered the preventive custody of the defendants in Palmasola prison.
- On March 28, 2019, a press release reported that a 25-year-old woman suffering from epilepsy denounced that in 2018 she was the victim of sexual harassment on several occasions inside the Rurrenabaque prison (department of Beni) by police officers in charge of security.
- In April 2019, four policemen of the Anti-Crime Special Task-Force (FELCC) of Yapacaní (Santa Cruz de la Sierra) were charged with sexual abuse of two young women who were taken into custody without any warrant.

192. These facts reflect a pattern of criminal behavior against women exercised by members of the Bolivian Police in different parts of the country's territory, which generates a state of fear and mistrust in the population instead of being a guarantee of protection and security; particularly for women, they represent a real threat to their physical and sexual integrity.

193. Concerning the integration of the gender perspective in the justice system, the recognition of one day of work for one day of punishment for women with minor children stands out in Law No. 1173, as well as domestic work as suitable work to demonstrate the existence of lawful employment to distort the procedural risks of flight danger through the jurisprudence of the Plurinational Constitutional Court. However, judicial resolutions continue to be registered that do not apply this constitutional precedent. More evidence that the Bolivian penal system responds to an androcentric construction where the socio-cultural realities of women are made invisible is the fact that there are cases women who, in legitimate defense, cause the death of their aggressors, and are sanctioned with

the highest penalties for homicide or murder, without this considering these grounds of non-imputability.

194. According to data from the Ministry of Economy and Public Finance, the budget allocated for the administration of the 46 prisons from 2018 to 2020 ranged between \$US 1,372,663 (9,558,730 bolivianos) and \$US 1,373,380 (Bs. 9,553,730), not sufficient to provide adequate conditions of infrastructure and basic services to people in confinement. For 2021, the General State Budget applied a reduction of 14 % to this budget, resulting in \$US 1,052,575 (Bs. 7,325,920), which is particularly serious and worrying if we consider the extraordinary needs and challenges that the penitentiary system is facing to guarantee inmates' rights in the context of the global pandemic.
195. The ASUNCAMI study carried out between 2015 and 2017, entitled "Free Looks. Study on Equal Access to Justice and Decent Detention Conditions for LGBTI Populations and People Living with HIV/AIDS in Prisons in Bolivia", evidenced the existence of violation of rights towards the LGBTI population and also towards the population of detainees living with HIV<sup>125</sup>. This study succeeded in documenting stories of abandonment by public defense attorneys upon learning of the diagnosis of their defendants or their sexual orientation, as well as the dramatic case of trans women forced to dress as men to attend their court hearings. The study also cites testimonies from cellmates of people who died in prison from opportunistic diseases, among which tuberculosis is the predominant one<sup>126</sup>.
196. The health condition after a positive diagnosis for HIV generates all kinds of prejudices that are reproduced in the prison system due to the lack of knowledge about this infection, for which these people are attacked and isolated<sup>127</sup>.
197. There is no statistical data on LGBTIQ+ people and those living with HIV/HIV-AIDS, so exclusive programs cannot be generated and implemented, which increases their degree of vulnerability. In addition to this, there are the prejudices and stigmata, firmly rooted in society, that are replicated in prisons, worsening their discrimination<sup>128</sup>.
198. The budget intended for the feeding of inmates, has been frozen at 8 bolivianos (slightly more than a dollar) per day since 2015, and must cover breakfast, lunch and dinner for each prisoner. With this tiny amount it is not possible to provide an adequate and healthy diet. This has negative effects on the physical and psychological well-being as well as on the temperament of the inmates, especially if

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<sup>125</sup> ASUNCAMI, "Miradas Libres. Study on Equal Access to Justice and Dignified Conditions in Custody for LGBTI Populations and People Living with HIV/AIDS in Prisons in Bolivia", 2017, <https://asuncami.org/page.html>

<sup>126</sup> <http://www.corresponsalesclave.org/2018/06/ser-gay-o-trans-y-vivir-con-vih-en-una-carcel-de-bolivia.html>

<sup>127</sup> ASUNCAMI, "Miradas Libres. Study on Equal Access to Justice and Dignified Conditions in Custody for LGBTI Populations and People Living with HIV/AIDS in Prisons in Bolivia", 2017, <https://asuncami.org/page.html>

<sup>128</sup> Ombudsman's Office. "Turn the Gaze to the Prisons. Detainees' Situation of Vulnerability in the Prisons of Bolivia's Capital Cities", p. 470



they are people in situations of greater vulnerability. Only getting food that is insufficient in quality and variety worsens their situation<sup>129</sup>.

199. In the correctional facilities, the inmates themselves have established a system of privileges such as charges for cell rentals, food stalls, restaurants and billiard rooms, in addition to some "voluntary contributions", which do not specify what they consist of and "life insurance", that is to say the payment of an amount of money in order to provide security or protect an inmate<sup>130</sup>.
200. The levels of contagion and deaths reported in prisons are high: as of December 2020, they amounted to 55 persons in custody who died from Covid-19, 159 confirmed cases and 118 suspected cases throughout the country. In the San Pedro prison, twelve inmates deceased inmates with symptoms of the disease in just a few days.
201. Regarding the Plurinational Public Defense Service (SEPDEP), according to data from management reports published by the Ministry of Justice and Institutional Transparency in 2017, it had a staff of 83 public defenders and 17 assistant defenders, amounting to 98 seats. The number of people the defense service attended was 11,609, an average of 140 per public defender. The defenders receive low salaries and have few incentives to continue in office. By 2021, there were 106 judicial seats, but the number of defenders was reduced to 50 defenders and two assistants. The procedural load of the Public Defense is much more complex in comparison to that of the Public Ministry, because in addition to handling cases in criminal proceedings, they provide assistance to people detained in police headquarters as well as guidance services to the prison population, which increases the level of responsibility assumed by each defender<sup>131</sup>. Another limitation is that the SEPDEP has incorporated the gender perspective neither in the defense of women in conflict with the law nor when prosecuting for acts of gender-based violence.
202. According to the Report on the State of Justice in Bolivia 2020<sup>132</sup>, the Ministry of Justice and Institutional Transparency, in its accountability report, establishes that for the 2020 administration, said entity implemented 92.07% of its current budget with an amount of Bs. 11,489,636.38 (eleven million, four hundred and eighty-nine thousand, six hundred and thirty-six 38/100 bolivianos) of Bs. 12,479,599.00 (twelve million, four hundred and seventy-nine thousand, five hundred and ninety-nine 00/100 bolivianos). For 2021, in the initial accountability report, the Ministry reported that SEPDEP has a budget of Bs. 10,901,611.00 (ten million nine hundred one thousand six hundred eleven 00/100 Bolivianos), that is

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<sup>129</sup><https://www.paginasiete.bo/seguridad/2018/5/9/el-prediarario-se-mantiene-en-bs-desde-2015-por-debajo-del-nivel-de-la-pobreza-extrema-179405.html>

<sup>130</sup> <https://www.elcomercio.com/actualidad/policia-bolivia-requisa-carcel-privilegios.html>

<sup>131</sup> Fundación Construir, Report on the State of Justice in Bolivia 2018, p. 47

<sup>132</sup> Citizens' Platform for Access to Justice and Human Rights. 2021. Report on the State of Justice in Bolivia. 2020. Fundación Construir. Bolivia. p. 115. Found on: <https://www.fundacionconstruir.org/wp-content/uploads/2021/11/INFORME-SOBRE-EL-ESTADO-DE-SITUACION-JUSTICIA2020.pdf>

12.64 % less than in 2020. This situation is very worrying because, far from strengthening SEPDEP, these years of budget and, consequently, personnel reduction will affect its efficiency.

### ***Recommendations:***

203. Pre-trial detention must be reduced to cases where it is strictly necessary. For this reason, it is necessary to establish the control by a mixed commission (international and national) on forms of custody, considering the inability of the police to guarantee detention without torture and of the Bolivian justice system to reduce pre-trial detention.
204. The conditions of detention in judicial and police cells and in prisons must comply with the rules and principles set forth in international instruments. Preventive custody must be reduced to cases where it is strictly necessary. To that end, it is necessary to establish the control by a mixed commission (international and national) on forms of detention and cases of irregular use of preventive custody, considering the inability of the police to guarantee detention without torture and of the Bolivian justice system to reduce preventive custody.
205. In consideration of the high risks of vulnerability of women and the principle of the best interests of the child, widely apply alternative sentences to detention, in accordance with the United Nations Minimum Rules on Non-Custodial Measures (Tokyo Rules), the Bangkok Rules and the IACHR's "Practical Guide on Measures to Reduce Pretrial Detention", including for crimes related to Law No. 1008 (Coca and Controlled Substances Regime). Therefore, the exclusions established in criminal law based on the type of crime must be reviewed.
206. Integrate the gender perspective in the prosecution of women who face the criminal system, that is, as offenders, applying instruments such as the General Recommendation No. 1 of the Committee of Experts of the MESECVI on legitimate defense and violence against women or the constitutional jurisprudence that recognizes domestic work as lawful work in order to distort procedural risks such as the danger of flight.
207. It is necessary to implement a protocol for the management of prisoners living with HIV, to guarantee a procedure officially approved by the National Directorate of the Penitentiary System that ensures this population's access to health care and protection.
208. Awareness-building initiatives on the rights of the LGBTI population, people with HIV and people with disabilities should be developed for the prison population, prison officials and police officers to overcome discrimination against these populations.
209. It is necessary to consolidate the National Public Defense Service by providing it with greater financial and human resources to overcome its work overload and improve the quality of its services.
210. Greater economic and human resources must be allocated to the prison administration system. Compliance with the minimum rules of the United Nations

and with rehabilitation and social reintegration is a must, in addition to establishing a criminal policy that takes into account the LGBTI population, population with HIV and population with disabilities.

211. It is necessary to increase the food budget to improve detainees' nutrition and health. The illegal privileges of inmates must be abolished and the results of the 2019 prison census on overcrowding and the inmates' living conditions in prisons and jails must be disseminated.

## Artículo 14

### Access to justice and judiciary independence

212. The crisis in the justice system is a structural problem due to the lack of independence, the procedural delay, the absence of effective responses and the political choice of the judicial authorities without strictly taking into account their personal and professional merits.
213. In 2016, The Plural Justice Summit for Living Well was held in order to lay the foundations for reforming the country's justice system, being the promulgation of a law that establishes minimum budgets for the justice sector, the improvement of the processes of selection and evaluation of judicial authorities, monitoring and supervision of the judicial career, adjustments to the procedural management model, implementation of electronic government and design of a new university curriculum, some of the reasons that were addressed. The conclusions have been partially fulfilled, although there is not an official public report on the matter. The current Government has announced a new Justice Summit for March 2022.
214. In 2017, through Law No. 898, the Commission for Follow-up to the Summit Conclusions was created, which had to comply with the justice reform agenda, this mechanism does not have the participation of civil society, nor were processes of feedback with it nor was there access to information on the degree of progress in relation to the conclusions and/or agreements established, results of the Summit itself.
215. Political interference in the Judicial Branch and the Public Ministry was the subject of several complaints regarding the persecution of leaders of social organizations and opponents of the governments in power. Among these cases is that of Franklin Gutiérrez, president of the Association of Coca Growers of the Yungas<sup>133</sup>, who was accused of organizing armed groups to ambush and attack police officers<sup>134</sup>, however, civil human rights organizations denounced that there were contradictions in the accusations, absence of evidence proving their

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<sup>133</sup> Monitoring of the Rights' Defenders Observatory UNITAS ADEPCOCA CONFLICT ISSUE. [https://redunitas.org/wp-content/uploads/2019/08/Monitoreo\\_conflicto\\_ADEPCOCA\\_2018.pdf](https://redunitas.org/wp-content/uploads/2019/08/Monitoreo_conflicto_ADEPCOCA_2018.pdf)

<sup>134</sup> <https://www.paginasiete.bo/seguridad/2019/8/28/adepecoca-en-un-ano-el-conflicto-en-los-yungas-dejo-muertos-11-cocaleros-detenedos-228980.html#!>

participation in the act as well as lack of elements that justify the extreme measure of preventive detention<sup>135</sup>.

216. Cases of innocent people convicted<sup>136</sup> have had an impact on the credibility of the justice system.<sup>137</sup> One of the latest cases to gain great notoriety is that of doctor Jhiery Fernández, who was detained for almost four years and was sentenced to 20 years in prison for the alleged rape of baby Alexander, despite the existing contradictions in the expert reports and other evidences.<sup>138</sup> In addition to this case, there are at least six others registered by civil society in which innocent people have been detained and/or sentenced, without real reparation and non-repetition measures being taken by the State.<sup>139</sup>

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<sup>135</sup> Annual Report of the Defenders Observatory on Violations of the Freedoms of Expression, Association and Peaceful Assembly, Right to Defend Rights and Democratic Institutionalality. December, 2018. [https://redunitas.org/wp-content/uploads/2019/05/Informe\\_anual\\_2018.pdf](https://redunitas.org/wp-content/uploads/2019/05/Informe_anual_2018.pdf)

<sup>136</sup> Reynaldo Ramírez, was sentenced to 30 years in prison in 2015 for the crime of femicide; In 2017, as a result of a police expert report, Ramírez was found to be innocent and was released. More information <https://www.eldeber.com.bo/santacruz/La-historia-El-calvario-de-un-hombre-inocente-20170705-0041.html>. The judges of the sentencing court that sentenced Reynaldo and the prosecutor assigned to his case were prosecuted for the crime of breach of duties. The Ministry of Justice, plaintiff in the Ramírez case, requested that in addition to this crime they be prosecuted for others such as delay of justice and malfeasance. More information: <https://www.eldeber.com.bo/santacruz/Medidas-sustitutivas-para-quienes-lo-sentenciaron-20180403-9460.html>

<sup>137</sup> Correo del Sur, Bolivia in the top 10 countries with the worst judiciary system, published on November 20, 2018, available on line: [http://correodelsur.com/seguridad/20171120\\_bolivia-esta-entre-los-diez-paises-con-peor-justicia.html](http://correodelsur.com/seguridad/20171120_bolivia-esta-entre-los-diez-paises-con-peor-justicia.html)

<sup>138</sup> On March 2018, the Tenth Criminal Sentencing Court of the City of La Paz sentenced doctor Jhiery Fernández to 20 years in prison for rape against "baby Alexander" that supposedly led to his death in 2014. This sentence It occurred despite the fact that there were several contradictions in the expert reports. In September 2018, an audio of one of the court judges was leaked to the media affirming Fernández's innocence and that the sentence came about due to external pressure. More information: <https://www.noticiasfides.com/nacional/seguridad/sentencian-a-20-anos-de-prision-a-medico-fernandez-por-caso-bebe-alexander-386777> y <http://www.lostiempos.com/actualidad/pais/20180918/jueza-admite-inocencia-medico-acusa-cocaricovelasco-guerrero>. Audio available in the following link: <https://www.youtube.com/watch?v=Ne4mFA9DkVo> about the mediatic repercussions, follow this link: <https://www.paginasiete.bo/seguridad/2018/9/17/jueza-admite-en-un-audio-que-no-violaron-alexander-que-el-medico-es-inocente-194068.html>.

<sup>139</sup> Observatory of Access to Justice of Fundación CONSTRUIR recorded among other cases: i) Reynaldo Ramírez (2014 – 2017), convicted of femicide while innocent, spent 26 months in prison: <https://www.noticiasfides.com/nacional/seguridad/reynaldo-ramirez-luche-con-all-my-forces-for-justice-but-my-case-remains-in-impunity-406585> ii) Edmundo Vélez (2017) received a precautionary measure of pre-trial detention with the only evidence being the witness statement, the ruling it was reversed days later when other prints were found on the murder weapon: <https://www.noticiasfides.com/nacional/seguridad/edmundo-velez-34me-exigieron-que-me-declare-culpable-de-todo-yo-dije-que-no-34-383468> iii) Freddy Hinojosa Díaz (2005-2013) sentenced to 20 years in prison for rape, released as a result of a DNA test in which it was detected that he did not correspond to the son allegedly fathered as a result of the rape, the alleged victim changed his statement and was released: <https://redinocente.org/2016/08/freddy-hinojosa-diaz-8-anos-presos-por-algo-que-no-hizo/> iv) Luis Córdoba Marca (1991-2013) spent 22 years in prison, without charge or conviction, was released in 2013: <https://www.redbolivision.tv.bo/noticia/luis-cordova-hablo-de-su-detencion-sin-sentencia/> v) Alfredo Pinedo (2018) spent two weeks in preventive detention accused of raping a minor with down syndrome,

217. In the 2016-2018 period, the number of Courts increased at the national level. In 2016, Bolivia had 1,118 courts in both capital cities and provinces; in 2018 it reached 1,157 courts.<sup>140</sup> However, the budget allocated to the administration of justice is insufficient, being less than 0.6% in the last 5 years<sup>141</sup>. The situation of interim appointments persists in the Judicial Branch and the Public Ministry, as of 2018 only 145 (13%) of the 1,082 judges were institutionalized and enjoying the guarantees of stability, a necessary condition for independence and impartiality,<sup>142</sup> the same happens with the Public Ministry, because as of 2020, 58% of the 1,161 judges at the national level (1,095 in ordinary justice and 63 in agro-environmental justice) continued in a provisional situation and without enjoying the reinforced guarantees established by international standards for independence of justice operators, in relation to the Public Ministry, there are no official data that allow identifying the number of prosecutors at the national level, much less the percentage of institutionalized officials, the only reference data is the announcement of the first promotion of 60 graduating prosecutors from the training school to 2020, and the estimate of 534 prosecutors made by the Citizen Platform for Access to Justice and Human Rights<sup>143</sup>. Therefore, the judicial career has not yet been consolidated to guarantee independence in the exercise of the functions of judges, in addition to guaranteeing stability to judicial officials through a transparent system of promotions, transfers, conditions service, training, among others.
218. Regarding the coverage of the judicial system, as of 2020, only 49% of the 339 municipalities in the country had a jurisdictional presence<sup>144</sup> as for the Public Ministry, the latest official data is from 2015, where a coverage of 41% was estimated.<sup>145</sup>. In relation to the Plurinational Public Defense Service, the coverage

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receiving threats from other inmates, he found out on television that justice found the real culprit, he was released:

[https://anteriorportal.erbol.com.bo/noticia/seguridad/22072018/liberan\\_hombre\\_que\\_fue\\_encarcelado\\_si\\_endo\\_inocente\\_vi](https://anteriorportal.erbol.com.bo/noticia/seguridad/22072018/liberan_hombre_que_fue_encarcelado_si_endo_inocente_vi)) Victor Hugo Rodríguez (2014) spent five months in prison accused of raping several minors, was exposed publicly in the media to ask other victims to report him, five months later a DNA test determined that he was not the author of the crimes:

<https://www.elpaonline.com/index.php/noticiastarija/item/185302-prueba-de-adn-revela-inocencia-de-presunto-violador-en-serie>

<sup>140</sup> Comunidad de Derechos Humanos, Bulletin Year 3 N° 3 December 2019, Monitoring the Situation of Human Rights

<sup>141</sup> According to data from the Ministry of Economy and Public Finance, the sum of the budget allocated to the justice sector, which includes: i) Judicial Branch, ii) Plurinational Constitutional Court, iii) Public Ministry, iv) Public Defense (SEPDEP), v) Defense of the Victim (SEPDAVI), vi) School of Judges, and, vii) Ministry of Justice and Institutional Transparency, has been in percentages less than 0.6% in the last 5 years (2015-2019)

<sup>142</sup> Report on the Situation of Judicial Independence in Bolivia, presented by Bolivian civil society organizations within the 169th period of hearings of the IACHR held in Boulder (USA) on October 1, 2018.

<sup>143</sup> Citizen Platform for Access to Justice and Human Rights, Report on the State of Justice 2020. Information provided to Fundación CONSTRUIR by the Council of the Judiciary through a note CITE: OF.CM/PRES.-EXT.-n°229/2021 May 18, 2021.

<sup>144</sup> Information provided to Fundación CONSTRUIR by the Council of the Judiciary through a note CITE: OF.CM/PRES.-EXT.-n°229/2021 May 18, 2021.

<sup>145</sup> CIS-OACNUD, "Bolivian Judicial System: Good practices and work recommendations for the sector"

of its services reaches 31% of the country's municipalities, and finally, the Plurinational Victim Defense Service barely reaches 12%.<sup>146</sup>.

219. There are many difficulties for citizens in general to access the public information generated by the Judicial Branch, there is no official information available that is disaggregated, updated, digital and open on judiciary management.<sup>147</sup>
220. The delay in justice has causes that imply unsustainable dimensions over time, whose main elements, among others, are: indefinite duration of the processes, high permissibility in the use of unnecessary resources (“chicana”), procedural overload and absence of pragmatic mechanisms that make it possible to decongest said load<sup>148</sup>.
221. This situation is aggravated by the lack of leadership in the courts and legal offices, the accumulation of delayed work, insufficient and inefficient human resources, a small number of courts, tolerance with the patronage practices of the parties towards the court officials and the inefficient assessment of lawyers, who many times voluntarily perpetuate a process to stretch their earnings.
222. Another factor that has a preponderant effect on the judiciary crisis is corruption. In recent years, serious cases have been uncovered. In August 2019, the leak of audios that revealed corruption in different judiciary levels and involving high judiciary authorities<sup>149</sup>. Another serious case was revealed in September 2018 as a result of an audio that came to light in which a judge admits that she and her colleagues sentenced a person while knowing he was innocent<sup>150</sup>. Yet another case refers to the former regional deputy manager of Banco Unión who was arrested and imprisoned after revealing a series of irregularities in the system that allowed an official of the bank to embezzle 37.6 million Bolivians. It is paradoxical that the person who denounced the illegality and presented a report to his superiors to prove that something was happening with the money that the official handled, was the one apprehended and imprisoned for almost a year, entering a deep depression and being affected by different diseases that attacked her.<sup>151</sup>.
223. To all of this is added that there are no expeditious procedures for denouncing external and internal interference for justice operators, and often, in cases where judges, judges, prosecutors denounce interference, they do not obtain a response from the institutions, and even more serious, lead to dismissal or

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Citizen Platform for Access to Justice and Human Rights, Report on the State of Justice 2020

<sup>147</sup> FUNDACIÓN CONSTRUIR, Report on the State of Justice in Bolivia, 2018, p. 111

<sup>148</sup> Reflections on the reform of justice in Bolivia <https://www2.justicia.gob.bo/files/ReflexionesSobreLaReformaDeJusticiaEnBolivia.pdf>, 2017, pág. 33

<sup>149</sup> <https://www.noticiasfides.com/nacional/seguridad/escandalos-de-corrupcion-golpean-al-organo-judicial-400149>

<sup>150</sup> <https://www.paginasiete.bo/anuario/2018/12/17/la-justicia-condena-inocentes-atravesia-por-su-peor-crisis-202883.html>

<sup>151</sup> <https://www.paginasiete.bo/anuario/2018/12/17/la-justicia-condena-inocentes-atravesia-por-su-peor-crisis-202883.html>

removal from the case, citing as emblematic examples that of Judge Minerva Tárraga (2019)<sup>152</sup> or the “Audios” case and prosecutor Nancy Carrasco (2019) for “La Manada” case<sup>153</sup> which were separated from the cases instead of obtain protection from the Judicial Branch and the Public Ministry.

224. In Bolivia, the elections of the high judicial authorities established in the Constitution are carried out by popular vote after the selection of candidates by the Plurinational Legislative Assembly. In the 2015-2019 legislative period, it was held on December 3, 2017.<sup>154</sup> This procedure has not guaranteed an improvement in the administration of justice since the structural problems are still evident<sup>155</sup>, despite the modifications introduced in the second process, the decisive intervention of the political power in the selection by the Legislative Assembly has not been attenuated in the candidate pre-selection stage. The social perception of this process explains that both in the 2011 and 2017 elections, null and blank votes constituted a majority, which in the December 3, 2017 corresponded to two out of three voters.<sup>156</sup>
225. Regarding the Public Ministry, on October 10, 2018, the State Attorney was elected, having obtained 116 votes out of a total of 152 from the Legislative Assembly in 2017. The election process was criticized for the deficiency in the objective identification tools and the evaluation of merits and independence<sup>157</sup>. The situation of the Public Ministry has been characterized by a constant lack of institutionalism and allegations of corruption and political interference.
226. In December 2019, the Observatory of Justice for Women and Children of the “Voces Libres” Foundation warned that Law No. 1173 on Criminal Procedure Abbreviation violates principles of due process and international standards of due diligence. This rule -according to the institution- causes the violation of the rights of the most vulnerable victims: women and children, for which they requested that some of its articles be abolished, and others be supplemented.<sup>158</sup>
227. Regarding the compatibility between ordinary justice with indigenous justice, it should be noted that culturally appropriate cooperation and coordination mechanisms have not yet been established. This situation was addressed at the Departmental Meeting of indigenous authorities and justice operators held in the

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<sup>152</sup> Página Siete (27/09/2019). Judge Denounces Intimidation for the Michel case and asks for Evo Morales' intervention. Available online: <https://www.paginasiete.bo/seguridad/2019/9/27/jueza-denuncia-amedrentamiento-por-caso-michel-pide-intervencion-de-evo-232437.html>

<sup>153</sup> Página Siete (28/11/2019). “La Manada” case: Prosecutor denounces death threats and interference by the minister of the presidency. Available online: <https://www.paginasiete.bo/seguridad/2019/11/28/caso-manada-fiscal-denuncia-amenazas-de-muerte-injerencia-del-ministro-de-la-presidencia-una-abogada-238848.html>

<sup>154</sup> Human Rights Committee, Fourth periodic report that the Plurinational State of Bolivia had to present in 2018 in the light of the article 40 from the Pact, 2019, p. 36

<sup>155</sup> The first election of magistrates of the Judicial Branch was in 2011 and the second was in 2017.

<sup>156</sup> Judicial Elections in Bolivia. Have we learned the lesson?. *Fundación para el Debido Proceso*. 2018. [http://www.dplf.org/sites/default/files/informe\\_dplf\\_elecciones\\_judiciales.pdf](http://www.dplf.org/sites/default/files/informe_dplf_elecciones_judiciales.pdf)

<sup>157</sup> Fundación Construir, Report on the State of Justice in Bolivia, 2019, p. 59

<sup>158</sup> <https://www.paginasiete.bo/sociedad/2019/12/2/ocho-razones-que-revelan-como-la-ley-de-abreviacion-penal-beneficia-femicidas-239140.html>

city of Oruro on Friday, June 7, 2019, an event in which it was noted that there are many limitations in coordination between the ordinary jurisdiction and the original jurisdiction for conflict resolution, despite advances in national regulations.<sup>159</sup>

228. On August 10 and 11, 2019, the National Meeting of Peasant Native Indigenous Justice was held in Cochabamba. As a result of this meeting, Resolution No. 1059 of the Native Peasant Nations and Indigenous Peoples was issued, in the same The lack of coordination and cooperation of the police authorities and the prosecutor's office with the natural authorities that administer justice is also noted, and they also demand the modification of art. 10 of Law No. 073 of Jurisdictional Demarcation<sup>160</sup> for being contrary to self-determination and especially to the legal systems of indigenous justice. On the other hand, they requested the strengthening of the indigenous jurisdiction with the allocation of economic resources to the exercise of the administration of justice, in addition to its equipment<sup>161</sup>.

229. In March 2020, the first Covid-19 infection was registered<sup>162</sup>, at which point a series of regulatory provisions were issued essentially aimed at dealing with the Pandemic, which implied the declaration of a Total Lockdown<sup>163</sup>. The Bolivian Government at that time determined a Total Lockdown on March 22, 2020, establishing the suspension of public and private activities, except, among others, public and private health services, the Bolivian Police and public entities, private institutions and individuals that provide attention and care for the vulnerable population, establishing priorities and assigning the strictly necessary personnel (DS No. 4200, Art. 2, Par II., sub. a, c, f). As on April 30<sup>164</sup>, the country entered a Conditional and Dynamic Lockdown, which meant that the different regions of the country would assume differentiated measures, however, most of the municipalities, especially capital and intermediate cities, remained in Total Lockdown until May 31, 2020.

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<sup>159</sup> <https://www.cipca.org.bo/noticias/autoridades-origenarias-de-oruro-exigen-mayor-coordinacion-entre-la-jurisdiccion-ordinaria-y-la-jurisdiccion-indigena>

<sup>160</sup> The Law of Jurisdictional Demarcation, in its article 10 paragraph II, limits the rural native indigenous jurisdiction establishing certain matters in which it does not reach material validity. In this provision, a kind of subjugation of the indigenous jurisdiction is glimpsed in relation to the ordinary jurisdiction.

<sup>161</sup> <https://www.servindi.org/actualidad-noticias/14/08/2019/bolivia-identifican-13-retrocesos-en-la-aplicacion-de-la-justicia>

<sup>162</sup> <http://data.eldeber.com.bo/seccion/covid19/#view-1>

<sup>163</sup> Supreme Decree No. 4179 of March 13, 2020, declares a National Emergency Situation due to the presence of the Coronavirus (COVID-19) outbreak. Supreme Decree No. 4192 of March 16, 2020 establishes prevention and containment measures for the national emergency against the outbreak of Coronavirus (COVID-19), throughout the national territory. Supreme Decree No. 4199 of March 21, 2020 declares Total Quarantine throughout the national territory, which implied the confinement of citizens under the concept of Rigid Quarantine. Determination that was complemented by Supreme Decree No. 4200, of March 25, 2020, which reinforces and strengthens the measures against the contagion and spread of the Coronavirus (COVID-19), and Supreme Decree No. 4214, of April 14 of 2020, which extends the period of total quarantine until April 30, 2020, throughout the territory of the Plurinational State of Bolivia, within the framework of the declaration of a health emergency.

<sup>164</sup> Supreme Decree N° 4229 of April 30, 2020



230. The Supreme Court of Justice, regarding Total Lockdown, issued a series of Circulars oriented to the attention and resolution of requests for the imposition, modification or cessation of precautionary measures, suspension of deadlines, promotion of the use of interpretation criteria progressive, proportional, favorable and reinforced in terms of human rights, resolution of issues inherent to compliance with quarantine provisions, use of technological tools and action protocols through virtual means<sup>165</sup>.
231. Regarding the acts of violence that occurred in Pando in September 2008, known as the "Porvenir Massacre," the Sixth Sentencing Court of La Paz has issued Judgment 10/2017 of March 10, 2017, in which López is sentenced to 15 years in prison and other defendants to different years in prison. The parties to the process (the accusers and the accused) filed restricted appeals against the aforementioned ruling. By the Appellate Decision 72/2018 of July 17, issued by the Fourth Criminal Court of the Departmental Court of Justice of La Paz, it declared the appeals admissible and determined that Leopoldo Fernández Ferreira's appeal was partially admissible and the appeals deducted by the representatives of the victims and the Public Ministry inadmissible. Consequently, confirmed the appealed Sentence, except for what was determined by the Court of origin in relation to the computation of Leopoldo Fernández Ferreira's sentence, considering home detention as valid as part of the computation for the total sanction. Between August and September 2018, the victims, those sentenced, and the Public Ministry filed appeals against the referred View Order. The Criminal Court of the Supreme Court of Justice, through Supreme Order No. 372/2019-RA of May 22, 2019, declares the appeals filed by all the actors without resolution to date Admissible.<sup>166</sup>
232. Regarding the acts of violence that occurred during the months of October and November 2019, 35 deaths and 833 injured people were recorded, based on the pacification agreements, Supreme Decree No. 4100 of December 5, 2019 was issued, which would guarantee humanitarian aid to family members and medical care for people killed and injured as a result of the violent acts that occurred in the country between October 21 and November 24, 2019.

### ***Recommendations:***

233. Carry out an urgent reform of the justice system in order to guarantee its independence and respect for due process, in particular, by adopting a law on the judicial career that guarantees professional stability, and reviewing the process of selection, evaluation and removal of judges and prosecutors, according to public and objective criteria, based on merit. The necessary resources must also be guaranteed for the adequate functioning of the Justice Branch.

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<sup>165</sup> Circular No. 06/2020 of April 6, 2020. Circular No. 07/2020 of April 7, 2020. Circular No. 08/2020 of April 15, 2020. Circular No. 09/2020 of April 16, 2020. Circular No. 10/2020 of April 16, 2020.

<sup>166</sup> Supreme Justice Court, blob:<https://jurisprudencia.tsj.bo/5fdf2a14-c293-4b04-85a1-55bde44e1d38>

234. Guarantee the independence of the Judicial Branch through the allocation of resources to the justice sector through the approval of an adequate budget, with a fixed percentage of at least 4% of the General State Budget.
235. Put an end to the provisional status of jurisdictional authorities and support personnel through normative and regulatory mechanisms, promoting the merit-based judicial career, increasing the coverage of judicial services to meet the needs of the population and refrain from affecting institutional and individual independence of justice operators. Likewise, the Legislative and Judicial Branches, as well as the Public Ministry, must approve provisions that expedite the processes of reporting internal and external interference, in time to guarantee the investigation and sanction of cases of threat to the integrity of operators due to the cases they hear, in accordance with international standards on the matter.
236. Protect the independence and management autonomy of the Public Ministry, refraining from carrying out interference and pressure actions that affect its impartiality and objectivity. Implement the prosecutorial career, expand its coverage, guarantee strategic criminal prosecution, the use of alternative solutions that do not violate the rights of the parties and strengthen the human and technical resources of the Forensic Research Institute.
237. Modify Laws No. 463 and No. 464 creating defense careers in SEPDEP and SEPDAVI, as well as increase their budgets, level the salary scale of their personnel with other similar State entities, adopt personnel selection policies that allow them to have with specialized human resources, apply academic and labor incentives that promote their specialization and permanence in the institution, as well as develop monitoring mechanisms to measure the effectiveness and impact of their work and evaluation standards of the quality of the defense.
238. All cases related to corruption in the administration of justice must be investigated, processed and punished, respecting the guarantees of due process, in addition to generating citizen monitoring mechanisms for cases processed under the Disciplinary Regime.
239. Strengthen citizen participation, adopt a law on access to public information and improve the effectiveness in the prosecution and punishment of corruption crimes.
240. Strengthen training in human rights for the police and military, in addition to monitoring compliance with the United Nations Basic Principles on the use of force and firearms by the officials in charge of use of force.
241. Adopt a plan to implement the recommendations of the GIEI to the Bolivian State, especially with regard to investigating, prosecuting and punishing those responsible for human rights violations during the 2019 crisis within a reasonable time, and in general the violent events that occurred in the country guaranteeing the rights to truth, justice and reparation, within the framework of impartial and independent justice.
242. Ensure that the maintenance of public order is reserved exclusively to civilian police forces in the framework of demonstrations and other actions in the exercise of the right to freedom of assembly and expression.

243. Work in a participatory manner on the necessary modifications to the Jurisdictional Demarcation Law so that it complies with constitutional precepts and human rights standards, strengthening cooperation and coordination mechanisms between jurisdictions.
244. Guarantee that the Justice Summit announced for March 2022 is a process of broad participation of the different social, judiciary, academic, civil society and other actors whose conclusions are translated into public policies, an implementation plan with goals, indicators, resources and deadlines subject to periodic public accountability reports and monitoring and evaluation mechanisms.

## Lynching

245. The Plurinational Constitutional Court through SCP 0246/2015-S1 of February 26, 2015, established that: “Lynching is a violation of Human Rights, it is not allowed in any jurisdiction and must be prevented and punished by the State” (emphasis added). For its part, art. 6 of the Law on Jurisdictional Demarcation (Law No. 073) (Annex 32), determines: “In strict application of the CPE, the death penalty is strictly prohibited under criminal proceedings in ordinary justice for the crime of murder to whom the impose, consent or execute it. Consequently, no violent act caused by force or with majority disproportion that threatens life, the integrity of people and their property, can be called community justice, it has different connotations and will be confused with acts typified as crimes by the criminal legal system” (emphasis added)<sup>167</sup>.
246. There is no official data on lynchings and the outcome of open trials. According to information in the media, between 2014 and 2018, there were 22 lynchings<sup>168</sup>. These events show that there is mistrust in the justice system, which is why in some cases people decide to take justice into their own hands.
247. In May 2020, Human Rights organizations and institutions condemned the lynching of a 27-year-old man in the community of Chalviri in the municipality of Sacaba, department of Cochabamba who was beaten, buried alive and finally hanged after being caught stealing a motorcycle, which constitutes an arbitrary deprivation of life and involves cruel, inhuman and degrading treatment. This case once again made it clear that it is essential to strengthen the action of the administration of justice to regain the trust of the population, which ultimately must understand that crime cannot be fought under any circumstances by doing justice on their own.

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<sup>167</sup> Human Rights Committee, Fourth periodic report that the Plurinational State of Bolivia had to present in 2018 in the light of the article 40 from the Pact, p. 28

<sup>168</sup> <https://www.paginasiete.bo/seguridad/2018/12/13/en-cinco-anos-hubo-22-linchamientos-en-bolivia-202933.html>

248. In November 2021 in Vacas, a community located in the upper valley of Cochabamba, two men were beaten and later burned by community members who accused them of being suspected vehicle thieves.

### **Recommendations:**

249. Respond in a timely manner to possible acts of lynching; investigate ex officio and punish cases of attempted and completed lynchings and implement a data registry on the number of lynchings and the procedural status of the cases.
250. Develop awareness campaigns against justice by one's own hands and about the scope of indigenous peasant justice, in educational units, communities, in rural areas and peri-urban areas of cities.

### **Violations of human rights during dictatorships**

251. Since the 2012, several of the survivors of the dictatorships in Bolivia have settled in a tent in front of the Ministry of Justice building to demand the application of Law No. 2640 on Exceptional Compensation for Victims of Political Violence in periods of unconstitutional governments. Since then, more than nine years ago, marches, blockades, seizure of public facilities and other measures have been carried out, without any success<sup>169</sup>. According to their leaders, they have the following six demands: the declassification of the archives of the dictatorships that the Armed Forces have, compliance with Law No. 2640 and United Nations Resolution 60/147<sup>170</sup>, the review of the files of victims that the Executive rejected for compensation and the call to submit new files for those who did not do so in a timely manner<sup>171</sup>. To the date this reality has not changed.
252. On October 29, 2019, 'Ayllus' and miners from Oruro marched through downtown La Paz in support of the Government of Evo Morales, when they arrived at the Prado La Paz, where the tents of the victims of the dictatorships are located, a group of protesters attacked Julio Llanos, an 81-year-old former leader and former miner leader<sup>172</sup>, who fell to the floor hitting his head, he was immediately transferred to the Workers' Hospital where he was sent to an intensive care unit since his condition was delicate, dying on November 29<sup>173</sup>.

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<sup>169</sup> <https://www.brujuladigital.net/opinion/la-democracia-dolorosa-de-las-victimas-de-la-dictadura>

<sup>170</sup> Basic Principles and Guidelines on the Right of Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law to Remedies and Reparations

<sup>171</sup> <https://www.paginasiete.bo/seguridad/2017/3/14/victimas-dictadura-cumplen-anos-prado-130523.html>

<sup>172</sup> Julio Llanos Rojas, survivor of the dictatorships, was a member of the Platform of Social Fighters against Impunity for Justice and Historical Memory of the Bolivian People Survivors of the Dictatorships persecuted in the military dictatorships, fighter for justice and victim of the political violence.

<sup>173</sup> <https://www.paginasiete.bo/gente/2019/11/29/murio-julio-llanos-luchador-por-la-democracia-las-victimas-de-las-dictaduras-238872.html>

### **Recommendations:**

253. Divulge the report of the Truth Commission and the measures that the State will implement based on it, in consultation with the associations of victims and relatives.
254. It is necessary for the State to provide a prompt solution to the request for compensation from the survivors of the dictatorships in Bolivia who settled in tents in front of the building of the Ministry of Justice and Institutional Transparency.

## **Article 16**

### **Legal personality**

255. In Bolivia, Law No. 351 of March 2013 was enacted on the granting and registration of legal personality to social organizations, non-governmental organizations, foundations and entities, which has as its objective the granting and registration of legal personality to social organizations, non-governmental organizations, foundations and non-profit civil entities. This regulation determines that the legal personality of certain organizations can be revoked if they do not meet a series of requirements that have been questioned, among them, that their activities are not in accordance with the National Development Plans or that they carry out activities different from those that appear in its statutes or regulations<sup>174</sup>.
256. This law does not comply with international standards on freedom of association. In this sense, the Human Rights Committee recommended to the State the modification of this law, which has not been fulfilled.
257. Internally, the Ombudsman's Office filed an abstract action of unconstitutionality against these regulations. The United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, presented an "amicus curiae", in which he provides legal arguments against Article 7.II.1 of Law 351 and Article 19 (g) of Supreme Decree No. 1597<sup>175</sup>, regarding an abstract action of unconstitutionality filed by the Ombudsman against these regulations that was not considered by the Constitutional Court declaring their constitutionality.
258. Human Rights Watch, also noted that Law No. 351 and its regulatory decree grant the government broad powers to dissolve civil society organizations without guaranteeing due process.<sup>176</sup>

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<sup>174</sup>Fundación Construir, Final Report, study carried out in Bolivia from January to August 2015 on the legal environment in which Civil Society Organizations (CSOs) operate in Bolivia, 2015, p. 71, [https://www.icnl.org/wp-content/uploads/our-work\\_INFORME-FINAL-BOLIVIA.pdf](https://www.icnl.org/wp-content/uploads/our-work_INFORME-FINAL-BOLIVIA.pdf)

<sup>175</sup> <https://sur.conectas.org/es/recuperar-espacios-civicos-con-litigacion-respaldada-por-la-onu/>

<sup>176</sup> Human Rights Watch, <https://www.hrw.org/es/world-report/2020/country-chapters/337667>

259. Supreme Decree No. 4353, September 29, 2020, abolished Supreme Decree 1597, which regulates Law No. 351, establishing a more appropriate framework for the operation of NGOs, however, in practice, other administrative obstacles arise, such as the detailed information required by the Vice Ministry of Public Investment and External Financing (VIPFE) for the renewal of the Single National Registry of NGOs, which makes it difficult to exercise the right to association.

### **Recommendations:**

260. Modify Law No. 351 in accordance with international standards and with the participation of civil society, to eliminate the requirements that disproportionately restrict the ability of NGOs to operate freely, independently and effectively and simplify procedures of granting and renewal of legal personalities, as well as other registrations that civil society organizations must comply with.

## **Articles 8 and 18**

### **Freedom of conscience**

261. Regarding conscientious objection to compulsory military service, the State repeatedly informed the IACHR that the pending points of the Friendly Settlement Agreement in the Alfredo Díaz Bustos Case against Bolivia related to incorporating the right to conscientious objection would have already been met, by presenting a series of bills, administrative measures and others, a response that was not admitted by the IACHR for several years until in its 2018 Annual Report, this body declared full compliance of the Friendly Settlement Agreement referred to Report No. 97/05<sup>177</sup> However, to date there is no law that regulates conscientious objection to military service, so in the opinion of civil society, the agreement was breached by the Bolivian State in terms of legislative reform<sup>178</sup>.

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<sup>177</sup> In 2004, the IACHR received a petition filed by the Ombudsman alleging the violation by the State of Bolivia of Articles 1(1), 2, 12, 24, and 25 of the American Convention on Human Rights to the detriment of Alfredo Díaz Bustos, the petitioner alleges that Mr. Alfredo Díaz Bustos is a Jehovah's Witness whose right to conscientious objection has been violated by the State in relation to the obligation to perform compulsory military service. On July 4, 2005, the Bolivian State signed a transactional agreement in which it undertook to promote a friendly settlement, in a letter dated August 22, 2005, the Bolivian Ombudsman requested the conclusion of the case by accrediting compliance with the friendly solution. In fact, Mr. Díaz Bustos was given his military record and a Ministerial Resolution which provides that, in the event of an armed conflict, said citizen will not be assigned to the battlefield. However, pending compliance by the State with points d and e. d) in accordance with international human rights law, incorporate in the regulatory draft reforms to military legislation currently under review by the Ministry of National Defense and the Armed Forces, the right to conscientious objection to military service;

e) promote, together with the Vice Ministry of Justice, the congressional approval of military legislation that incorporates the right to conscientious objection to military service

<sup>178</sup> <http://derechosnacion.org/wp-content/uploads/2019/04/Diaz-Bustos-Articulo-Final.pdf>

262. A new case of conscientious objection against Bolivia was admitted by the IACHR. In 2015, José Ignacio Orías Calvo submitted a letter to the Ministry of Defense, in which he stated that the military service is in disagreement with his convictions. After the response, which reaffirmed its mandatory nature and rejected his request to refrain from military training and exhaust all internal instances, he turned to the IACHR. The State Attorney General's Office (PGE) tried, without success, to distort the foundations of the international complaint, the IACHR concluded that the case should be admitted for consideration in the merits phase.<sup>179</sup>
263. Since the Constitutional Court issued the Plurinational Constitution Judgment No. 206/2014 that makes possible the application of the Penal Code regarding the interruption of pregnancy in non-punishable cases such as rape, incest, statutory rape and risk to the health or life of women, several doctors from health centers to which women go to practice the Legal Interruption of Pregnancy have presented their conscientious objection hindering the application of the aforementioned sentence to the detriment of victims of sexual violence, and in other cases, exposing women's lives are at greater risk. From the perspective of human rights, the conscientious objection of doctors who refuse to practice legal abortions is fully valid and for this same reason health centers must also have non-objecting doctors who can make possible the application of the aforementioned constitutional ruling. However, it has been promoted that entire hospitals declare themselves conscientious objectors, non-objector doctors are stigmatized in many cases and in other cases, non-objectors interfere in women's decisions, in breach of Resolution No. 0027 of the Ministry of Health and Sports<sup>180</sup>, which emphatically states that 'conscientious objection is a personal decision, not an institutional decision'<sup>181</sup>. In addition, the Directors and/or Heads of the Health Services, in this situation, are not guaranteeing the legal interruption of pregnancy within 24 hours as stipulated in the referred standard; which is an insurmountable obstacle for women who are forced to resort to unsafe abortions, with the consequent risks to their health and life.

### ***Recommendations:***

264. Legislate conscientious objection to military service in accordance with international human rights standards, allowing people who, due to religion or conviction, choose to perform alternative civil services to comply with the State and society.
265. The regulations for conscientious objection by medical professionals in relation to legal abortions must be complied with so that their access does not

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<sup>179</sup> <https://derechosenaccion.org/wp-content/uploads/2018/08/Opinion-Orias.pdf>

<sup>180</sup> "Technical Procedure for the Provision of Health Services in the Framework of the Plurinational Constitutional Sentence 0206/2014..

<sup>181</sup> Technical Procedure for the Provision of Health Services in the Framework of the Plurinational Constitutional Sentence 0206/2014.

constitute an insurmountable barrier for women, and must be argued in writing, previously and in a formal way, individually and not collectively. In addition to guaranteeing that health centers have non-objecting medical personnel and comply with the procedure within 24 hours of submitting the request, avoiding delays and risks to the health and/or life of women.

## Article 19

### Freedom of expression and defense of human rights

266. In Bolivia, the right to freedom of expression is constitutionalized in Article 106 and there is a Printing Law since 1925.
267. During 2018, the IACHR Special Rapporteur received information on the aforementioned episodes in which the Police had exceeded the use of force when intervening in social demonstrations and the classification of many journalists as "opposition" by officials of the Government in front of public opinion and exposing them to the risk of being attacked. In this context, the Office of the Special Rapporteur received information on situations of violence against journalists for reasons related to the work they perform<sup>182</sup>.
268. During the political and social crisis in October and November 2019, violations of the right to free expression of journalists and press workers were reported. The Amnesty International Report states that 'Such harassment unduly limits freedom of expression in the country, by generating censorship of political leaders, journalists and human rights defenders, including health workers'<sup>183</sup>.
269. Among the measures adopted by the Government of Jeanine Añez in the face of the coronavirus pandemic was Supreme Decree No. 4200, which stipulates in its Art. 13.II that 'all who incite non-compliance with this Supreme Decree or misinform or generate uncertainty to the population, will be subject to criminal charges for committing crimes against public health'. This determination received much criticism for the margin of action left to the authorities to restrict freedom of expression, since the decree did not specify what actions or statements could be considered 'disinformation' or what acts could generate 'uncertainty for the population'<sup>184</sup>. Human Rights Watch, questioned the norm pointing out that the interim government of Bolivia took advantage of the pandemic to arrogate to itself the power to penalize those who publish information that the authorities consider incorrect and this violates the right to freedom of expression.<sup>185</sup>

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<sup>182</sup>Annual Report 2018, Inter-American Commission on Human Rights <http://www.oas.org/es/cidh/docs/anual/2018/docs/IA2018cap4A-es.pdf>, p. 283

<sup>183</sup><https://www.amnesty.org/es/latest/news/2020/08/bolivia-violaciones-derechos-humanos-durante-crisis-postelectoral/>

<sup>184</sup><https://elpais.com/noticias/hrw-human-rights-watch/>

<sup>185</sup><https://elpais.com/internacional/2020-04-08/el-gobierno-de-bolivia-recibe-criticas-por-amenazar-la-libertad-de-expresion-durante-la-cuarentena.html>



270. According to the Observatory of Defenders, during 2019 there were 203 violations of freedom of expression<sup>186</sup>, the most common being intimidation by officials and public authorities, violation of freedom of the press and stigmatization, 38 have been recorded cases of intimidation of journalists<sup>187</sup>.
271. In 2020, 43 violations of freedom of expression were recorded, with stigmatization being the most common violating act<sup>188</sup>. In total, 85 violations of press freedom were recorded, with attacks being the most common type. Between physical and verbal attacks, the Observatory recorded 59 cases, many during the work covering demonstrations or public acts of different social groups.<sup>189</sup>
272. The State not only failed to comply with its duty to respect the rights of journalists as interlocutors between the State and society, but it has also failed to guarantee the free exercise of their work, protecting them from any act of individuals that goes against the law. detriment of the performance of their duties.
273. In recent years, NGOs and human rights defenders have been victims of attacks and acts of harassment, including public statements by authorities questioning<sup>190</sup> and stigmatizing their work<sup>191</sup>. During 2020, the Defenders Observatory recorded 20 situations of violation of the rights of defenders<sup>192</sup>. From the State, there is no official information regarding these violations, complaints or investigations, nor are there mechanisms to protect the safety and integrity of defenders and journalists and to guarantee that they can fully carry out their work without limitations.
274. Women human rights defenders are particularly at risk due to constant attacks, threats, intimidation, stigmatization, persecution, prosecution and criminalization. In 2021, despite the United Nations' recommendations on the protection of women human rights defenders who are suffering attacks throughout the region, acts have been carried out to criminalize and prosecute defenders throughout the country. Casa de la Mujer<sup>193</sup> has suffered a process of harassment

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<sup>186</sup>UNITAS, Informe de situación 2019, pág 14

<sup>187</sup>Ibid.

<sup>188</sup> UNITAS, Status report 2020, p. 12.

<sup>189</sup>Ibid, pág 13.

<sup>190</sup>International NGOs received a warning for alleged interference in Bolivia, as well as some national organizations that were considered critical of the government.

<https://www.paginasiete.bo/nacional/2020/10/9/gobierno-desmiente-afines-al-mas-en-la-cidh-copa-pide-sancion-por-muertes-270911.html>

<sup>191</sup>NGOs that appeared at a hearing before the IACHR in support of the victims of Senkata and Sacaba were discredited by the ambassador to the OAS, who assured that the information they provided was false and part of a show staged by NGOs. He spoke of them as "widows of Evo Morales" in allusion to the former president Morales. <https://www.paginasiete.bo/nacional/2020/10/9/gobierno-desmiente-afines-al-mas-en-la-cidh-copa-pide-sancion-por-muertes-270911.html>

<https://www.paginasiete.bo/nacional/2020/10/9/gobierno-desmiente-afines-al-mas-en-la-cidh-copa-pide-sancion-por-muertes-270911.html>

<sup>192</sup> Ibid., p. 16 y 35.

<sup>193</sup> <https://www.defensoria.gob.bo/noticias/defensoria-del-pueblo-reprocha-actos-de-hostigamiento-contra-la-casa-de-la-mujer-en-santa-cruz>

for its work in the defense and legal support of victims of violence, rape and femicide in the city of Santa Cruz, for continuing its work during a civic strike. On the other hand, one of its lawyers that attends to victims of violence was accused by one of the defendants and defamed in the media.

275. In 2021, the Eleventh Criminal Sentencing Court of Santa Cruz de la Sierra admitted a “Freedom Action” filed by a defendant of gender-based violence against his victim and the organizations Salvaginas Ecofeminist Collective<sup>194</sup>, Ni una Menos Bolivia, Articulation Sonoras and Irreverente, for making the case public on social networks due to the unjustified delay in the process, which concluded with the refusal of placing the plaintiff under guardianship.
276. In 2021, in the city of Potosí, the Autonomous Municipal Government, through the Municipal Council, declared the members of the Mujer de Plata collective personae non gratae, which has put those who are part of this organization in danger due to the stigmatization and criminal prosecution that the Public Ministry was requested to attribute the painting of graffiti. These measures are totally disproportionate, as they did not consider that this is the only feminist group in that city and that accompanies victims and relatives of victims.
277. In 2021, of the Chamber of Senators’ constitutional commission presented a bill to pass into law the Declaration on the right and duty of individuals, groups and institutions to promote and protect human rights and universally recognized fundamental freedoms.

### ***Recommendations:***

278. It is recommended to respect and enforce the constitutional regulatory framework on the right to freedom of the press, avoiding stigmatizing statements by authorities and public officials, as well as warnings that produce situations of self-censorship in journalists.
279. Establish legal proceedings against those responsible for acts of aggression against journalists.
280. Avoid arbitrarily assigning official advertising to the media, guaranteeing access with equal opportunities.
281. The State must guarantee the right to information, to free association, to the free expression of opinion and thought, peaceful protest, right to participation and access to justice for human rights defenders.
282. Guarantee a safe and enabling environment for NGOs and human rights defenders; investigate all reports of attacks and harassment against them, publicly recognize human rights defenders as legitimate and vital agents of society; and implement a legislative and operational framework for their protection.
283. The role of the State is to guarantee, to protect and to put an end to the improper application of criminal, civil and administrative law against women human rights defenders, as well as any act of intimidation or retaliation and any arbitrary

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<sup>194</sup> <https://muywaso.com/pronunciamiento-frente-al-acoso-judicial-contra-colectivas-feministas-en-bolivia/>

act as a consequence of their activities, including obstacles to obtain external financing. It must take additional measures as well, using a gender and intersectional perspective and ensure that impartial, exhaustive and effective investigations are carried out on all attacks and acts of harassment and intimidation, persecution, threats, discrimination, misogyny, sexism, chauvinism and colonial violence.

284. Promote the initiative of the Chamber of Senators to give legal force to the Declaration on human rights defenders.

## Article 23

### Forced child marriages and unions<sup>195</sup>

285. A social problem of notorious relevance is that of marriages and early forced unions of girls and adolescents. In the Report on the Study of Marriage and Forced Unions of Girls in Bolivia presented by Plan International Bolivia, in July 2018, it is established that there is evidence that the prevalence of early marriages is high in the country. It is estimated that for the year 2016, 3% of the population under 15 years old were married or in a union, also 22% of girls and adolescents were married before the age of 18. The prevalence of unions - marriages in girls between 15 and 19 years of age by area of residence is differential. In rural contexts, there is a higher proportion of girls and adolescents who are in a union/married: before the age of 15, 5.6% are already in a union and at the age of 18, that is 1 out of every 5 girls<sup>196</sup>.
286. The study of Girls and Adolescents in Early Marriages and Forced Unions carried out in 4 rural municipalities of Bolivia, presented in 2020 by UNFPA and Plan International, confirms that in the investigated contexts there is no marriage mediated by legal and ritual recognition but the early unions and often "forced" coexistence when there is a pregnancy involved for reasons of "honor". It is also a response to poverty and lack of income, which creates very strong incentives for early unions for girls, particularly in rural and indigenous areas<sup>197</sup>.

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<sup>195</sup> Forced marriage is any marriage in which at least one of the parties is under 18 years of age. In this regard, the Committee for the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC), have described this practice as a forced marriage, "since there is no full, free consent and informed of one of the parties or neither of them; emphasizing that in most cases, whether in fact or in law, girls are the most affected. In relation to child unions, the IACHR underlines the "difficulty of regulating informal de facto unions, which are often not included in legal definitions. In this regard, the Commission agrees that as early or precocious de facto unions are understood as an informal expression of marriage, some States do not classify them as marriage, which probably leads to an underestimation of the extent of child marriage in the region".

<sup>196</sup> Report of the Coalition of Civil Society Organizations on the Human Rights of Children and Adolescents for the Universal Periodic Review (UPR) of Bolivia, p. 40, <https://www.comunidad.org.bo/assets/archivos/publicacion/77c931961974d79fa143053c29f9c98f.pdf>

<sup>197</sup> Girls and Adolescents in Forced Marriages and Unions at an Early Age, UNFPA, Plan International 2020, p. 108.

287. Article 139 (Age) of the Family Code and Family Procedure. Law No. 603, in its paragraph I, complies with the aforementioned international instruments; In other words, the minimum age to legally establish both institutions are 18 years old.
288. Nevertheless, paragraph II fails to comply with General Recommendation no. 31 of CEDAW and General Comment no. 18 of the CRC, considering that the international instrument does not refer to the authorization by the parents, or those who have the guardianship or guardianship of the girl; and the Ombudsman for Children and Adolescents is not a judicial authority; and in relation to paragraph III, it contradicts and violates the aforementioned recommendation, considering that it prioritizes the previous authorizations and makes judicial authorization the last option, being the only legally valid one.
289. Article 170 (minority) of Law No. 603 is a violation of the aforementioned international instruments; by expressly authorizing that both parties under the age of 18 can marry or have a free union or, in fact; and not so an exception.
290. Likewise, the term 'puberty' is not regulated in current regulations, being a legal vacuum, which can be tacitly interpreted as being under 16 years of age; and in relation to the phrase 'if they had conceived' it is interpreted as a harmful practice, called 'Crimes committed for reasons of honor' determined in General Recommendation no. 31 of CEDAW and General Comment no. 18 of the CRC; considering that the pregnancy may have been the product of sexual violence.

### ***Recommendations:***

291. Modify the Code of Families and Family Procedure determining 18 years as the minimum age for marriage/free union; without any exception; in compliance with the observations issued to the Bolivian State by the Committee against Torture in 2021; framed in the General Recommendation no. 31 of CEDAW and General Comment no. 18 of the CRC and the Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/31/57. January 5, 2016.
292. Approve Public Policies to prevent and punish Harmful Practices, contemplated in General Recommendation no. 31 of CEDAW and General Comment no. 18 CRC.
293. Develop intersectional approaches in actions to prevent and eradicate forced marriages and early unions of children and adolescents, particularly with lower income and schooling levels and higher levels of poverty. Criminal prosecution must be developed in all cases related to sexual violence, eradicate all types of agreements that make the impunity of the aggressors viable, likewise, a national state and contextualized study on marriages and early unions must be carried out.
294. Promote the right to decide, leadership and empowerment of girls and adolescents for their life projects free of violence. Involve children and young people in awareness and promotion campaigns against forced marriages and unions at an early age.

295. Engage, educate and mobilize parents, families and community leaders to create an environment where girls and boys grow up free from forced child marriages and unions, thus enhancing their capacity for further dialogue informed with daughters and sons about sexuality and prevent pregnancy. Work with the autonomous municipal governments to include technical, material and financial resources in the annual operational plans to ensure educational actions and the availability of supplies, including contraceptive methods within the comprehensive sexual and reproductive health program.

## Marriage and free union of LGBTIQ+ people

296. National regulations<sup>198</sup> (State Political Constitution and Family Code) continue to recognize marriage and free union between heterosexual people as the only form of legal bond between couples, thus denying these social institutions to sexual and gender diversity, which means that same-sex couples cannot benefit from social security, hereditary succession, the construction of a common patrimony, request family assistance, access shared bank credits, make decisions in the absence of the partner and others.
297. Although in compliance with Constitutional Resolution 127/2020 of July 3, 2020, of the Second Constitutional Chamber of La Paz, the SERECÍ Civic Registry Service had to order the registration of the free union of the couple who achieved the protection of their rights, making the registration of their union effective on December 18, 2020. Subsequent requests from other same-sex couples to the SERECÍ have also been denied by this instance<sup>199</sup>, on the grounds that Resolution 127/2020, although it was fulfilled according to the constitutional procedure in the specific case, it is under review before the Plurinational Constitutional Court (TCP)<sup>200</sup> (as it proceeds in all cases of constitutional amparo actions) and only once this court confirms or not, that decision I would make a determination in favor of other couples. In this way, the SERECÍ continues to refuse to apply the constitutionality block, exercise conventionality control and apply the principles of non-discrimination, favorability and progressiveness provided for in the Political Constitution of the State to allow access to marriage and free union to couples of the same sex, making a decision that the TCP can make depend on it without there

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<sup>198</sup> Article 63 of the CPE establishes: I. Marriage between a woman and a man is constituted by legal ties and is based on the equality of rights and duties of the spouses. II. Free or de facto unions that meet conditions of stability and uniqueness, and are maintained by the Political Constitution of the State (CPE). For its part, the Family Code in its Article 168 determines the nullity of the marriage and the free union if it has not been carried out between a woman and a man.

<sup>199</sup> <https://www.paginasiete.bo/sociedad/2021/7/8/hrw-denuncia-que-en-bolivia-negaron-union-de-pareja-lesbiana-300422.html>

<sup>200</sup> Despite this initially favorable result, until today the TCP, which must issue a review ruling confirming or revoking Resolution 127/2020 of the Second Constitutional Chamber of La Paz, has not done so, generating an unjustified delay or delay.

being any legal provision by which this instance (SERECÍ) must wait for a decision in a specific case to process requests from other couples.

298. In the context of the pandemic, it is known that, as a result of COVID 19, there were deaths of members of same-sex couples and that their relatives have tried to deprive the survivors of the assets acquired during their life together, protected where the law does not expressly recognize the legal bond between same-sex couples. The judicial authorities in family matters have denied surviving couples the judicial declaration of free union in the event of the death of their partners, requirements for the declaration of heirs, under the same argument that this institution is reserved for heterosexual couples, for which reason has also had to resort to the constitutional route, having achieved a favorable response, although as in the case of free union such decision will be reviewed by the Plurinational Constitutional Court.
299. SCP 0076/2017 and Constitutional Decree 0028/2017 have restricted marriage, free or de facto unions of trans people, as well as adoption due to the possibility that the exercise of these rights may affect “third party rights”.
300. However, numeral 3 of Art. 23 of the ICCPR mentions that the marriage cannot be celebrated without the free consent of the couple. However, in the case of trans people and their cisgender and/or heterosexual partners, they are not even allowed the right to marry even though the cisgender and/or heterosexual partner knows the gender identity of their trans partner and provides his consent to marry her.
301. Discrimination against trans people thus reaches even their heterosexual and cisgender partners, who are also prevented from exercising their right to a family. The justification in SCP 0076/2017 and Order 0028/2017 to restrict the right to marriage and adoption is based on the fact that trans people could hide the fact of being trans from their partners and get married fraudulently.
302. This argument violates another series of rights since, in the hypothetical case that a transgender person does not announce to their partner that they have changed their name, sex data and image, this could be subject to a private process of annulment of their rights. marriage, without the need to restrict the right of all trans people who in good faith wish to marry with the consent of their partners.
303. Discrimination against trans people is so profound that it even affects their children. There are several cases of transmasculine people who have gestated and given birth to their own children that today cannot be civilly registered due to the absence of a procedure in the Civic Registry Service (SERECÍ)<sup>201</sup>; said instance refuses to include as “father” transsexual and/or transgender men who have even changed their name and sex to male before giving birth.
304. In the birth certificates that are issued in health centers to newborns, there is only space to record the name of the “mother”, so a conflict is generated when the pregnant person is a trans man with a name and male data. There are two cases

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<sup>201</sup> The Civic Registry Service - SERECÍ is the entity in charge of registering births, marriages, divorces, deaths, etc., as well as issuing certificates of these acts of people.

in which a trans man with a masculine name has been entered in the “mother” space, which is why the SERECÍ has not allowed them to register them as parents, leaving these children without identity to date and therefore, without legal personality.

### ***Recommendations:***

305. Confirm the constitutional resolutions that are under review by the Plurinational Constitutional Court that have allowed to date the registration and judicial recognition of free unions of same-sex couples, giving legal security to people who achieved the protection of courts of guarantees.
306. Develop a legal framework based on human rights standards that recognizes and protects the right to form a family for same-sex couples, guaranteeing that they can access marriage and free union under the same conditions as heterosexual couples, without discrimination based on sexual orientation and gender identity, including adjustments to SERECÍ regulations, procedures and systems to eliminate existing formal barriers.
307. Modulate SCP 0076/2017 and Constitutional Decree 0028/2017 based on International Human Rights Treaties for being contrary to them, or failing that, promulgate as soon as possible, regulations that guarantee the right of the family to all LGBTIQ+ people (marriage, free or de facto unions, adoption and child registration).
308. Urge the Plurinational Constitutional Court to act in accordance with the law and pronounce itself confirming the guardianship with respect to Constitutional Resolutions No. 127/2020 of July 3, 2020 and Constitutional Resolution No. 152/2021 of July 28, 2021, both of the Second Constitutional Court of the Departmental Court of Justice of La Paz.
309. Train judges and public servants on the rights of LGBTIQ+ people, in particular on their equal access to marriage and free union, and their duty to apply the constitutionality block and exercise control of conventionality in all cases in which the validity of their human rights is at stake.
310. Develop information and awareness campaigns for the population in general to eradicate discriminatory attitudes that encourage the maintenance of restrictive legal frameworks for the LGBTIQ+ population.