

**Supplementary Information on the Plurinational State of Bolivia, Scheduled for Review by the
U.N. Committee against Torture during its 50th session (6-31 May 2013)**

Women's Link Worldwide and FUNDERES

Section 1: Introduction and Objective of the Shadow Report

Introduction and Objective

This shadow report aims to highlight the occurrence of sexual violence in educational institutions in Bolivia and argues that such acts amount to a violation of the right to be free from torture. It will provide an integral view of the myriad of rights in play in such situations and how they interact with and affect the right of to be free from torture. Children are placed by their parents in the care of the education establishments and its actors on the understanding of the fulfilment of this right to education and in the context of the special protection that they must be afforded. This entails a heightened obligation on those working in public educational establishments and other State actors to ensure their protection from violations of their human rights, including a right to be free from violence. Thus when children¹ are sexually violated in the very place where they should be able to access means to elevate their social and economic situation, the elements of ill-treatment are without doubt fulfilled, and combined with the breach of this heightened obligation of protection, it entails a violation by the State and its actors of the right to be free from torture, as distinct from ill-treatment.

Contained within this opening section is a brief introduction of the intersecting rights in play when sexual violence occurs in educational institutions. These concepts will be elaborated upon in the subsequent sections. Thus, Section two will be begin with an examination of both the rights to

¹ This shadow report, although referring to both children and girl-children generally. Both boys and girls are affected by, and should be protected from, sexual violence in educational institutions. As will be set out in more detail in Section?? below, girl-children represent a notably higher percentage of victims of sexual violence in educational institutions in Bolivia. This fact is held out on the international stage as well with the World Health Organization quoting international studies revealing that approximately 20% of women and 5-10% of men report being victims of sexual violence as children. See World Health Organization, Fact Sheet No. 239, November 2012, available at <http://www.who.int/mediacentre/factsheets/fs239/en/>

education and the right to special protection afforded to children and particularly girl-children on the international stage. Thereafter the right to be freedom from torture in both the regional and international fora will be set out, culminating in the setting out of a higher standard of protection from torture to be afforded to children in educational institutions.

In essence it is argued that girl-children in educational establishments in the Plurinational State of Bolivia (hereinafter Bolivia) must be accorded a higher level of protection from acts falling within the ambit of torture or ill-treatment based on the special protection that must be afforded to them by reason of their physical and mental immaturity and in order to develop their full potential as well as the fact that educational establishments are where the State is obliged to ensure that it progressively realizes the right to education.

Thereafter, the aforementioned specific rights are examined in the Bolivian context, again concluding with a higher standard of protection to be afforded to children in Bolivian educational institutions. This is followed by an overview of the situation of sexual violence in educational institutions generally in Bolivia, together with a brief review of the case of the young girl Patricia Flores as a specific example of such violence. The penultimate section contains an analysis of the elements of torture in the context of sexual violence of girls in educational establishments. Finally, this report will respectfully set out a series of recommendations for consideration by this Honourable Committee.

Intersecting Factors and Rights in Situations of Sexual Violence in Educational Establishments

Right to be Free from Torture

The absolute and non-derogable nature of the prohibition against torture is accepted as a matter of customary international law.² The provisions of article 2³ of the Convention Against Torture and

² Committee against Torture (hereinafter "CAT Committee") General Comment No. 2: *Implementation of Article 2 by State Parties* (2008) para. 1, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>

³ United Nations, Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>. Bolivia ratified the CAT on 12 April 1999. For further information see: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en Article 2

Other Cruel Inhuman or Degrading Treatment or Punishment (hereinafter CAT)⁴ reinforce this peremptory *jus cogens* norm and afford the CAT Committee the authority to, *inter alia*, implement effective means of prevention in response to **evolving threats, issues and practices**.⁵ While the prohibition on torture may have originally applied primarily in the context of interrogation, punishment or intimidation of a detainee, the international community has begun to recognize that torture may also occur in other contexts.⁶ In this context, educational institutions have been identified as situations of risk for children, risk that, it is argued further below, falls within the ambit of CAT.

Right to Education

In 2000 States around the world adopted the Millennium Development Goals.⁷ They form a blueprint agreed to by all the world's countries and the world's leading development institutions as a means of meeting the needs of the world's poorest and most vulnerable. Education was recognized as a key stepping stone and Goal Two aims to achieve universal primary education.⁸ It has been defined by the United Nations Committee on Economic, Social and Cultural Rights as:

“[...] both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a **vital role in empowering women, safeguarding children** from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly,

of CAT states that “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

⁴ United Nations, Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>. Bolivia ratified the CAT on 12 April 1999. For further information see: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en

⁵ CAT Committee, General Comment No. 2: *Implementation of Article 2 by State Parties* (2008) para.1, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement> (emphasis added).

⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. A/HRC/22/53, 1 February 2013 para.15

⁷ See United Nations Millennium Declaration, adopted 8 September 2000, available at: <http://www.un.org/millennium/declaration/ares552e.htm>; See also: <http://www.un.org/millenniumgoals/>

⁸ See Millennium Development Goals, ‘Goal 2: Achieve Universal Primary Education’ available at: <http://www.un.org/millenniumgoals/education.shtml>

education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: **a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.**⁹

At the same time as countries around the world push and are encouraged by international bodies to ensure that children and particularly socio-economically disadvantaged girls attend schools, schools are slowly being acknowledged as one of the most potentially dangerous places for these girls to be.

Sexual Violence in Educational Institutions and Underlying Factors

In December 2011, the Inter-American Commission on Human Rights noted that “sexual violence in schools has yet to be acknowledged as one of the most compelling problems in today’s world”.¹⁰ This pernicious form of sexual violence **“occurs in the framework of power dynamics built upon age and/or gender differences amidst very hierarchical structures,” which can be exacerbated further by factors such as “poverty, inequality, disability, and membership in ethnic minorities [making] the relationship even more lopsided and expose women [and girls] who are members of these groups to even greater danger of having their rights violated.”**¹¹

Those same children and girls who are marked by vulnerabilities on the basis of race, ethnic origin, age, disability, socio-economic status and are encouraged to attend schools can and are being identified as prey by potential violators working in or with access to schools who take advantage of the framework of power dynamics. Thus, in the very places identified as their salvation, their means of overcoming their disadvantaged situations, young girls and being preyed upon, violated, tortured and even murdered. Sexual violence in educational establishments is an egregious violation of a

⁹ Committee on Economic, Social and Cultural Rights General Comment No.13: *The Right to Education* (1999) para. 1, available at: <http://www.unhcr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>

¹⁰ Organisation of American States (hereinafter “OAS”) Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence: Education and Health* (2011) para. 4, available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf> ; See also, Report on the Special Rapporteur on the right to education, Kishore Singh, *The promotion of equality of opportunity in education* (2011) para. 7(g) (“If schools play a central role in the prevention of violence and the promotion of a culture of peace, it is also true that violence can often take place in the school context with serious consequences for the enjoyment of the right to education. The Rapporteur intends to address the emerging concern of violence in schools in close collaboration with the Special Representative of the Secretary-General on violence against children.”) available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-29.pdf>

¹¹ OAS, Inter-American Commission on Human Rights *Access to Justice for Women Victims of Sexual Violence: Education and Health* (2011) para. 18, available at <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

series of human rights of girls: it deprives girls of their right to education, their means of improving their social situation; the special protection that must be afforded by nature of their physical and mental immaturity and in order to develop their full potential; the right to be free from violence and the right to be free from ill-treatment and torture.

In this shadow report, we respectfully request, *inter alia*, that the Committee recognize and analyze the extent of the occurrence of sexual violence in educational establishments in Bolivia; recognize the heightened obligation placed on States in the context of such violence in educational establishments in light of the right to education, the right to be free from violence and the right of children and particularly girls to special protection and acknowledge that such violent sexual acts occurring in educational institutions *prima facie* entail a breach of the Convention Against Torture in the form of torture (as distinct from ill-treatment) in light of this heightened obligation.

SECTION 2: INTERNATIONAL STANDARDS: THE RIGHT TO EDUCATION AND THE SPECIAL PROTECTION AFFORDED TO CHILDREN AND PARTICULARLY GIRL CHILDREN PURSUANT TO INTERNATIONAL HUMAN RIGHTS LAW

Right to Education

As noted above, education is both a human right in itself and an indispensable means of realizing other human rights.¹² The International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two articles to the right to education, articles 13 and 14 with the former, the longest provision in the Covenant, being the most wide-ranging and comprehensive article on the right to

¹² Committee on Economic, Social and Cultural Rights General Comment No.13 *The Right to Education* (1999) para. 1, available at: <http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?OpenDocument> ; See also Universal Declaration of Human rights (adopted 10 December 1948) article 26, available at: <http://www.un.org/en/documents/udhr/index.shtml>; Charter of the Organization of American States, article 50 (“the Member States will give special attention to the eradication of illiteracy”), available at: http://www.oas.org/dil/treaties_A41_Charter_of_the_Organization_of_American_States.htm; OAS, Additional Protocol to the American Convention on Human Rights in the Area Of Economic, Social And Cultural Rights "Protocol Of San Salvador" (adopted 17 November 1988, entered into force 16 November 1999, Bolivia ratified 5 October 2006) article 13, available at: <http://www.oas.org/juridico/english/treaties/a-52.html>; United Nations, Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981, hereinafter “CEDAW”) article 10, available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

education in international human rights law.¹³ Education is directed to the **full development of the human personality and the sense of its dignity and serves to strengthen the respect for human rights and fundamental freedoms.**¹⁴ It enables all persons to **participate effectively in a free society, promote understanding, tolerance and friendship** among all nations and all racial, ethnic or religious groups among others.¹⁵ While it is a progressively realizable right¹⁶ that requires an obligation to take steps by all appropriate means to the maximum of available resources, there are associated immediate obligations.¹⁷ Thus there is **an immediate obligation to ensure that the right shall be exercised without discrimination of any kind, including gender.**¹⁸ It applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.¹⁹ There is a further immediate obligation to take deliberate, concrete and targeted steps towards the full realization of the right to education.²⁰

¹³ Committee on Economic, Social and Cultural Rights, General Comment No. 13: *The Right to Education* (1999) para. 2, available at: <http://www.unhcr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>

¹⁴ United Nations, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990, hereinafter “the Convention”/“the CRC”) Article 13, available at: http://www.unesco.org/education/pdf/CHILD_E.PDF See also article 13 of the Protocol of San Salvador (education “should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.”) available at: <http://www.oas.org/juridico/english/treaties/a-52.html>;

¹⁵ United Nations, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990, hereinafter “the Convention”/“the CRC”) Article 13 Available at: http://www.unesco.org/education/pdf/CHILD_E.PDF See also Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From all Forms of Violence* para 4., available at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

¹⁶ Progressive realization means that State parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the realization of the right to education. See Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From All Forms of Violence* para 44., available at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

¹⁷ Convention on the Rights of the Child’ (adopted 20 November 1989, entered into force 2 September 1990) Article 2 Available at: (hereinafter “the Convention”/“the CRC”) http://www.unesco.org/education/pdf/CHILD_E.PDF; See Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From All Forms of Violence*, para 43.

¹⁸ Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From All Forms of Violence* paras. 5, 43, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

¹⁹ Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From all Forms of Violence* para. 31, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

²⁰ Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From all Forms of Violence* para. 4, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

States have an obligation to fulfil and provide the right to education.²¹ They must avoid measures that hinder or prevent the enjoyment of the right to education; must take measures that prevent third parties from interfering with the enjoyment of the right to education and take positive measures that enable and assist individuals and communities to enjoy the right to education.²² They are obligated to remove gender and other stereotyping which impedes the educational access of girls and women among others.²³ **Violations of the right to education may occur through the direct action of States or through their failure to take steps required by right to education, which includes the failure to take measures which address de facto educational discrimination.**²⁴ The Special Rapporteur on Education has stated that “[u]nderstanding and removing obstacles that impede the enjoyment of all to the right to education are urgent challenges for the entire international community.”²⁵

States **must create favourable conditions to ensure the safety of girls at school.**²⁶ Violence and violent discipline in educational institutions are inconsistent with human dignity.²⁷ Thus, **violence, sexual abuse and early pregnancies have been identified as among the main barriers to girls’ education**²⁸ and the former Special Rapporteur on the right to Education has stated that “[p]rotecting girls from the sexuality-related causes of exclusion and gender violence in schools is not only a vital requirement worldwide, it also implicates and engages the entire educational apparatus [including] the training, recruitment, awareness-raising and further training of

²¹ Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From all Forms of Violence* para. 47, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

²² Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From all Forms of Violence* para. 47, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

²³ Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From all Forms of Violence* para. 55, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

²⁴ Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From all Forms of Violence* paras. 58-59 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

²⁵ Report on the Special Rapporteur on the right to education, Kishore Singh *The promotion of equality of opportunity in education* (2011) para. 6, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-29.pdf> Notably, although the Special Rapporteur, at paragraph 54, identifies the threat of violence against girls as a specific risk and a major factor in parents’ decisions to keep their daughters out of school, the report recognizes this threat on the way to and from school but fails to refer to the threat in schools themselves.

²⁶ Committee on Economic, Social and Cultural Rights, General Comment 16: *The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights - Article 3 of the International Covenant on Economic, Social, and Cultural Rights* (2005) para. 30; See also CEDAW, article 10.

²⁷ Committee on the Rights of the Child General Comment 13, *The Right of the Child to Freedom From all Forms of Violence* para. 14.

²⁸ United Nations, Commission on Human Rights, Girls’ Right to Education, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos (2006) para. 94, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/106/70/PDF/G0610670.pdf?OpenElement>

teachers.”²⁹ Sexual and gender-based violence is facilitated by Government’s failure to enact and effectively implement laws that provide students with explicit protection from discrimination.³⁰

The Committee on the Rights of the Child has noted “with concern continuing **authoritarianism, discrimination, disrespect and violence which characterize the reality of many schools and classrooms.**”³¹ The concept of **patriarchalism continues to have a decisive influence in educational institutions:** it is an undifferentiated set of oppressive facts deriving from sex, race, gender ethnic origin and social background.³² Within this context, the purpose of girls’ education is to facilitate changes in stereotyped roles, eliminate prejudices and other customary practices based on the idea of the inferiority or superiority of either sex, by building in all persons the capacity to respect and exercise human rights: “**what is at stake is education for equality and hence, a more just, interdependent, equitable and peaceful society.**”³³

Special Protection: Children and Girl Children

The obligation of States to recognise and address the particular vulnerability of children and their subsequent special need for protection is a well-established principle in international human rights law and is reflected in various international and regional instruments and jurisprudence.³⁴ The

²⁹ United Nations, Commission on Human Rights, Girls’ Right to Education, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos (2006) Para. 110. See also para. 152 wherein the Special Rapporteur recommends that States “[d]esign and publicize simple, appropriate, practical mechanisms enabling girls to report, incomplete security and confidentiality, any acts of violence towards them at or near educational institutions” available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/106/70/PDF/G0610670.pdf?OpenElement>

³⁰ Report of the Independent expert for the United Nations study on violence against children (2002) para. 52, available at http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf See also para. 111 for specific recommendations concerning violence in the educational setting.

³¹ Committee on the Rights of the Child, General Comment No. 12: *The Right of the Child to be Heard* (2009) para. 105.

³² United Nations Commission on Human Rights, Girls’ Right to Education, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos (2006) paras. 15-20.

³³ United Nations Commission on Human Rights, Girls’ Right to Education, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos (2006) paras. 21, 22.

³⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) Articles 19 and 37, available at: http://www.unesco.org/education/pdf/CHILD_E.PDF (Bolivia ratified the CRC 26 June 1990); American Convention on Human Rights (adopted, 22 November 1969, entered into force 18 July 1978) Article 19, available at: <http://www.unhcr.org/refworld/docid/3ae6b36510.html>; African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) Available at: <http://www.unhcr.org/refworld/docid/3ae6b38c18.html>>; European Convention on the Exercise of Children’s Rights (adopted 25 January 1996, entered into force 1 July 2000) Available at: <<http://conventions.coe.int/Treaty/en/Treaties/Html/160.htm>>; European Social Charter (adopted 18 October 1961, entered into force 26 February 1965) Articles 17, 7, available at: <http://polis.osce.org/library/f/2667/466/CoE-ITA-RPT-2667-EN-466>; *A v UK* (ECtHR, 1998) app no. 100/1997/884/1096. In the judgment the European Court stated that:

Declaration of the Rights of the Child reads: “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”³⁵ The need for the special protection of the child is re-affirmed in the UN Convention on the Rights of the Child, which sets out a comprehensive set of substantive rights that must be realized for children to develop their full potential, free from hunger and want, neglect and abuse.³⁶ The near-universal ratification of the Convention reflects a global commitment to the principles of children's rights.³⁷

The Committee on the Rights of the Child (“hereinafter “the Committee” / “the CRC Committee”) has clarified that State parties’ obligations towards children in the context of the prevention of violence are far-reaching and entail both negative and positive obligations. Thus is stated that “[t]hese **special obligations are due diligence and the obligation to prevent violence or violations of human rights, the obligation to protect child victims and witnesses from human rights violations**, the obligation to investigate and to punish those responsible, and the obligation to provide access to redress human rights violations.”³⁸ Violence against children is multifaceted and calls for a multi-dimensional or structural response.³⁹ State parties, such as Bolivia,⁴⁰ have an obligation to “take all appropriate legislative, administrative, social and educational measures to **protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other**

“Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity” (para.29). Also see *X and Y v. the Netherlands* (ECtHR, 1985) app no. 8978/80, paras. 21–27; *Stubbings and Others v. the United Kingdom* (ECtHR, 1996) App no. 36-37/1995/542-543/628-629, paras. 62–64; *C.A.S. and C.S. v. Romania* (ECtHR, 2012) App no. no. 26692/05; See also Geneva Declaration of the Rights of the Child (adopted 24 September 1924) available at: <http://www.un-documents.net/gdrc1924.htm>; Declaration of the Rights of the Child (adopted 20 November 1959) available at: <http://www.un.org/cyberschoolbus/humanrights/resources/child.asp>

³⁵ Declaration of the Rights of the Child, (adopted 20 November 1959) Preamble, available at: <http://www.un.org/cyberschoolbus/humanrights/resources/child.asp>

³⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) Articles 19 and 37, available at: http://www.unesco.org/education/pdf/CHILD_E.PDF

³⁷ As of 17 April 2013, the United States and Somalia are the only UN member states that have not ratified the Convention. For further information see UN Treaty Collections (2013) available at: http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en

³⁸ Committee on the Rights of the Child General Comment 13: *The Right of the Child to Freedom From all Forms of Violence* (2012) para. 5, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>; See also Human Rights Committee General Comment 31: *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (2004) available at: <http://www.unhcr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f>

³⁹ Report of the Independent Expert for the United Nations Study on Violence against Children Paulo Sérgio Pinheiro (2006) para. 5.

⁴⁰ Bolivia ratified the Convention on the Rights of the Child on June 26, 1990. See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

person who has the care of the child.⁴¹ The uncompromising language of the treaty text (“shall take”) entails a strict obligation to take a comprehensive set of measures to ensure the protection of the rights of the child. Resource constraints cannot provide a justification for a State party’s failure to take any, or sufficient measures that are required for child protection.⁴² Therefore, “States parties are urged to adopt comprehensive, strategic and time-bound coordinating frameworks for child caregiving and protection.”⁴³

The definition of ‘caregivers’ referred to in Article 19 above, has been interpreted quite broadly by the Committee, to include *inter alia* “[...] those with **clear, recognized legal, professional-ethical and/or cultural responsibility for the safety, health, development and well-being of the child**, primarily: parents, foster parents, adoptive parents...family and community members [and] **education, school and early childhood personnel.**” In relation to the situation of sexual violence in educational establishments, this is particularly relevant as the Committee has highlighted the potential danger of the hierarchical nature structure: “children are **at risk of being exposed to violence in many settings where professionals and State actors have often misused their power over children, such as schools**, residential homes, police stations or justice institutions”.⁴⁴ Sexual violence against children, which is particularly directed against girls, has been defined as “sexual behaviour, coercive or not, imposed on a minor, by a person who may be physically superior, with more experience and resources that incorrectly uses his or her power or authority.”⁴⁵

The Committee has also raised its concern at the high levels of violence against children in State institutions such as schools and opined that such violence may breach the prohibition on torture: “The Committee is also **aware of widespread and intense violence applied against children in State**

⁴¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) available at: http://www.unesco.org/education/pdf/CHILD_E.PDF CRC, Article 19.

⁴² Committee on the Rights of the Child General Comment 13: *The Right of the Child to Freedom From all Forms of Violence* (2012) para 27, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

⁴³ Committee on the Rights of the Child General Comment 13: *The Right of the Child to Freedom From all Forms of Violence* (2012) para.72, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

⁴⁴ Committee on the Rights of the Child General Comment 13: *The Right of the Child to Freedom From all Forms of Violence* (2012) para 36, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

⁴⁵ UNICEF, *Report on violence against Children and Adolescents in Latin America* (2006) p.16, 50, available at [http://www.unicef.org/republicadominicana/Estudio_violencia\(4\).pdf](http://www.unicef.org/republicadominicana/Estudio_violencia(4).pdf)

institutions and by State actors including in schools, care centres, residential homes, police custody and justice institutions which may amount to torture and killing of children[.]”⁴⁶

The Inter-American Court in its Advisory Opinion on the Status of Human Rights of the Child has expressed the extent of the positive obligations of Member States in this area, noting that they “have a duty [...] to take **positive measures to ensure protection of children against abuse, either in their relations with public authorities, or in relations among individuals or with non-governmental entities.**”⁴⁷ The Court, in its jurisprudence, has been emphatic that respect for the right to life necessitates special arrangements when it comes to the protection of children, and there is a consequent heightened obligation to prevent situations that might lead, by act or omission, to the violation of this right.⁴⁸ It has also opined that where there are **child victims the application of the highest standard is required in determining the seriousness of actions that violate the right to humane treatment.**⁴⁹

The Inter-American Commission on Human Rights has stated that “States have an obligation to create effective mechanisms to **prevent and punish acts of violence whose victims are children and adolescents, both in the home, as in education** and other areas of social life where this type of threat may occur.”⁵⁰ It has drawn attention to the fact that the problem of sexual violence against girls is largely a consequence of gender-based discrimination, stating: “in addition to facing discrimination on account of their gender, they are also relegated in importance because they are considered mere objects of protection on account of their minor status.”⁵¹

Thus, **the duty of special protection is heightened by the particular vulnerability and exposure of girls to acts of violence.** This intensified duty of due diligence with respect to girls is provided for in

⁴⁶ Committee on the Rights of the Child General Comment 13: *The Right of the Child to Freedom From all Forms of Violence* (2012) para 3(i), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

⁴⁷ Inter-American Court on Human Rights (hereinafter “IACtHR”). *Advisory Opinion on the Juridical Condition and Status of Human Rights of the Child* (2002) para. 87, available at: http://www.worldcourts.com/iacthr/eng/decisions/2002.08.28_Human_Rights_of_the_Child.pdf

⁴⁸ See *Mapiripán Massacre v. Colombia* (IACtHR, 2005) Serie C No. 134, para. 162

⁴⁹ See *Gómez Paquiyauri Brothers v. Perú* (IACtHR, 2004) Serie C No. 110, para. 170

⁵⁰ Inter-American Commission on Human Rights (“IACHR”) *Security and Human Rights Report* para. 125.

⁵¹ IACmHR (2011) ‘Access to Justice for Women Victims of Sexual Violence: Education and Health’ available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

the obligation of special protection set forth in Articles 19 of the American Convention⁵² and the Convention of Belém do Pará.⁵³ In addition, the CRC Committee has determined that states' obligations to protect the rights of the child are heightened in relation "to marginalized groups of children, who are rendered particularly vulnerable due to their alternative methods of communicating, their immobility and/or the perceived view that they are incompetent, such as children with disabilities."⁵⁴

The special protection that must be afforded to children, and particularly to girl children, is additionally evidenced in the universal principle of the "best interests of the child". This is one of the four core principles of the Convention, in addition to the principle of non-discrimination, the rights to life, survival and development; and respect for the views of the child.⁵⁵ There is broad consensus in both national and international law that in all decisions concerning children, their best interests must take great importance, if not precedence.⁵⁶ All decision-making concerning a child's care must take account of the best interests principle, including decisions by parents, professionals and others responsible for children.⁵⁷ Every legislative, administrative and judicial body or institution, including public or private social welfare institutions, is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their

⁵² Organisation of American States, American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm Bolivia ratified the Convention 20 June 1979. See also, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm Article 19 states: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

⁵³ Article 9, Convention of Belém do Pará (adopted 9 June 1994, entered into force March 5, 1995) Bolivia ratified 26 October 1994.

⁵⁴ Committee on the Rights of the Child, General Comment No. 13. para. 48; See also *X and Y v. the Netherlands* (ECtHR, 1985) app no. 8978/80 paras. 21–27

⁵⁵ CRC, General Comment No. 12: *The Right of the Child to be Heard* (2009) para. 2, available at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

⁵⁶ CRC, art. 3(1), CRC, art. 3 and arts. 9, 18, 20, 21, 37 and 40; CEDAW, General Recommendation No. 19: *Violence against Women* para. 19; *Neulinger and Shuruk v. Switzerland* (ECtHR, Grand Chamber, 2010) app no. 41615/07 para. 135; CRC, General Comment No. 5: General measures of implementation for the Convention on the Rights of the Child, para. 12, available at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>; DEDAW, Art. 6(2)(c); IACtHR *Advisory Opinion of the Inter-American Court of Human Rights, on the Legal Status and Human Rights of the Child* (2002), paras. 56-61. The term 'best interests' broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as the age, the level of maturity of the child, the presence or absence of parents, the child's environment and experiences" See UNHCR (2008) Guidelines on Determining the Best Interests of the Child p.14, available at: <<http://www.unhcr.org/4566b16b2.pdf>> See also; African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) Available at: <http://www.unhcr.org/refworld/docid/3ae6b38c18.html>>;art. 4.

⁵⁷ CRC, GC No. 12, para. 13; IACtHR *Juridical Condition and Human Rights of the Child Advisory Opinion* OC-17/2002, 28 (2002) para. 65

decisions and actions by, for example, a proposed or existing law or policy or administrative action or court decision.⁵⁸

SECTION 3: INTERNATIONAL STANDARDS IN RELATION TO SEXUAL VIOLENCE AND TORTURE

From the Universal Declaration of Human Rights in 1948⁵⁹ through to the specific CAT the international system of human rights protection has been consistent and unequivocal in relation to the rights of all persons to be free from acts of torture.⁶⁰ Similarly within the Americas there has been a consistent and explicit prohibition on torture, cruel, inhuman or degrading treatment or punishment.⁶¹

Regional System of Protection of Human Rights in the Americas

The American Convention on Human Rights (hereinafter the American Convention) states at article 5, the right to humane treatment, that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.⁶² The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (hereinafter the Convention of *Belém do*

⁵⁸ CRC, General Comment No. 5, para. 12; also IACtHR *Judicial Condition and Human Rights of the Child* Advisory Opinion OC-17/2002, 28 (2002) para. 79.

⁵⁹ United Nations, General Assembly, Resolution 217A (3), 10 December 1948, Universal Declaration of Human Rights, available at <http://www.un.org/en/documents/udhr/#atop> Article 5 states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

⁶⁰ Torture and other forms of ill-treatment are prohibited under, *inter alia*: Article 7 of the International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976; the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987; Article 37 of the Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990; Article 10 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003.; and Article 15 of the Convention on the Rights of Persons with Disabilities, G.A. res. A/61/611 (2006). Additionally, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969, provides that everyone has “*The right to security of person and protection by the State against violence or bodily harm,*” and the Committee on the Elimination of Discrimination against Women has stated that “*Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, [including the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment,] is discrimination within the meaning of article 1 of the [Convention on the Elimination of All Forms of Discrimination against Women]*” (CEDAW, General Recommendation No.19, para. 7).

⁶¹ For similar prohibitions in other regions, see; African Charter, article 5; African Charter on the Rights and Welfare of the Child, article 16, and European Convention for the Protection of Fundamental Freedoms, Article 3.

⁶² Organisation of American States, American Convention on Human Rights (adopted 22 November, 1969, entered into force on 18 July 1978) available at <http://www.oas.org/dil/treaties> Bolivia ratified the Convention on 20 June 1979

Pará) specifically addresses the issue of violence against women and girls in the Americas. It defines violence against women as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere.⁶³

The right not to be subjected to torture is specifically enumerated in article 4(d) as an integral right afforded to every woman. The Convention imposes a duty on ratifying States to condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence.⁶⁴ Thus States are obliged to, *inter alia*, refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; apply due diligence to prevent, investigate and impose penalties for violence against women; include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary. Article 9 obliges State parties to take special account of the vulnerability of women to violence by reason of a variety of factors, including, race or ethnic background, women of minor age and socioeconomically disadvantaged women.⁶⁵

Article 5 of the American Convention is recalled in the Preamble to the Inter-American Convention to Prevent and Punish Torture in its definition of torture.⁶⁶ State Parties to the Convention are

⁶³ Organisation of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) article 1, available at: <http://www.cidh.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>. Bolivia ratified this Convention on October 26, 1994. The definition is expanded upon in article 2 to include physical, sexual and psychological violence, rape and sexual abuse in various settings specifically mentioning educational institutions and any such acts perpetrated or condoned by the State regardless of where it may occur.

⁶⁴ Organisation of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) article 7, available at <http://www.cidh.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>

⁶⁵ Organisation of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) article 7, available at <http://www.cidh.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm> Under article 8, the Convention outlines specific measures to be taken to address violence against women in all its forms.

⁶⁶ Organisation of American States, Inter-American Convention to Prevent and Punish Torture (adopted 9 December 1985, entered into force on 28 February 1987) available at <http://www.oas.org/juridico/english/treaties/a-51.html>. Article 2 states that *inter alia* "torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish." Under article 3 the Convention makes it clear that those who can be found guilty of torture include public servants or employees acting in that capacity who instigate or

obliged to take effective measures to prevent and punish torture within their jurisdiction and ensure that all acts of and attempts to commit torture are offenses under their criminal law and are obliged to make such acts punishable with severe penalties in light of their serious nature.⁶⁷ Similar measures must also be taken in relation to prevent other cruel, inhuman or degrading treatment or punishment.⁶⁸

Both the Inter-American Commission on Human Rights (hereinafter IACHR or the Commission) and the Inter-American Court of Human Rights (hereinafter the IACtHR) have made significant pronouncements in judicial decisions, interpretative documents and reports on violence against women and girls and its relationship with the prohibition against torture, cruel, inhuman and degrading treatment or punishment.

The IACtHR has on numerous occasions stated that the prohibition against torture is absolute in nature and has attained *jus cogens* status⁶⁹ and it first specifically addressed sexual violence against

induce the use of torture, or who directly commit it or who, being able to prevent it, fail to do; as well as any person who at the instigation of a public servant or employee orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto. Bolivia ratified the Convention 26 August 2006. See further <http://www.oas.org/juridico/english/sigs/a-51.html>

⁶⁷ Organisation of American States, Inter-American Convention to Prevent and Punish Torture (adopted 9 December 1985, entered into force on 28 February 1987) available at <http://www.oas.org/juridico/english/treaties/a-51.html>.

⁶⁸ Organisation of American States, Inter-American Convention to Prevent and Punish Torture (adopted 9 December 1985, entered into force on 28 February 1987) available at <http://www.oas.org/juridico/english/treaties/a-51.html>. The Convention additionally includes guarantees that authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process (art. 8), and that national laws and regulations incorporate suitable compensation for victims of torture. (art. 9).

⁶⁹ See for example, *Bayarri v Argentina* (IACtHR, 2008) para. 81 (“Torture and cruel, inhuman and degrading treatment are strictly prohibited by international human rights law. Nowadays, the absolute prohibition of torture, both physical and psychological, belongs to the domain of international *jus cogens*. The Court has understood that an act that constitutes torture exists when the ill-treatment is: (a) intentional; (b) causes severe physical or mental suffering, and (c) is committed with a purpose or objective, including the investigation of crimes”), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_187_ing.pdf. The Court additionally noted at para. 92 that “even when the application of torture or cruel, inhuman or degrading treatment has not been denounced before the competent authorities, whenever there are indications that it has occurred, the State must initiate, *ex officio* and immediately, an impartial, independent and meticulous investigation that allows the nature and origin of the injuries observed to be determined, those responsible to be identified, and their prosecution to commence. It is essential that the State act diligently to avoid the practice of torture, taking into account that the victim usually abstains from denouncing the facts because he is afraid. The judicial authorities have the duty to guarantee the rights of the person detained, which entails obtaining and ensuring the authenticity of any evidence that can prove acts of torture. The State must guarantee the independence of the medical and health care personnel responsible for examining and providing assistance to those who are detained so that they can freely carry out the necessary medical evaluations, respecting the norms established for the practice of their profession”; *Bueno Alves v Argentina* (IACtHR, 2007) Series C No. 164, para. 76, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_164_ing.pdf; *Miguel Castro Castro Prison v Peru* (IACtHR, 2008) Series C No. 181, para. 271, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf; *Maritza*

women in the context of torture and ill-treatment in its judgment in the *Castro Castro Prison v Peru*.⁷⁰ Specifically, the Court analyzed the scope and consequences of sexual violence in the context of state custody and relied upon and drew from the Convention of “Belém do Pará” in the interpretation of the right to humane treatment of the female detainees who were subjected to various forms of torture including sexual violence when the prison where they were being held was bombed. It acknowledged that **women are affected differently by certain acts of violence; that certain acts of violence are specifically directed against women** and others affected then in greater proportion than men. It added that **acts of sexual violence are in many cases used “as a symbolic means to humiliate the other party.”**⁷¹

Citing jurisprudence from the European Court of Human Rights,⁷² the Court acknowledged that:

“sexual rape of a detainee by a State agent is an especially gross and reprehensible act, taking into account the vulnerability and the abuse of power displayed by the agent. [It] is an extremely traumatic experience that may have serious consequences and it causes great physical and psychological damage that leaves the victim physically and emotionally humiliated, situation (*sic*) difficult to overcome with time, contrary to what happens with other traumatic experiences.”⁷³

Urrutia v Guatemala (IACtHR, 2003) Series C No. 103, para. 92, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_103_ing.pdf

⁷⁰ Case of *Miguel Castro Castro Prison v Peru* (IACtHR, 2008) Series C No. 181, para. 271, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf

⁷¹ Case of *Miguel Castro Castro Prison v Peru*, Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of August 2, 2008 Series C No. 181, para. 223, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf (emphasis added). Specifically addressing rape as a form of sexual violence and torture, the Court noted, at para. 310, that it does not necessarily imply non-consensual vaginal sex: it can also be non-consensual acts involving vaginal or anal penetration of the victim using parts of the perpetrator’s body or objects. Oral penetration with the male organ is also classified as rape.

⁷² See *Aydin v. Turkey* (ECtHR, Grand Chamber, 1997) app no. 57/1996/676/866 para. 83.

⁷³ Case of *Miguel Castro Castro Prison v Peru* (IACtHR, 2008) Series C No. 181, para. 311, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf (emphasis added). It reiterated this theme of vulnerability at para. 313 wherein it stated that “sexual violence against women has devastating physical, emotional, and psychological consequences for them,¹⁶⁶ which are exacerbated in the cases of women who are imprisoned.”

The State was held responsible for violations of article 5 of the American Convention for, *inter alia*, acts of sexual violence and including rape in the form of a non-consensual digital vaginal examination.⁷⁴

In *Rosendo Cantú y otra v México* the Court held that the rape of Mrs. Cantú by two soldiers in the presence of others entailed, *inter alia*, a violation of article 5(2) of the American Convention and article 2 of the Inter-American Convention to Prevent and Punish Torture.⁷⁵ It reiterated that an act of torture consisted of mistreatment fulfilling the following requirements: i) intentional; ii) causes severe physical or mental suffering, and iii) is committed with any objective or purpose.⁷⁶ With regard to intention, the Court noted that in general terms, **“rape has other objectives, including intimidating, degrading, humiliating, punishing or controlling the person who is raped.”**⁷⁷ It added that **“rape may constitute torture even when it is based in a single fact alone and takes place outside State facilities.** This is so because the objective and subjective elements that classify an act as torture do not refer either to the accumulation of facts or to the place where the act is committed”⁷⁸

In the *Case of Fernández-Ortega et al. v. Mexico*⁷⁹ the Court recalled that in assessing the victim’s suffering the following, among others, must be considered: characteristics of the action, the duration, the method used, or the way in which the suffering was inflicted, the potential physical

⁷⁴ See also Concurring Opinion of Judge Cecilia Medina Quiroga in relation to the Judgment of the Inter-American Court of Human Rights in the *Case of González et al. (“Cotton Field”) v México* (IACtHR, 2009) Series C 205, wherein Judge Medina discusses at length the jus cogens nature of the prohibition of torture and its content in the context of the American Convention in relation to the prohibition of cruel, inhuman and degrading treatment or punishment. Additionally at para. 18-19, and particularly relevant to the case of Patricia Flores, she highlights two particular moments as indicative of the State’s failure to comply with its obligation to prevent: the moment in which the State was notified of the existence of a pattern of violence against women in Ciudad Juárez (and the absence of policies designed to try and revert the situation) and the lapse between the time the three victims disappeared and the State’s response to their disappearance which was “extremely belated and even today insufficient”.

⁷⁵ *Rosendo Cantú et al. v. Mexico* (IACtHR, 2011) Series C No. 225, para. 110, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf

⁷⁶ *Rosendo Cantú et al. v. Mexico* (IACtHR, 2011) Series C No. 225, para. 110, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf

⁷⁷ *Rosendo Cantú et al. v. Mexico* (IACtHR, 2011) Series C No. 225, para. 117, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf

⁷⁸ *Rosendo Cantú et al. v. Mexico* (IACtHR, 2011) Series C No. 225, para. 110, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf para. 118, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf See also *Case of Fernández-Ortega et al. v. Mexico* (IACtHR, 2010) para. 128, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf

⁷⁹ *Fernández-Ortega et al. v. Mexico* (IACtHR, 2010) Series C No. 215, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf

and mental effects, and also the **status of the person who endured this suffering, including their age, gender, and physical condition.**⁸⁰ The Court described sexual abuse as “a paradigmatic form of violence against women, the consequences of which even transcend the personhood of the victim”⁸¹ and stated that:

“[...] **severe suffering of the victim is inherent in rape**, even when there is no evidence of physical injuries or disease. Indeed, the aftereffects of rape will not always be physical injuries or disease. Women victims of rape also experience complex consequences of a psychological and social nature.”⁸²

Thus, in finding violations of article 5 of the American Convention and various articles of the Inter-American Convention to Prevent and Punish Torture and the Convention of *Belém do Pará* the Court referred specifically to the victim’s **vulnerability and the coercion** exercised by the State actors involved.⁸³

The Commission, in the case of *Raquel Martín Mejía v Perú*⁸⁴ found the Peruvian state responsible for, *inter alia*, the violation of the right to humane treatment protected under article 5 of the American Convention and the Inter-American Convention to Prevent and Punish Torture. The case concerned an armed raid on the home of Raquel Martín and Fernando Mejía by persons dressed in Peruvian Army uniforms. The persons in question beat Fernando Mejía, put him in a government truck and left. Moments later, the person in command returned to the house on two consecutive occasions, each time raping Raquel Martín Mejía.⁸⁵ The Commission stated, *inter alia*, that “rape is a

⁸⁰ *Fernández-Ortega et al. v. Mexico* (IACtHR, 2010) Series C No. 215, para. 122, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf

⁸¹ *Fernández-Ortega et al. v. Mexico* (IACtHR, 2010) Series C No. 215, para. 119, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf

⁸² *Fernández-Ortega et al. v. Mexico* (IACtHR, 2010) Series C No. 215, para. 124, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf (emphasis added).

⁸³ *Fernández-Ortega et al. v. Mexico* (IACtHR, 2010) Series C No. 215, paras. 125, 131, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf

⁸⁴ *Raquel Martín de Mejía* (IACHR, 1996) Merits Report No. 5/96, available at <http://www.cidh.org/annualrep/95eng/Peru10970.htm>

⁸⁵ When she filed a declaration with the local police, Raquel Mejía reported the abduction of subsequent homicide of her husband but did not report the sexual abuse as she was “fearful that the violations committed against my person would have caused me to be ostracized and exposed me to greater danger or physical harm.” *Raquel Martín de Mejía* (IACHR, 1996) Merits Report No. 5/96, available at <http://www.cidh.org/annualrep/95eng/Peru10970.htm>

physical and mental abuse that is perpetrated as a result of an act of violence.”⁸⁶ The Commission opined that for torture to exist three elements must be combined: it must be an intentional act through which physical and mental pain and suffering is inflicted on a person; committed with a purpose; by a public official or by a private person acting at the instigation of the former.⁸⁷ Citing the then Special Rapporteur against Torture⁸⁸ it continued that:

“[...] **sexual abuse is one of the various methods of physical torture.** Moreover, rape is considered to be a method of psychological torture because its objective, in many cases is not just to humiliate the victim but also her family or community [...] rape would appear to be a weapon used to punish, intimidate and humiliate. Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed, the victims are commonly hurt or, in some cases, are even made pregnant. The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them”⁸⁹

The Commission recommended that Peru “conduct a thorough, rapid and impartial investigation of the sexual abuse [...] in order to identify the perpetrators so that they may be punished in accordance with the law, and that it pay the injured party a fair compensation.”⁹⁰

⁸⁶ *Raquel Martín de Mejía* (IACHR, 1996) Merits Report No. 5/96, Analysis (a) available at <http://www.cidh.org/annualrep/95eng/Peru10970.htm>

⁸⁷ *Raquel Martín de Mejía* (IACHR,1996) Merits Report No. 5/96, Analysis (a), available at <http://www.cidh.org/annualrep/95eng/Peru10970.htm>

⁸⁸ Report of the Special Rapporteur, Mr. P. Koojimans U.N. Doc.E/CN.4/1986/15, para.119, available at: http://ap.ohchr.org/documents/E/CHR/report/E-CN_4-1986-15.pdf

⁸⁹ *Raquel Martín de Mejía* (IACHR,1996) Merits Report No. 5/96, Analysis (a), available at <http://www.cidh.org/annualrep/95eng/Peru10970.htm> The Commission recommended, at VII, Recommendations (3), that Peru “conduct a thorough, rapid and impartial investigation of the sexual abuse [...] in order to identify the perpetrators so that they may be punished in accordance with the law, and that it pay the injured party a fair compensation.” It additionally opined that the right to judicial protection recognized in Article 25 of the American Convention “must be understood as the right of every individual to go to a tribunal when any of his rights have been violated” and “to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation.

⁹⁰ *Raquel Martín de Mejía* (IACHR,1996) Merits Report No. 5/96, Recommendation (3) available at <http://www.cidh.org/annualrep/95eng/Peru10970.htm> The Commission opined that the right to judicial protection recognized in Article 25 of the American Convention “must be understood as the right of every individual to go to a tribunal when any of his rights have been violated” and “to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate,

In *Ana, Beatriz y Celia González v México* the IACHR found México responsible for violations of article 5 of the American Convention and article 8 of the Inter-American Convention to Prevent and Punish Torture, amongst other violations.⁹¹ Three sisters had been illegally detained, interrogated and subjected to physical abuse, including rape, by a group of military officers.⁹² The Commission, citing the jurisprudence of the International Criminal Tribunal of the former Yugoslavia,⁹³ stated that “there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international law.”⁹⁴ It re-affirmed that **“in international law, rape is a form of torture under certain circumstances.”**⁹⁵ In this particular case, the Commission noted that **“[t]he facts established here are particularly serious, since one of the women raped was a minor, and as such was entitled to special protection under the American Convention.”**⁹⁶

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adequate compensation.”: *Raquel Martín de Mejía* (IACtHR, 1996) Analysis, available at <http://www.cidh.org/annualrep/95eng/Peru10970.htm>

⁹¹ *Ana, Beatriz, and Cecilia González Pérez* (IACHR, 2001) Case 11.565, para. 4, available at <http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm>

⁹² *Ana, Beatriz, and Cecilia González Pérez* (IACHR, 2001) Case 11.565 para. 42, available at <http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm>

⁹³ See *Prosecutor v Mucic et al (the Celebici case)* (ICTY, 1998) Case No. IT-96-21, para. 476, wherein the Tribunal stated that “there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international law.” See also *Prosecutor v Furundzija*, (ICTY, 1998, and 2000 before the Appeals Chamber) Case No. IT-95-17/1 wherein the Tribunal, at para. 163, stated that “[a]s evidenced by international case law, the reports of the United Nations Human Rights Committee and the United Nations Committee against Torture, those of the Special Rapporteur and the public statements of the European Committee for the Prevention of Torture, this vicious and ignominious practice can take on various forms. International case law, and the reports of the United Nations Special Rapporteur evince a momentum towards addressing, through legal process, the use of rape in the course of detention and interrogation as a means of torture and, therefore, as a violation of international law. Rape is resorted to either by the interrogator himself or by other persons associated with the interrogation of a detainee, as a means of punishing, intimidating, coercing, or humiliating the victim, or obtaining information or a confession from the victim or a third person”. See further *Prosecutor v Tadic* (ICTY, 1997 and on 26 January 2001 before the Appeals Chamber) Case No. IT-94-1 in relation to rape as torture; *Prosecutor v Kunarac et al*, (ICTY, 2001 and 12 June 2002 before the Appeals Chamber) Case No. IT-96-23 &23/1, 22 February 2001 () concerning sexual enslavement and rape as crimes against humanity; and *Prosecutor v Krstic* (ICTY, 2001 and (and 19 April 2004 before the Appeals Chamber) making the link between rape and ethnic cleansing. For jurisprudence of the International Criminal Tribunal of the former Yugoslavia see generally <http://www.icty.org/action/cases/4> . Also see International Criminal Tribunal for Rwanda, *Prosecutor v Akayesu* (ICTR 1998, and Appeals Chamber 2001) para. 597 wherein the Chamber stated that “[l]ike torture rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment control or destruction of a person. Like torture rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the investigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

⁹⁴ *Ana, Beatriz, and Cecilia González Pérez* (IACHR, 2001) Merits Report No. 53/01, Case 11.565, para. 45, available at <http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm>

⁹⁵ *Ana, Beatriz, and Cecilia González Pérez* (IACHR, 2001) Merits Report No. 53/01, Case 11.565, para. 47, available at <http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm>

⁹⁶ *Ana, Beatriz, and Cecilia González Pérez* (IACHR, 2001) Merits Report No. 53/01, Case 11.565, para. 50, available at <http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm>

A myriad of international treaties expressly or implicitly prohibit torture, cruel, inhuman or degrading treatment or punishment, the foremost of those being the CAT.⁹⁷ The definition of torture contained in article one⁹⁸ can be said to be made up of four constituent elements, namely:

1. Severe pain and suffering, whether physical or mental;
2. Intentionally inflicted;
3. for a prohibited purpose which includes for any reason based on discrimination of any kind;
4. by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Although not specifically defined in the act, other acts of cruel, inhuman or degrading treatment or punishment not amounting to torture, when committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity amounts to a violation of article 16. In practice, the definitional threshold between ill-treatment and torture is often unclear and the obligations are “indivisible, interdependent and interrelated,”⁹⁹ though ill-treatment, as distinct from torture, may differ in the severity of pain and suffering and does not require proof of impermissible purposes.¹⁰⁰ In situations of detention or similar direct control, there is no test of proportionality *vis-a-vis* the force applied (as would occur in the context of lawful domestic force) and any form of physical or mental pressure or coercion constitutes, at a minimum, ill-treatment.¹⁰¹

⁹⁷ United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, New York, (adopted 10 December 1984, entered into force 26 June 1987), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>. Bolivia ratified the Convention 12 April 1999. See further, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en

⁹⁸ Article 1 defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

⁹⁹ CAT, General Comment No. 2: *Implementation of article 2 by States Parties*, UN Doc. (2007), para. 3. See related, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (23 December 2005), wherein, at para. 39, he maintains that the distinction “may best be understood to be the purpose of the conduct and the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted.”

¹⁰⁰ CAT, General Comment No. 2: *Implementation of article 2 by States Parties* (2007) para. 10.

¹⁰¹ Manfred Nowak and Elizabeth McArthur, “The distinction between torture and cruel, inhuman or degrading treatment”, *Torture*, Vol. 16, No. 3, 2006, pp. 147–151 cited in *Torture in International Law, A Guide to Jurisprudence*, 2008, Association

This Committee has affirmed in a number of decisions that rape constitutes a form of torture.¹⁰² In *C.T. and K.M. v Sweden* the Committee addressed the issue of rape in the context of deportation and article 3 of the Convention.¹⁰³ Prior to her arrival C.T. had been detained in Rwanda due to her political activism. During her detention she was repeatedly raped, as a result of which she became pregnant, and later gave birth to her son, K.M, in Sweden. The Committee considered that her repeated rape in detention amounted to torture.¹⁰⁴ This was a key element in deciding that there were substantial grounds for believing that the complainants would be in danger of being subjected to torture if returned to Rwanda in violation of article 3 of the Convention.

Similarly in *V.L. v Switzerland* the claim that V.L.'s return to Belarus would violate article 3 was examined.¹⁰⁵ V.L.'s husband had written a letter to an editor of a newspaper criticizing the president of Belarus. Prior to leaving Belarus, V.L. was interrogated by three police officers seeking information on the whereabouts of her husband. She was penetrated with objects, beaten and raped. She complained the sexual violence to the officer in charge of the relevant department and was subsequently threatened, followed to her home and asked to withdraw the complaint, and ultimately kidnapped from her home and raped in an isolated area. In assessing the risk of torture, the Committee noted that **although the acts complained of took place outside formal detention facilities “the complainant was clearly under the physical control of the police.”**¹⁰⁶ Notably however it placed reliance on the “**hierarchical system with top-down rule**” of the police in Belarus. In finding that V.L.'s removal to Belarus would breach article 3 of the Convention, the Committee addressed the constituent elements of the torture prohibition:

“The acts concerned, constituting among others multiple rapes, surely constitute infliction of severe pain and suffering perpetrated for a number of impermissible

for the Prevention of Torture (APT) and the Center for Justice and International Law (CEJIL), available at http://www.ap.t.ch/content/files_res/JurisprudenceGuide.pdf

¹⁰² See *V.L. v Switzerland*, (CAT, 2007) Communication No. 262/2005; *C.T. and K.M. v Sweden*, (CAT, 2007) Communication No. 279/2005

¹⁰³ *C.T. and K.M. v Sweden* (CAT,2007) Communication No. 279/2005

¹⁰⁴ *C.T. and K.M. v Sweden* (CAT, 2007) Communication No. 279/2005 para. 7.5. The Committee additionally noted that “it was without doubt that [K.M.] was the product or rape by public officials, and is thus a constant reminder to the first named complainant of her rape.”

¹⁰⁵ *V.L. v Switzerland* (CAT, 2007) Communication No. 262/2005

¹⁰⁶ *V.L. v Switzerland* (CAT, 2007) Communication No. 262/2005 para. 8.10.

purposes, including interrogation, intimidation, punishment, retaliation, humiliation and discrimination based on gender. Therefore, the Committee believes that the sexual abuse by the police in this case **constitutes torture even though it was perpetrated outside formal detention facilities.**¹⁰⁷

The position of the CAT Committee and the regional system that sexual violence can constitute torture or ill-treatment has been supported in other jurisdictions and demonstrates a pattern of a finding of a breach of the prohibition against torture, as opposed to ill-treatment, when sexual violence occurs in detention or similar direct control facilities or situations. When detained persons or inmates enter a detention or similar direct control facility or situation there is an obligation on the State to ensure their protection for the duration of their time in that situation or facility. Thus, when examining sexual violence as torture (particularly but not exclusively when referring to the issue of State involvement as a key element of a finding of torture) both the regional system and the CAT Committee **refer to hierarchical system within which the victim finds herself and the control the perpetrator holds over her, combined with her vulnerability which is notably exacerbated in the situation of minors.** These elements, which amount to a heightened obligation on the State, have been highlighted as distinguishing factors underlying a finding of torture as opposed to ill-treatment.

This underlying reasoning, as well as the general position that that sexual violence can constitute torture, has been supported in other jurisdictions. Thus, for example, in the case of *Aydin v Turkey*¹⁰⁸ the European Court of Human Rights particularly noting the skewed power dynamic in the custody context, notably analogous to the power dynamic in educational establishments. Aydin was 17 years old when detained by security forces. She was separated from her family, stripped naked, questioned by strangers, beaten, slapped, threatened, abused and raped. Her rapist was never determined. She was forced into a tyre, spun around and hosed with ice-cold water from high-pressure jets. The Court stated that:

¹⁰⁷ *V.L. v Switzerland* (CAT, 2007) Communication No. 262/2005 para. 8.10. It further noted the effect of the failure of the authorities to investigate, prosecute and punish the police for the acts of torture and noted the undeniable link with the link to impunity and the risk of repeat ill-treatment were she to be returned.

¹⁰⁸ *Aydin v. Turkey* (ECtHR, 1997) app no. 57/1996/676/866

“Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill treatment given the ease with which the offender can **exploit the vulnerability and weakened resistance of his victim**. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally.”¹⁰⁹

Paying special regard to her “sex and youth” it held that “the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture in breach of Article 3” of the ECHR.¹¹⁰ Notably the Court added that it “would have reached this conclusion on either of these grounds taken separately.”¹¹¹

CONSEQUENT HEIGHTENED OBLIGATION OF THE STATE TO PREVENT ACTS OF TORTURE IN THE CONTEXT OF SEXUAL VIOLENCE OF GIRL CHILDREN IN EDUCATIONAL ESTABLISHMENTS

It is our position that the elements present in educational establishments: the special obligation on the State to protect girl children, including from all types of violence, and the obligation to fulfil the right to education free from discrimination (with the non-discrimination element an immediate obligation) combine to require a higher standard of due diligence on behalf of the State in the context of sexual violence in such establishments. That higher standard translates to a breach of the prohibition of torture, as distinct from ill-treatment, when girls are sexually violated in education establishments. Notably, the elements of vulnerability, power, control and domination in a hierarchical setting or situation which have been essential to findings of torture in cases of sexual violence in detention and similar direct control facilities are echoed and amplified in the educational institution setting. In this regard it is worth recalling, as set out in the introduction, the commitment of the CAT Committee to respond to evolving threats and practices as well as recent comments of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment highlighting the broadening of the application of torture from the detainee context to other

¹⁰⁹ *Aydin v. Turkey* (ECtHR, 1997) app no. 57/1996/676/866 para. 83.

¹¹⁰ *Aydin v. Turkey* (ECtHR, 1997) app no. 57/1996/676/866 paras. 84, 86.

¹¹¹ *Aydin v. Turkey* (ECtHR, 1997) app no. 57/1996/676/866 paras 86.

contexts.”¹¹² Furthermore as this Committee has noted, the prohibition against torture must be enforced in all types of institutions and States must exercise due diligence to prevent, investigate, prosecute and punish violations by non-State officials or private actors.¹¹³

In the educational setting, not only is there a special obligation to protect girl-children, there is the additional obligation to fulfil the right to education free from discrimination and violence. Thus where sexual violence of girl children occurs in educational establishments it is not just ill-treatment. It additionally entails a breach of the State’s obligation to ensure their special protection and moreover, entails the deprivation of the right to education. As such it amounts to a breach of the prohibition on torture for which the State is responsible and must be held accountable.

SECTION 4: STANDARDS IN RELATION TO THE RIGHT TO EDUCATION, THE SPECIAL PROTECTION AFFORDED TO CHILDREN, PARTICULARLY GIRL CHILDREN, AND IN RELATION TO SEXUAL VIOLENCE AND TORTURE IN BOLIVIA

The international obligations of the State regarding the right to education, the special protection to be afforded to girl-children and the right to be free from violence and torture are echoed, at least in part, in Bolivia’s legal system.

Right to Education

Article 77 of the Bolivian Constitution, promulgated in 2009, obliges the State to support, guarantee and administer education and characterises the provision of **education as a supreme function of the State.**¹¹⁴ This supreme function has been at the centre of a series of concluding observations from

¹¹² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. A/HRC/22/53, 1 February 2013 para.15

¹¹³ CAT, GC 2, paras. 15, 17 and 18: CAT Committee Communication No. 161/2000, *Dzemajl et al. v Serbia and Montenegro*, para. 9.2 as cited in Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. A/HRC/22/53, 1 February 2013 para. 24.

¹¹⁴ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 77, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

international treaty monitoring bodies.¹¹⁵ The State solely is charged with the supervision and management of the education system which consists of both public and private educational institutions.¹¹⁶ The Ministry of Education is the highest governmental authority mandated to oversee the education system and to set the guidelines for the accomplishment of its constitutional obligation to ensure the fulfilment of the supreme function of the right to education free from discrimination.¹¹⁷

Notably, the Constitution acknowledges the role of education in promoting citizenship, intercultural dialogue and moral-ethical values, with such values incorporating gender equity, non-violence and the full enjoyment of human rights among others.¹¹⁸ The objective of education in Bolivia is defined as the integral formation of persons and the strengthening of critical social consciousness in and for life.¹¹⁹ It is directed towards, among other things, individual and collective advancement: the development of physical and intellectual skills, aptitudes and abilities linking theory to productive practice.¹²⁰ It contributes to strengthening the unity and identity of each and every person in the Plurinational State as well as the cultural identity and development of the members of each nation or indigenous community and the intercultural understanding and enrichment within the State.¹²¹ School employees in public educational institutions are considered public officials. In some cases

¹¹⁵ See for example, Committee on the Elimination of Discrimination against Women (hereinafter “CEDAW Committee”) Concluding Observations: Bolivia (2008) para. 13 (“[The Committee]...recommends that the State party strengthen its efforts to implement nationwide effective educational programmes”), available at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>; United Nations, Human Rights Council ‘Universal Periodic Review: Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the annex to Human Rights Council Resolution 5/1, Plurinational State of Bolivia (2009) paras. 17 (“In 2008, CECSR requested taking effective measures and providing funds to combat discrimination in the education of girls and young women [...]”) and 48 (UNICEF; UNCT and CRC noted that the Constitution establishes free and compulsory primary and secondary education. However, CRC was concerned that all children, particularly indigenous children, attend primary school [...] It recommended ensuring that girls and indigenous children also fully realize their right to education, and improving quality of teacher training [...]”) Available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=16480

¹¹⁶ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 77, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹¹⁷ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 82, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹¹⁸ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 79, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹¹⁹ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 80, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹²⁰ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 80, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹²¹ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 80, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

private educational institutions can be supervised by the Ministry of Education.¹²² Notably, in Bolivia gender equity is considered one of the values that should be promoted by the state and incorporated in education.¹²³ Moreover, the State is obliged to provide free education for people with disabilities.¹²⁴

Violence and Special Protection of Children including Girls

Article 15 (II) of the Bolivian Constitution states that all persons, and in particular women, have the right to be free from physical sexual or psychological violence in both the family and society¹²⁵ and the State is obliged to adopt the necessary measures to **prevent, eliminate and punish gender-based and generational (“generacional”) violence** and any act or omission that aims to degrade the human condition, cause death, pain, physical sexual or psychological suffering in the public or private sphere.¹²⁶ Rape and sexual abuse are considered sexual offences under the Bolivian Criminal Code.¹²⁷

Article 60 specifically **sanctions all forms of violence against children, including girl children**, and adolescents in both the family and society.¹²⁸ Similarly the Code for Children and Adolescents states that “[i]t is the duty of all persons to safeguard the dignity of the child or adolescent, to protect them and keep them safe from any inhuman, violent, dehumanizing, degrading or repressive treatment and to report to the competent authority of any cases of suspected or confirmed

¹²² Constitution of the Plurinational State of Bolivia (February 7th 2009). Articles 85, 87, 88, 89 and Section II, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹²³ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 79, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹²⁴ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 70 (II), available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹²⁵ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 15 (II), available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹²⁶ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 15 (III), available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹²⁷ Bolivian Criminal Code, Sanctioned by Decree Law No. 10426 of 23 August 1972, as amended, Articles 308-310 and Section XI, available at http://www.oas.org/juridico/spanish/gapeco_sp_docs_bol1.pdf

¹²⁸ Bolivian Criminal Code, Sanctioned by Decree Law No. 10426 of 23 August 1972, as amended, Article 60, available at http://www.oas.org/juridico/spanish/gapeco_sp_docs_bol1.pdf; See also Code for Children and (Ley del Código del Niño, Niña y Adolescente) (Ley No. 2026), available at <http://www.lexivox.org/norms/BO-L-2026.html> This Code establishes and regulates the regime of prevention, protection and comprehensive care and provides for its application to all children and adolescents.

abuse."¹²⁹ Article 14 of the Constitution prohibits any kind of discrimination in the enjoyment of rights based on the sex or age of a person.¹³⁰

The Constitution states that the activities of children, including girl-children, in both the family and societal setting shall have a formative function and, recognising the special protection that must be afforded to them, it adds that their rights, the guarantees to be accorded to them and the institutional mechanisms of protection shall be subject to **special regulation**.¹³¹ Moreover, it is the duty of the State, society and family to ensure the priority of the best interests of the child, including girl-child, and adolescents: this includes the **primacy or pre-eminence of their rights, the primacy or pre-eminence to receive protection and relief in all circumstances and priority of attention or care from public and private services** as well as access to prompt and timely justice with the assistance of specialized personnel.¹³² Notably in 2009 the CRC Committee stated that national legislation was not in conformity with the Convention, including the Code for Children and Adolescents.¹³³ In addition, the UN Country Team for Bolivia for Bolivia's Universal Periodic Review in 2010 and UNICEF recommended that Bolivia strengthen the overall legal framework on child rights and child protection.¹³⁴

In this context, and in light of the existence of violence against children in educational institutions and the reopening of the case of Patricia Flores (discussed in detail in Sections 5 and 6 respectively below) the State issued Supreme Decree 1302 of 2012 which seeks to establish mechanisms that contribute to the eradication of violence, maltreatment and abuse that threatens the life and physical, psychological and/or sexual integrity of children and adolescent students in the education

¹²⁹ Code for Children and (*Ley del Código del Niño, Niña y Adolescente*) (Ley No. 2026), available at <http://www.lexivox.org/normas/BO-L-2026.html>

¹³⁰ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 15 (II), available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹³¹ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 61, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹³² Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 60, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208> See also Code for Children and (*Ley del Código del Niño, Niña y Adolescente*) (Ley No. 2026), article 158, available at <http://www.lexivox.org/normas/BO-L-2026.html>

¹³³ Committee on the Rights of the Child, Concluding Observations, Bolivia (2009), UN. Doc. CRC/C/BOL/CO/4, paras. 7–8.

¹³⁴ UN Country Team ("UNCT") Bolivia submission to the 2010 Universal Periodic Review, p. 9; UNICEF submission to the 2010 Universal Periodic Review on Bolivia, p. 5. See 'Compilation prepared by the Office of the High Commissioner for Human Rights: Plurinational State of Bolivia' (2009), UN Doc. A/HRC/WG.6/7/BOL/2 para. 5. For information on Bolivia's universal periodic review, see <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BOsession7.aspx>

area.¹³⁵ It also charges the Ministry of Education and the Departmental Directors of the Education with the obligation to report these aggressions especially when attributed to the school's personnel.¹³⁶ Moreover, it outlines the necessity for a plan for education without violence as well as the necessity to intervene in, and prevent, cases of sexual violence.¹³⁷ In recognition of the unfortunate central role of educational actors in the perpetration of acts of sexual violence in education institutions, article 3(I) states that where a principal, teacher or administrative assistant is charged with offences that affect the physical, psychological and sexual integrity of girls and boys, such persons will be suspended from their duties.¹³⁸

Supreme Decree 1302 is an important step towards recognizing the phenomenon of sexual violence in educational institutions in Bolivia and towards the protection of children in educational institutions, however, its principal content has not, to date, been translated into national legislation or incorporated into the Criminal Code of Bolivia, the Criminal Procedure Code or other existing regulations.

Torture

Bolivia signed the Convention against Torture and other Cruel, Inhuman or Degrading Treatment in February 1985 and ratified it without reservations on April 1999. In December 2005, the Optional Protocol to the Convention was also approved. Article 13(IV) of the Constitution acknowledges international human rights commitments such as these and confirms that those rights prevail within the State and that all constitutional rights must be interpreted in light of ratified international human rights treaties.¹³⁹

¹³⁵ Supreme Decree 1302 of Bolivia (August 1st 2012), article 1, available at: <http://www.lexivox.org/norms/BO-DS-N1302.xhtml>

¹³⁶ Supreme Decree 1302 of Bolivia (August 1st 2012), article 2, available at: <http://www.lexivox.org/norms/BO-DS-N1302.xhtml>

¹³⁷ Supreme Decree 1302 of Bolivia (August 1st 2012), article 4, available at: <http://www.lexivox.org/norms/BO-DS-N1302.xhtml>

¹³⁸ Supreme Decree 1302 of Bolivia (August 1st 2012), article 4, available at: <http://www.lexivox.org/norms/BO-DS-N1302.xhtml>

¹³⁹ Constitution of the Plurinational State of Bolivia (February 7th 2009). Article 13 (IV), available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208> Similarly, the Convention on the Rights of the Child (ratified by Bolivia on 26 June 1990) the Convention against the Elimination of All forms of Discrimination against Women (ratified by Bolivia on 8 June 1990) and its Optional Protocol and the International Covenant on Economic, Social and Cultural Rights (ratified by Bolivia on 18 August 1992) are also binding and constitute guidelines for the interpretation of constitutional

Article 15(I) of the Constitution states that “[n]o one shall be tortured or suffer cruel, inhuman degrading or humiliating treatment.” Similarly, article 114(I) states that “[a]ny form of torture, disappearance, confinement, coercion, levy (“*exacción*”) or any form of physical or psychological violence is prohibited.”¹⁴⁰ It adds that public servants or authorities that inflict, instigate or consent these practices shall be dismissed irrespective of the penalties prescribed by law.¹⁴¹ In 2001, this Committee recommended that the State incorporate a definition of torture that covers all the situations provided for in article one of CAT as well as punishments commensurate with the gravity of the crime(s).¹⁴² The State, in its 2012 report stated that a process for amending the Criminal Code and the Criminal Procedure Code in the context of torture has been initiated.¹⁴³

The right to education, the special protection to be afforded to girl-children and the prohibition of torture, are as equally apparent in the Bolivian national system as in the international arena. As such, the same heightened obligation in relation to torture should apply within the State, particularly bearing in mind article 13(IV) of the Constitution.

SECTION 5: SEXUAL VIOLENCE IN EDUCATIONAL INSTITUTIONS IN BOLIVIA

In spite of the international and national obligations of the State in relation to torture and sexual violence in educational institutions, schools in Bolivia have been and continue to be the settings of physical, psychological and sexual violence that produce devastating effects on the wellbeing of children, including girls and adolescents.¹⁴⁴ The last population census estimated that 2,678,313

law. For information on the status of ratifications of these instruments, see <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

¹⁴⁰ See also Bolivian Criminal Code, Sanctioned by Decree Law No. 10426 of 23 August 1972, as amended, Article 295, available at http://www.oas.org/juridico/spanish/gapeco_sp_docs_bol1.pdf Article 295 contains the punishments for ill-treatment and torture. Notably the leniency of these sentences, which range from six months, two, four, six and ten years, have been criticized by this Committee. See CAT Committee, Concluding observations: Bolivia (2001), para. 95, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/A.56.44,paras.89-98.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/A.56.44,paras.89-98.En?Opendocument)

¹⁴¹ Constitution of the Plurinational State of Bolivia (2009), Article 114.I, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/view/36208>

¹⁴² See CAT Committee, Concluding observations: Bolivia (2001), para. 95, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/A.56.44,paras.89-98.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/A.56.44,paras.89-98.En?Opendocument)

¹⁴³ CAT Committee, Plurinational State of Bolivia Second periodic report (2012), para. 12, available at: <http://www2.ohchr.org/english/bodies/cat/cats50.htm>

¹⁴⁴ In this regard, it is noteworthy that this Committee has expressed its concern about the numerous and consistent reports received describing the scale of the problem of abuse and sexual violence against minors in educational establishments, particularly where the victims have identified their aggressors as among the teaching staff. See CAT.

people are using the education system, of which 1,308,538 are female with most aged between 4 to 17 years.¹⁴⁵ That number is increasing year after year.¹⁴⁶ Bearing in mind the objective of educational institutions is, to among others, provide a setting wherein students may access the tools with which to improve their socio-economic situation and ensure their human rights, including economic, social and cultural rights, the effect of such violations is particularly egregious and traumatic.¹⁴⁷ In the words of the Commission: “[a]s an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.”¹⁴⁸

In a comparative analysis of violence against women in Latin America and the Caribbean, the Pan American Health Organization stated that in Bolivia, 17.9 % of women ever married or in union aged 15 to 49 reported experiencing sexual violence by an intimate partner or by any perpetrator in their lifetime.¹⁴⁹ From 2007 to 2011, 442,000 accounts of violence against women and girls were reported in the public and private institutions of Bolivia’s most important cities.¹⁵⁰ In 2008 alone, 4,288 complaints of sexual violence were made, with 91% of those from women and girls.¹⁵¹ During the first half of 2012, 61,251 complaints of violence against women were reported, which represent over 90% of the total claims registered in 2011 (64,450 claims).¹⁵²

Concluding observations: Ecuador (2010). para.18.available at: <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.ECU.CO.4-6.pdf>

¹⁴⁵ Ministry of Education of the Plurinational State of Bolivia, Information System about the Education System.(*Sistema de Información Educativa (SIE)-ME*) (2010). It estimates an annual population growth rate of 2.1%.

¹⁴⁶ Ministry of Education of the Plurinational State of Bolivia, Information System about the Education System.(*Sistema de Información Educativa (SIE)-ME*)(2010). It estimates an annual population growth rate of 2.1%.

¹⁴⁷ IACHR, Access to justice for women victims of sexual violence: education and health (2011). para. 1, available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁴⁸ IACHR, Access to justice for women victims of sexual violence: education and health (2011). para. 13, available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁴⁹ Pan American Health Organization, Centers for Disease Control and Prevention. Summary Report: Violence Against Women in Latin America and the Caribbean: a comparative analysis of population-based data from 12 countries (2013). p.6-12, available at: http://new.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=20440&Itemid=

¹⁵⁰ Centro de Información y Desarrollo de la Mujer y Observatorio Manuela Ramos, Summary. Reality beyond numbers: statistic reports of violence against women (*Más que Cifras una Realidad: reporte estadístico de violencia contra las mujeres*) (2007-2011) available at: <http://www.cidem.org.bo/index.php/cidem/publicaciones/187-sivigce9>

¹⁵¹ Coordinadora de la mujer and Observatorio de Género, Sexual violence in Bolivia: Patriarchal domination over women’s bodies (*Violencia sexual en Bolivia: la dominación patriarcal sobre los cuerpos de las mujeres*) (2012). p.5 available at: <http://www.coordinadoradelamujer.org.bo/web/index.php/biblioteca/mostrar/id/2>

¹⁵² Human Rights Council, High Commissioner for Human Rights report about the Plurinational State of Bolivia (2013). para 41, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-17-Add2-Corr1_SPOnly.pdf

According to the United Nations General Assembly, child and adolescent sexual abuse crosses all racial, cultural, educational, and socio-economic lines, and occurs in every region and country of the world. The prevalence of child and adolescent sexual abuse in the world is estimated to vary from 4% to 29% for males and 20% to 30% for females.¹⁵³ Bolivia is not an exception. The largest study in Bolivia on child sexual assault showed that **30 % of girls are sexually assaulted before the age of 18.**¹⁵⁴ In the cities of Sacaba and Cercado of the Department of Cochabamba, each prosecutor receives **three to four cases of sexual assault per day** and most of the cases received are of adolescent victims. These figures, produced by the prosecutors, are rough estimates and encompass only reported cases. Nonetheless, they demonstrate a perception of State actors that there is a high volume of sexual assault cases, and that the great majority of these cases involve female child or adolescent victims.¹⁵⁵

Many cases of child and adolescent sexual abuse, however, are never disclosed and are thus not reflected in official or non-official statistics and figures.¹⁵⁶ Some girls are unaware that they are being sexually abused and many of those who know (60 to 70 percent of them) chose to remain silent for fear of social stigmatization and the possible consequences of their disclosure.¹⁵⁷

¹⁵³ Report of the independent expert for the United Nations study on violence against children, Paulo Pinheiro, *Rights of the Child* (2006). available at: http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf; See also De Angulo, Brisa, Legal Practice and Social Constructs Override Legal intent: Maintenance of the Revictimization of Child and Adolescent Victims of Sexual Abuse (2010). Rutgers University School of Law. available at: http://www.abreezeofhope.org/uploads/2/8/2/9/2829760/directed_research_final_draft_scr.pdf

¹⁵⁴ This study was put before the IACHR in the Thematic Hearing, 144^o Regular Period of Session, Denouncing Sexual Violence against adolescent girls in Bolivia. The study was comprised of 3,722 participants between the age of 12 and 17, both male and female. It was published in De Angulo, Brisa Child Sexual Abuse and the Conspiracy of Silence (2009). Referred in: De Angulo, Brisa. Bolivian Socio-cultural Patterns Discriminate against Female Adolescent Victims of Sexual Assault (2011). Rutgers University School of Law, available at: http://www.abreezeofhope.org/uploads/2/8/2/9/2829760/final_draft_dr_2011_brisa_scr.pdf

¹⁵⁵ De Angulo, Brisa, Bolivian Socio-cultural Patterns Discriminate against Female Adolescent Victims of Sexual Assault (2011). Rutgers University School of Law, available at: http://www.abreezeofhope.org/uploads/2/8/2/9/2829760/final_draft_dr_2011_brisa_scr.pdf

¹⁵⁶ De Angulo, Brisa, Legal Practice and Social Constructs Override Legal intent: Maintenance of the Revictimization of Child and Adolescent Victims of Sexual Abuse (2010). Rutgers University School of Law, available at: http://www.abreezeofhope.org/uploads/2/8/2/9/2829760/directed_research_final_draft_scr.pdf

¹⁵⁷ De Angulo, Brisa, Bolivian Socio-cultural Patterns Discriminate against Female Adolescent Victims of Sexual Assault (2011). Rutgers University School of Law. available at: http://www.abreezeofhope.org/uploads/2/8/2/9/2829760/final_draft_dr_2011_brisa_scr.pdf

The Inter-American Commission of Human Rights has examined the gravity of the problem of sexual violence in the education arena and has recognized it as a very serious human rights problem.¹⁵⁸ It has addressed the phenomenon in **general reports,**¹⁵⁹ **thematic hearings,**¹⁶⁰ **meetings of experts and through the admission of individual cases.**¹⁶¹ In particular, the Commission has acknowledged the problem of sexual violence in educational institutions in Bolivia in the thematic hearing **“Denouncing sexual violence against adolescent girls in Bolivia” during the 144th sessions of hearings** in 2012.¹⁶² Additionally, the CEDAW Committee has made series of observations and recommendations concerning the Bolivian educational system, notably that although there have been efforts to reduce illiteracy and improve access to education, there **remains a risk of violence within education establishments**¹⁶³ and that the persistence of traditional stereotypes relating to the roles and responsibilities of women and men reinforce the sense of inferiority of women and girls and affect their status in all areas of life and throughout their life cycles.¹⁶⁴

Bolivia’s failure to address the phenomenon of sexual violence against girls has been also highlighted in the national sphere. The study of *Coordinadora de la Mujer, Breaking Silence: An approach to Sexual Violence and Child Abuse in Bolivia* revealed that many girls are threatened after being abused and that in some cases the threat or the sexual abuse can lead to the victim’s death.¹⁶⁵ In other cases, the mother of the victim is threatened and the perpetrator may offer money to the

¹⁵⁸ IACHR, Access to justice for women victims of sexual violence: education and health (2011). paras. 1-6, available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁵⁹ IACHR, Access to justice for women victims of sexual violence: education and health (2011). para. 1, available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁶⁰ IACHR, Thematic Hearing, 143^o Regular Period of Session, Sexual Violence in Educational Institutions in the Americas (2011). Requested by the Center for Reproductive Rights, Women’s Link Worldwide, FUNDERES and the Instituto Tecnológico Autónomo de México (ITAM).

¹⁶¹ *Samanta Nunes da Silva v. Brazil*. (IACHR, 2009) Report No. 93/09; Paola del Rosario Guzmán Albarracín v. Ecuador (IACHR, 2008) Report No. 76/08.

¹⁶² IACHR, Thematic Hearing, 144^o Regular Period of Session, Denouncing Sexual Violence against adolescent girls in Bolivia (2012). Requested by Child and Family Advocacy Clinic- Rutgers School of Law, International Human rights law clinic- American University, Oficina Jurídica para la Mujer and A Breeze of Hope Center.

¹⁶³ CEDAW Committee. Concluding Observations: Bolivia (2008). para 32, available at: <http://ebookbrowse.com/cedaw-c-bol-co-4-sp-pdf-d300128470>

¹⁶⁴ CEDAW Committee. Concluding Observations: Bolivia (2008). para 20, available at: <http://ebookbrowse.com/cedaw-c-bol-co-4-sp-pdf-d300128470>

¹⁶⁵ *Coordinadora de la Mujer and Defensor del Pueblo, Calla, Pamela and Barragán, Rossana et al, Breaking Silence: an approach to sexual violence and child abuse in Bolivia (Rompiendo Silencios: Una aproximación a la violencia sexual y el maltrato infantil en Bolivia)* (2005), available at: http://www.unicef.org/bolivia/Rompiendo_Silencios.pdf

This report was technically and Financially supported by Unicef, Royal Embassy of Denmark and the European Union. It was also cited by the IACHR in Access to justice for women victims of sexual violence: education and health (2011). available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

victim or her family along with the threats.¹⁶⁶ The study concluded that in some cases **sexual violence has become natural in gender relationships and that in many Bolivian families physical and sexual violence is tolerated**. This social acceptance is evident in the way perpetrators generally defend themselves and their actions by arguing that girls are responsible for being raped, either because they did not resist the aggression or they provoked the perpetrator in some way.¹⁶⁷

Children are at a disadvantage when sexual violence is reported because their accounts of violence are considered to be less credible than those of adults.¹⁶⁸ They are associated with wild imagination and their statements are used to reduce the punishments imposed on the perpetrators.¹⁶⁹ Girls can be vulnerable to sexual violence for several reasons. In addition to facing **discrimination on account of their gender, girls are relegated in importance because they are regarded as objects of protection** and not subjects of right on account of their minor status.¹⁷⁰

The Inter-American Commission of Human Rights has established that, to date, “**society tends to turn a blind eye to the violence and discrimination** that women and girls experience in educational institutions.”¹⁷¹ Furthermore, “**society tends not to grasp the full dimensions of sexual violence and instead boils it down to rape; the result is that many educational institutions simply ignore incidents of other forms of sexual violence, and do not even enter them into the record.**”¹⁷² In fact, “ignorant of the various dimensions of sexual violence and functioning in a milieu in which sexual prejudices and gender biases are blatant and in which a culture of physical punishment and violence

¹⁶⁶ Coordinadora de la Mujer and Defensor del Pueblo, Calla, Pamela and Barragán, Rossana et al, Breaking Silence: an approach to sexual violence and child abuse in Bolivia(*Rompiendo Silencios: Una aproximación a la violencia sexual y el maltrato infantil en Bolivia*)(2005), available at: http://www.unicef.org/bolivia/Rompiendo_Silencios.pdf

¹⁶⁷ Coordinadora de la Mujer and Defensor del Pueblo, Calla, Pamela and Barragán, Rossana et al, Breaking Silence: an approach to sexual violence and child abuse in Bolivia(*Rompiendo Silencios: Una aproximación a la violencia sexual y el maltrato infantil en Bolivia*)(2005), available at: http://www.unicef.org/bolivia/Rompiendo_Silencios.pdf

¹⁶⁸ See generally, report of the independent expert for the United Nations study on violence against children, Paulo Pinheiro, *Rights of the Child* (2006). available at: http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf;

¹⁶⁹ IACHR, Access to justice for women victims of sexual violence: education and health (2011), para. 52, available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

Coordinadora de la Mujer y Defensor del Pueblo, Calla, Pamela & Barragán, Rossana et al, Breaking Silence: an approach to sexual violence and child abuse in Bolivia(*Rompiendo Silencios: Una aproximación a la violencia sexual y el maltrato infantil en Bolivia*)(2005), available at: http://www.unicef.org/bolivia/Rompiendo_Silencios.pdf

¹⁷⁰ IACHR, Access to justice for women victims of sexual violence: education and health (2011), paras. 13 to 52, available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁷¹ IACHR, Access to justice for women victims of sexual violence: education and health (2011), para. 13. available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁷² IACHR, Access to justice for women victims of sexual violence: education and health (2011), para. 13. available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

can be the norm, some parents, **educators and authorities regard certain forms of sexual abuse as part of the learning process.**¹⁷³

Sexual violence in educational establishments occurs in a **“framework of power dynamics built upon age and/or gender differences amidst very hierarchical structures.”**¹⁷⁴ In this context, additional **factors such as poverty, inequality, disability, and membership in ethnic minorities intersect with gender and age and make the relationship even more lopsided** and expose women and girls who are members of these groups to even greater danger of having their rights violated.¹⁷⁵ In Bolivia, girls, feminine boys and children from rural zones are more likely to be sexually abused by adults and schoolmates.¹⁷⁶ The exchange of high grades for sexual intercourse is, moreover, a common occurrence which exemplifies the power relationships between the school personnel and the students.¹⁷⁷ Furthermore, physical punishment is still culturally accepted and is widely tolerated as a legitimate way to educate children and sometimes victims understand sexual violence as a different method of being punished.¹⁷⁸

In this setting, sexual violence can be concealed under a kind of “pact of silence” which acts as a deterrent to the filing of a complaint.¹⁷⁹ The justice system is weakened when responding to these violations¹⁸⁰ due to serious barriers in terms of access to justice such as the lack of information and the lack of protection against threats by assailants.¹⁸¹

¹⁷³ IACHR, Access to justice for women victims of sexual violence: education and health (2011), para. 13. available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁷⁴ IACHR, Access to justice for women victims of sexual violence: education and health (2011), para. 13. available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁷⁵ IACHR, Access to justice for women victims of sexual violence: education and health (2011), para. 18. available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁷⁶ Coordinadora de la Mujer and Defensor del Pueblo, Calla, Pamela and Barragán, Rossana et al., Breaking Silence: an approach to sexual violence and child abuse in Bolivia(*Rompiendo Silencios: Una aproximación a la violencia sexual y el maltrato infantil en Bolivia*)(2005), available at: http://www.unicef.org/bolivia/Rompiendo_Silencios.pdf

¹⁷⁷ Coordinadora de la Mujer and Defensor del Pueblo, Calla, Pamela and Barragán, Rossana et al., Breaking Silence: an approach to sexual violence and child abuse in Bolivia(*Rompiendo Silencios: Una aproximación a la violencia sexual y el maltrato infantil en Bolivia*)(2005), available at: http://www.unicef.org/bolivia/Rompiendo_Silencios.pdf

¹⁷⁸ Coordinadora de la Mujer and Defensor del Pueblo, Calla, Pamela and Barragán, Rossana et al., Breaking Silence: an approach to sexual violence and child abuse in Bolivia(*Rompiendo Silencios: Una aproximación a la violencia sexual y el maltrato infantil en Bolivia*)(2005), available at: http://www.unicef.org/bolivia/Rompiendo_Silencios.pdf

¹⁷⁹ IACHR, Access to justice for women victims of sexual violence: education and health (2011), para. 10. available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁸⁰ IACHR, Access to justice for women victims of sexual violence: education and health (2011), paras. 94. available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁸¹ IACHR, Access to justice for women victims of sexual violence: education and health (2011), para. 10. available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

SECTION 6: THE CASE OF PATRICIA FLORES

On August 31, 1999, the pre-pubescent, naked, physically and sexually abused body of ten year old Patricia Jacqueline Flores Velásquez was discovered in the sports storage deposit of her public school.¹⁸² Four and a half days previously, at 8.30am on the morning of August 27th 1999 Mrs. Martha Velásquez had accompanied her daughter, Patricia, into her school. Patricia was in third grade at the *Vincente Juariste Eguino* public school. The school, a small building, is located between the streets of Sucre and Pichincha in the central area of the city of La Paz.¹⁸³ When her father, César Flores arrived at the school at noon to pick up his daughter, neither the school staff nor the students were able to account for her whereabouts.¹⁸⁴

Patricia's absence was first noticed at the beginning of class on 27th August by her teacher, Ms. Amparo Lunario Rueda. She did not attend any class that day. There is no record of her teacher, supervisor or school official taking any official action based on Patricia's absence. In fact when her father arrived to collect her, the teachers and officials alleged that Patricia had never arrived at the school and attempted to place the responsibility for her disappearance with her parents. Later that same day, Friday 27th August, Patricia's disappearance was reported to local police by her aunt whilst her parents, both of modest economic means, remained at the school insisting that Patricia had been dropped off there and that she was now missing.

Over the following three days differing versions of the story were proffered, amongst others, that Patricia had left the school and/or had been seen walking in the street.¹⁸⁵ At this point, Mr. and Mrs.

¹⁸² National Police of Bolivia, Judicial Police Proceedings Report regarding Patricia Flores, 9 September 1999; Camacho, Santiago. Expert Report about the analysis of the crime scene in the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia (2012). This report was prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law); La Razón Murderer is on the streets, somebody should do something. A girl is raped and killed in school (*Asesino anda suelto, que alguien haga algo. Violan y matan a una niña en la Escuela*)(2nd September 1999).

¹⁸³ Internal Judicial Dossier. Pamphlet (27th August 1999) by Mr. and Mrs. Flores published by the media.

¹⁸⁴ Superior District Court of La Paz, First Criminal Law Chamber, Resolution 903/09. (2009); Superior District Court of La Paz Resolution 732/08 (2008); El Extra. Alert! Psychopaths attack school. Student flagellated, raped and murdered. Disappeared Friday and discovered Tuesday night in a storage room in the school (*Alerta, psicópatas atacan en las escuelas. Escolar flagelada, violada y asesinada. Desapareció el viernes y la encontraron el martes en la noche botada en el depósito de la escuela*) (1999); El Diario Presencia. Police find chilling evidence of the agony suffered. Attorney Gutierrez on the heels of those responsible. (*Policía halla escalofriantes pruebas del martirio. Fiscal Gutierrez pisa los talones a responsables*) (1999).

¹⁸⁵ Superior District Court of La Paz, Criminal law judge. Resolution 13/03 (2003)

Flores were under the impression that their daughter had been kidnapped and decided to sell their house and car to pay any ransom that might be sought in exchange for her safe return. The Family Protection Brigade, notably not the body charged with this function,¹⁸⁶ conducted an initial search for Patricia on Saturday 28th August. The operation was not comprehensive, based in part on the doubts as to the veracity of her status as a missing person. The police officers were additionally indifferent to the anguish of Patricia's parents; stating that situations like Patricia's disappearance happen regularly and that having a police officer in every school was simply not possible.¹⁸⁷

Meanwhile, the Technical Judicial Police refused to instigate an immediate search on the basis that the complaint was initially made by the Patricia's aunt and not her parents. Officials expressed that they would only begin proceedings if the complaint was formally made by Patricia's parents, Mr. and Mrs. Flores, who did so accordingly on Monday 30th August. An investigating case officer was finally assigned to Patricia's case for the first time on Tuesday 31st August, four days after her disappearance.¹⁸⁸ That same day, just after 11pm, Patricia's sexually abused and tortured body was found by a school guard in the school sports storage deposit on the ground floor of the school.¹⁸⁹ Up until this point, the police had not undertaken a thorough search of the school grounds.

In his 2012 Court ordered expert report, criminologist Santiago Camacho stated that "there is a high probability that the girl NEVER left the school from the moment Mrs. Martha Velásquez dropped her off in the schoolyard on the morning of the 27th August 1999."¹⁹⁰ This suggests an intimate knowledge of, and access to, the school and its buildings by the perpetrator(s).

¹⁸⁶ The Family Protection Brigade is a unit in each police station charged with receiving complaints of intra-familial violence prior to any criminal action. Notably, the Technical Judicial Police were the appropriate body to carry out this search, not the Family Protection Brigade.

¹⁸⁷ La Razón. Murderer is on the streets, somebody should do something. A girl is raped and killed in the school. *Asesino anda suelto, que alguien haga algo. (Violan y matan a una niña en la Escuela)* (2nd September 1999).

¹⁸⁸ La Razón. 5 days of negligence and disappearance: family member and friends tell the *Odyssey*. (*Fueron cinco días de negligencia y desesperación: allegados de la familia cuentan la Odissea*) (2nd September 2000).

¹⁸⁹ La Razón. Murderer is on the streets, somebody should do something. A girl is raped and killed in the school. *Asesino anda suelto, que alguien haga algo. (Violan y matan a una niña en la Escuela)* (2nd September 1999).

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

¹⁹⁰ Camacho, Santiago. Expert Report about the analysis of the crime scene in the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia (2012). Emphasis in original document.

Patricia's pre-pubescent, naked, tortured and sexually abused body was finally discovered in a school sports storage deposit, located on the ground floor of the school, on the 31st of August 1999.¹⁹¹ The initial autopsy conducted shortly after the discovery of her body indicated that "the girl's body had different types of bruises, hematomas, multiple trauma, sexual violence and asphyxiation by strangulation."¹⁹² It also noted the presence of multiple abrasions and wounds, blunt-cutting at the face and aggravated bruising resembling the imprint of a belt buckle.¹⁹³ Additionally, Patricia's face and vaginal cavity were marked with blood, and severe abrasions were found on the left leg and right knee.¹⁹⁴ Patricia's body presented clear signs of both vaginal and anal rape.¹⁹⁵ In 2012, a Court ordered expert report found that the evidence of strangulation, the abrasions on the face, back, legs and especially knees, as well as the evidence of rape were "consistent with torture-related injuries".¹⁹⁶ Traces of semen were found on her sweater by the Homicide Division of the Technical Judicial Police, as well as human blood stains and human faeces on the broom handle. It was evident that Patricia had been sexually violated including with the broom handle.¹⁹⁷ The official cause of death was declared asphyxiation by means of strangulation, most likely using a belt.¹⁹⁸

Since August 1999, a series of prosecutions, appeals and annulments ensued culminating in a decision by the Supreme Court in 2009 ordering that the judicial process be restarted, excluding the

¹⁹¹ National Police of Bolivia, Judicial Police Proceedings Report regarding Patricia Flores (1999); Camacho, Santiago. Expert Report about the analysis of the crime scene in the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia (2012). This report was prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law); La Razón. *Murderer is on the streets, somebody should do something. A girl is raped and killed in the school. Asesino anda suelto, que alguien haga algo. (Violan y matan a una niña en la Escuela)*(2nd September 1999).

¹⁹² Sagárnaga, Raúl Alberto. Internal Judicial Dossier: report by forensic doctor. See also the Court ordered expert report: Delgado, Claudia. Expert Forensic Report on the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia(2012) Prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law).

¹⁹³ The findings of the initial autopsy are summarized in the Court ordered Expert report: Camacho, Santiago. Expert Report about the analysis of the crime scene in the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia (2012). This report was prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law)

¹⁹⁴ National Police, Republic of Bolivia, Judicial Police Proceedings Report regarding Patricia Flores, 9 September 1999, p.4; Camacho, Santiago. Expert Report about the analysis of the crime scene in the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia (2012). This report was prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law); Delgado, Claudia. Expert Forensic Report on the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia(2012) Prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law).

¹⁹⁵ National Police of Bolivia, Judicial Police Proceedings Report regarding Patricia Flores (1999); Delgado, Claudia. Expert Forensic Report on the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia(2012) Prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law).

¹⁹⁶ Delgado, Claudia. Expert Forensic Report on the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia(2012) Prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law).

¹⁹⁷ Sagárnaga, Raúl Alberto. Internal Judicial Dossier: report by forensic doctor.

¹⁹⁸ Delgado, Claudia. Expert Forensic Report on the case of the murder of Patricia Flores Velasquez in La Paz-Bolivia(2012) Prepared for Judge Amalia Morales (Second Judge of first instance in the Departmental Court of Law).

investigation stage. This ineffective and elongated judicial process has entailed a series of judicial recusals prior to and during the case of Patricia Flores; the conviction of four persons in 2003 in connection with Patricia's murder (rape and murder; complicity in same; dereliction of duty), the subsequent annulment of those convictions; allegations and findings of evidence tampering and failure to ensure chain of custody at various stages of the judicial process; the conviction of three of the original four persons sentenced in relation to her murder (rape and murder, dereliction of duty) and the absolving of the fourth (complicity in rape and murder), the annulment of almost the entire process in 2009 by the Supreme Court of Justice including the judicial investigation stage and the order by that Court to the Superior Court of La Paz to begin the judicial process again from the investigative stage. Thus in 2012, Judge Morales, Second Judge of First Instance in the Departmental Court of Law, ordered two expert reports, one which required the exhumation of Patricia's body and subsequent examination and the other which involved an investigation of the storage deposit, the school generally and available case files.

The savage acts that Patricia suffered led to a widespread outcry in the media and society as a whole,¹⁹⁹ reaching such a fevered climax that at one point there had been growing support for a request for the reinstatement of the death penalty and/or the chemical castration of rapists in Bolivia.²⁰⁰

Current status of the case

The Flores Velasquez family unit has been drastically affected by the murder of Patricia and the subsequent judicial and legal wrangling and they now find themselves back at the investigative stage in the search for justice for their daughter and sister. Nearly fourteen years after the brutal rape and

¹⁹⁹ Última Hora. 10 year old girl brutally murdered in a school of La Paz. Pain and tears in a humble family (*Una niña de 10 años fue brutalmente asesinada en una escuela paceña. Dolor y llanto en una familia humilde*) (2nd September 1999); Los Tiempos, There is no safety in schools: Girl killed (*No hay seguridad ni en las escuelas: mataron a una niña*) (2nd September 1999); La Razón. 5 days of negligence and disappearance: family member and friends tell the *Odyssey*. (*Fueron cinco días de negligencia y desesperación: allegados de la familia cuentan la Odisea*)(2nd September 2000).

²⁰⁰ Cusicanqui, Nicolás, Analysis of the Law: Rigorous penalties for sexual abusers of children and adolescents: Analysis of the law's protection (*Rigurosidad penal para agresores sexuales de la niñez y adolescencia: Análisis del proyecto de ley*)(2009). available at: <http://www.icalp.org.bo/docs/2009-12-03-nicolascusicanquimorales-proyecto-decastracion-a-violadores-nicolas-cusicanqui.pdf>; El Panamá – AFP, Restoration of death penalty in Bolivia (*Restablecimiento de la pena de muerte en Bolivia*) available at: <http://www.critica.com.pa/archivo/091499/lat1.html>; Última Hora, Political debate about death penalty for sexual abuse. Attorney General will propose the revival of the sanction in the cabinet of ministers (*Políticos polemizan sobre vigencia de la pena de muerte en caso de violación. Ministerio de Gobierno planteará restitución de la sanción en el gabinete ministerial*)(September 1999).

murder of their ten year old daughter in her public school Mrs. Flores Velasquez continues in her quest for truth and justice. On 17th May 2010 *Women's Link Worldwide* and *Funderes* submitted a petition to the Inter-American Commission on Human Rights on behalf of Patricia Flores against the state of Bolivia, alleging violations of the following articles of the American Convention on Human Rights.²⁰¹ The petition draws attention to the fact that almost 11 years (at that time in 2010) after the brutal rape and murder of Patricia Flores, the veracity of the facts remains unknown and no final sentence has been handed down.

Now, in 2013, almost 14 years after her brutal torture, rape and murder, Patricia's family have yet to find out the truth of what happened to their young daughter and sister. No person has been convicted of any crime related to her savage death. No compensation, redress or reparation has even been offered to or received by her family; the case is at the initial stages of a local jurisdiction action.

SECTION 7: ANALYSIS OF THE ELEMENTS OF TORTURE IN THE CONTEXT OF SEXUAL VIOLENCE OF GIRLS IN EDUCATIONAL ESTABLISHMENTS

The definition of torture and the acts which must be prohibited and punished, as well as the methods of protection, must evolve in accordance with and in response to evolving threats, issues and practices as well as society's understanding of the term.²⁰² The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment²⁰³ and the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture.²⁰⁴

²⁰¹ Organisation of American States, American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm Bolivia ratified the Convention 20 June 1979.

²⁰² CAT Committee, General Comment 2: Implementation of article 2 by States Parties (2007). paras. 2 and 14, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>
Selmouni v. France (ECtHR, 1999) app. no 25803/94, para. 101

²⁰³ CAT Committee, General Comment 2: Implementation of article 2 by States Parties (2007). para. 21, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>

²⁰⁴ CAT Committee, General Comment 2: Implementation of article 2 by States Parties (2007). para. 20, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>

The skewed power dynamic inherent in most education institutions, when not properly addressed and managed, creates an environment in which young students, generally the most vulnerable, may be subjugated to the will of those with “power” often in the form of sexual violence. In this context, gender is a key factor, though these girls are targeted on the basis of an intersectionality of additional factors: their age, often their socio-economic status, race and ethnic origin among others.²⁰⁵

The risk to young girls in education establishments is apparent, prescient, immediate and real. As noted above, in 2011, the Inter-American Commission on Human Rights noted that “sexual violence in schools has yet to be acknowledged as one of the most compelling problems in today’s world”.²⁰⁶ Notwithstanding this, and bearing in mind the information contained in the section on sexual violence in educational institutions in Bolivia above, the State of Bolivia is, or at the very least should be aware of the occurrence of such sexual violence.²⁰⁷

Where State authorities or others acting in official capacity of under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.²⁰⁸

²⁰⁵ CAT Committee, General Comment 2: Implementation of article 2 by States Parties (2007). para. 22, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>

²⁰⁶ IACHR, Access to justice for women victims of sexual violence: education and health (2011). para 18. available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

²⁰⁷ See for example, Report of the independent expert for the United Nations study on violence against children, Paulo Pinheiro, *Rights of the Child* (2006). available at: http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf; IACHR, Thematic Hearing, 143rd Regular Period of Session, Sexual Violence in Educational Institutions in the Americas (2011). Requested by the Center for Reproductive Rights, Women’s Link Worldwide, FUNDERES and the Instituto Tecnológico Autónomo de México (ITAM); Angulo, Brisa. Bolivian Socio-cultural Patterns Discriminate against Female Adolescent Victims of Sexual Assault (2011). Rutgers University School of Law. available at: http://www.abreezeofhope.org/uploads/2/8/2/9/2829760/final_draft_dr_2011_brisa_scr.pdf; Coordinadora de la mujer and Observatorio de Género, Sexual violence in Bolivia: Patriarchal domination over women’s bodies (*Violencia sexual en Bolivia: la dominación patriarcal sobre los cuerpos de las mujeres*) (2012). p.5, available at: <http://www.coordinadoradelamujer.org.bo/web/index.php/biblioteca/mostrar/id/2>

²⁰⁸ CAT Committee, General Comment 2: Implementation of article 2 by States Parties (2007). paras. 18, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm> The Committee continued: “Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties’ failure to prevent

Bolivia has failed to act to prevent such sexual violence, which in certain cases such as that of Patricia Flores, results in death, failed to effectively punish, investigate and rehabilitate the victims.²⁰⁹

It is our position, as outlined in more detail above, that a heightened obligation exists when sexual violence against girls occurs in educational institutions in the context of the prohibition of torture. This heightened obligation stems from the confluence of the special protection that must be afforded to girls, including the primacy of their rights, and the right to education that the State is obliged to provide and which Bolivia regards as a “supreme function”. Thus where sexual violence does occur in educational institutions not only may it breach the prohibition of ill-treatment, it also, in light of this heightened obligation, violates the prohibition of torture. An additional important element in this finding is the skewed power dynamic inherent in most educational institutions.

The four elements of the definition of torture²¹⁰ will be addressed in turn in the context of sexual violence in educational establishments, with specific reference to the case of Patricia Flores. First, sexual violence, including or excluding rape, in educational institutions by its very nature inflicts physical, emotional, mental and psychological pain, among others, on the young victim.²¹¹ As noted by the Inter American Court, severe suffering of the victim is inherent in sexual violence which includes rape. This severe suffering is exacerbated in the context of minors. Thus it appears obvious that rape of a minor girl constitutes, at a minimum ill-treatment. Moreover, this Committee has

and protect victims of gender-based violence, such as rape[.]”; See also, *Hajrizi Dzemajl et al. v Serbia and Montenegro*(CAT,2002) communication no. 161/2000. paras. 9.2.

²⁰⁹ “Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term „victim” also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization. The term “survivors” may, in some cases, be preferred by persons who have suffered harm. The Committee uses the legal term “victims” without prejudice to other terms which may be preferable in specific contexts. See CAT Committee, General Comment 3: *Implementation of article 14 by State Parties* (2012). para. 3, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>

²¹⁰ As noted above, and in accordance with CAT, they are: severe pain and suffering, whether physical or mental; intentionally inflicted; for a prohibited purpose which includes for any reason based on discrimination of any kind; and, by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

²¹¹ See among others, See *V.L. v Switzerland* (CAT, 2005)communication no. 262/2005; *C.T. and K.M. v Sweden* (CAT, 2005)communication no. 279/2005; *Aydin v. Turkey* (ECtHR,1997)app no. 57/1996/676/866; IACHR, Merits Report No. 5/96, *Raquel Martín de Mejía* (Peru), March 1, 1996, 3, Analysis (a), available at <http://www.cidh.org/annualrep/95eng/Peru10970.htm>.

found that rape of a woman constitutes torture in certain circumstances. It is our position that sexual violence of a minor girl, even without taking into account the heightened obligation in educational institutions can constitute, in conjunction with the satisfaction of the three remaining criteria, a violation of the prohibition against torture. With the addition of the aforementioned heightened obligation at play in educational institutions (which expressly refers to the vulnerability of the victim) it is arguably without doubt that the first criterion necessary for a finding of a violation of the prohibition against torture is fulfilled.

Where the sexual violence does not include rape, it is important to bear in mind the findings of the Inter-American Commission on Human Rights: “society tends not to grasp the full dimensions of sexual violence and instead boils it down to rape”.²¹² Particularly in the context of educational institutions in Bolivia it is imperative to bear in mind firstly, the heightened obligation in play and the effect of both any failure to recognise the extreme severity of sexual violence of girls in schools and the impunity which presently characterises this phenomenon. It is our position that where an act or acts of sexual violence culminate in suffering sufficient to trigger a violation of the prohibition of ill-treatment, in light of the heightened obligation in educational institutions it should be deemed to satisfy the element of severe suffering inherent in a violation of the prohibition of torture.

In the specific case of Patricia Flores the physical and sexual violence evident in all medical reports, without doubt, support (and in fact at times specifically refer to) a finding of torturous acts. The severe suffering endured by Patricia is consistently referred to and implied in all reports relating to her ordeal and it would be difficult to deem her savage attack, rape and murder anything other than torture.

With regard to the purpose and intention of the acts, the Special Rapporteur on Torture, outlining a gender-sensitive interpretation of torture, has stated that:

“[i]n regard to violence against women, the purpose element is always fulfilled, if the acts can be shown to be gender-specific, since discrimination is one of the elements

²¹² IACmHR, *Access to justice for women victims of sexual violence: education and health* (2011). paras.1 to 6. available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

mentioned in the CAT definition. Moreover, if it can be shown that an act had a specific purpose, the intent can be implied.”²¹³

Young girls in educational establishments find themselves in hierarchical structures with significant power deficits due to both their age and gender in their interactions with others, including staff. The high proportion of girls, as opposed to other demographic, who are subjected to sexual violence in educational institutions in Bolivia demonstrates a strong gender based purpose underlying the violence. While gender based is thus sufficient to satisfy the purpose criterion, his lopsided relationship is further affected by an additional **intersectionality of factors** including, ethnic origin, socio-economic status, race and/or disability which must be borne in mind and acknowledged if the phenomenon is to be adequately addressed. Moreover, the issues of power and inequality are essential in the context of the motivational purposes as well as the intention of perpetrators of such violence. Thus, with a range of purposive elements in play, the intent associated with such sexual violence can be implied.

Finally, with regard to State involvement, in public educational institutions, where students in the care of the State and under the supervision of their teachers and supervisors are sexually violated, either by those employed within the school, or those with access to the school with the permission or acquiescence of those in charge, there is clear State involvement. States are obligated to adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture.²¹⁴ Where the perpetrator is a State employee, to whom the care of young girls has been entrusted by their parents in the pursuit of education, the link to the State is undeniable.

Where the perpetrator is not a member of staff or has not been determined or identified the concepts of consent and acquiescence come into play. States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors and other acting

²¹³ Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, (2008). para. 30, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=47c2c5452>

²¹⁴ CAT Committee, General Comment 2: Implementation of article 2 by States Parties (2007). paras. 17, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>

in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under the colour of law.²¹⁵

State parties should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, specifically including schools and institutions that engage in the case of children as well as contexts where the failure of the State to intervene encourages and enhances the danger or privately inflicted harm.²¹⁶ Thus, where non-eligible persons are allowed to access young girls in educational institutions and subsequently sexually violate them there is a clear failure on the part of the education institutions' authorities, extending *inter alia* from teachers who do not react adequately to girls' absences from the classroom, to any personnel charged with security and daily admission to the premises who permitted entry and to the director or principal and/or Board of Directors or others ultimately responsible for the safe and efficient running of the establishment.²¹⁷ Where this results in sexual violence which is alleged to constitute torture, the State involvement element of the prohibition may be fulfilled on the basis of consent or acquiescence.²¹⁸

The Bolivian State has a general obligation to protect and prevent which when combined with the phenomenon of sexual violence in schools and the special protection that must be afforded to children, especially young girls is sufficient alone to fulfil the State involvement requirement.²¹⁹ Moreover, the public school itself, as an agent of the State, has a duty to report any incidents of

²¹⁵ CAT Committee, General Comment 2: Implementation of article 2 by States Parties (2007). paras. 15, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>

²¹⁶ CAT Committee, General Comment 2: Implementation of article 2 by States Parties (2007). paras. 18, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>

²¹⁷ CAT Committee, General Comment 2: Implementation of article 2 by States Parties (2007). paras. 26, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm> "Those exercising superior authority – including public officials – cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventative measures". (Emphasis added)

²¹⁸ See for example, *Hajrizi Dzemajl et al. v Serbia and Montenegro*(CAT,2002) communication no. 161/2000. para. 8.10 "the police (public officials) although they had been informed of the immediate risk that the complainants were facing and had been present at the scene of the events, did not take any appropriate steps in order to protect the complainants, thus implying "acquiescence" in the sense of article 16." It additionally, at para. 9.2, placed significant reliance on the particular vulnerability of the victims and the racially motivated nature of the attacks as well as the Committee's own reiterations in the form of concluding observations to various countries concerning law-enforcement inaction and the failure to protect against racially motivated attacks. Although this decision was taken in the context of article 16, the reasoning equally applies to article 1 in light of the indivisible, interdependent and interrelated nature of the prohibitions.

²¹⁹ See CAT Committee, General Comment 2: Implementation of article 2 by States Parties (2007). paras. 21, available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm> ; *Velasquez Rodriguez v Honduras* (IACTHR, 1988), Ser. C., No. 4. para. 173; *Osman v United Kingdom* (ECtHR,1998)app no. 87/1997/871/1083, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_01_ing.pdf; Human Rights Council, General Comment 20. para. 2, available at: <http://www1.umn.edu/humanrts/gencomm/hrcomms.htm>

sexual violence to the relevant authorities without delay and cooperate with the investigation process.

An essential element in the obligation to protect, prevent and indeed redress, are the efforts that should be made to address structural causes to the violation, including any kind of discrimination related to, *inter alia* gender.²²⁰ As this Committee has noted, article 14 of CAT obliges the Bolivian State to take all necessary measures to address the structural context of “impunity accorded to human rights violations and, in particular, the use of torture, which appears to be widespread, resulting from the lack of any investigation of complaints and the slow pace and inadequacy of such investigations, which demonstrates the lack of effective action by the authorities to eradicate these practices and, in particular, the dereliction of duty on the part of the Public Prosecutor’s Office and the courts.”²²¹ Thus for example the Inter-American Court in the seminal *Cotton-fields* case stated that:

“[...] bearing in mind the context of structural discrimination in which the facts of this case occurred, [...] the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, re-establishment of the same structural context of violence and discrimination is not acceptable.”²²²

The Court also considered that the Mexican state was obliged to combat the situation because it was encouraging the chronic repetition of human rights violations.²²³ The environment of impunity in Bolivia is coupled with the harmful effects of the persistence of traditional stereotypes relating to the roles and responsibilities of women, which reinforce a perception of women as inferior in all areas of life, as noted by the CEDAW Committee in its most recent Concluding Observations on Bolivia.²²⁴ The CEDAW Committee additionally expressed its grave concern at “the extent, intensity

²²⁰ See CAT Committee, General Comment 3: *Implementation of article 14* (2012) para.8 and 17 Available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>;

²²¹ See CAT Committee, Concluding observations: Bolivia (2001). para.95 available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/A.56.44.para.89-98.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/A.56.44.para.89-98.En?Opendocument)

²²² *Velasquez Rodriguez v Honduras* (IACtHR, 1988), Ser. C., No. 4. para. 450. See also para. 454 of the same judgment wherein the Mexican state was obliged to combat the situation because it was encouraging the chronic repetition of human rights violations.

²²³ *Velasquez Rodriguez v Honduras* (IACtHR, 1988), Ser. C., No. 4. para. 454

²²⁴ CEDAW Committee. Concluding Observations: Bolivia (2008). para 20. available at: <http://ebookbrowse.com/cedaw-c-bol-co-4-sp-pdf-d300128470>

and prevalence” of violence against women in Bolivia, “which borders on femicide.”²²⁵ This illustrates that cases of sexual violence in educational institutions, such as that of Patricia Flores, must be considered in light of the wider context of wide-spread societal discrimination against women.

SECTION 8: RECOMMENDATIONS

Women’s Link Worldwide and FUNDERES respectfully submit the following recommendations and requests to be considered by this Honourable Committee during Bolivia’s periodic review:

To the Committee against Torture:

- We respectfully request that this Committee recognize the extent of the disturbing pattern of sexual violence against children and particularly girls in educational institutions and that it urge the Bolivian government to take all necessary measures to prevent and end impunity for such violence;
- Recognize the heightened obligation placed on States in the context of such violence in educational establishments in light of the right to education, the right to be free from violence and the right of young girls to special protection and acknowledge that such violent sexual acts occurring in educational institutions *prima facie* entail a breach of the Convention Against Torture in the form of torture (as distinct from ill-treatment) in light of this heightened obligation.
- Reaffirm that a State’s failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner (as exemplified in the case of Patricia Flores) may constitute a *de facto* denial of the right to reparation and thus constitute a violation of the State’s obligations under article 14, as well as contributing to a cycle of impunity and violation.²²⁶

²²⁵ CEDAW Committee. Concluding Observations: Bolivia (2008). para 24. available at: <http://ebookbrowse.com/cedaw-c-bol-co-4-sp-pdf-d300128470>

²²⁶ See CAT Committee, General Comment 3: *Implementation of article 14* (2012) para.8 and 17 Available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>;

To the Government of Bolivia

- Recognize the gravity of the issue of sexual violence against girls in educational institutions in Bolivia and take all necessary measures, including legislative, to address it as a matter of priority. This would include the incorporation of Supreme Decree 1302²²⁷ in the Criminal Code, the Criminal Procedure Code and other relevant materials;
- Monitor and ensure the investigation, prosecution, trial and punishment of those responsible for the brutal rape, murder and torture of 10 year old Patricia Flores Velasquez;
- Act with due diligence in the investigation and punishment of all cases of sexual violence in schools according to the international standards of investigation including those contained in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol) in the investigation of allegations of torture, which has been endorsed by the Committee in several instances;²²⁸
- Women's Link and FUNDERES reiterate also the recommendation made previously by the Committee that the Protocol be used in relation to the training of law enforcement officials,²²⁹ in addition to sensitisation on the issue of sexual violence against girls in educational institutions;
- Address the structural causes of the wide-spread issue of sexual violence, and impunity thereof, in educational institutions, including the persistence of traditional stereotypes relating to the roles and responsibilities of women, which reinforce a perception of women and girls as inferior in all areas of life.
- Adopt a long-term and holistic approach to ensuring that survivors, including the families of the immediate victims of sexual violence and other forms of torture, cruel, inhuman, or degrading treatment in educational institutions receive as full a rehabilitation as possible, and ensure that

²²⁷ Supreme Decree 1302 of Bolivia (2012), article 2, available at: <http://www.lexivox.org/norms/BO-DS-N1302.xhtml>

²²⁸ UN Office of the High Commissioner for Human Rights, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004). Available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> For e.g. see CAT Committee, Concluding Observations: Mexico (2012) para.17, available at: <http://www2.ohchr.org/english/bodies/cat/cats49.htm>; CAT Committee, Concluding Observations: Peru (2012) para.8(e), available at: <http://www2.ohchr.org/english/bodies/cat/cats49.htm>; The Protocol includes as a standard part of an investigation an independent physical and psychological forensic examination.

²²⁹ CAT Committee, Concluding Observations: Gabon (2012) para. 16, available at: <http://www2.ohchr.org/english/bodies/cat/cats49.htm>; CAT Committee, Concluding Observations: Senegal (2012) para. 25, available at: <http://www2.ohchr.org/english/bodies/cat/cats49.htm>; CAT Committee, Concluding Observations: Albania (2012,) para. 23, Available at: <http://www2.ohchr.org/english/bodies/cat/cats48.htm>

specialised services for the victim of torture or ill-treatment, including access to emergency contraception and/or termination of pregnancy services, are available and accessible²³⁰;

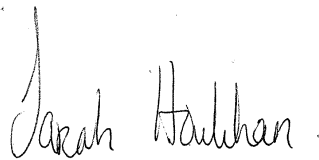
- It is also respectfully requested that the Bolivian government engage in awareness-raising of relevant domestic legislation such as the special protection of women and girls from sexual violence as embodied in the 2009 Constitution, the Children and Adolescent Code, and key international human rights treaties such as the Convention against Torture, the Convention on the Elimination of Discrimination against Women, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights;
- Intensify efforts to amend the Criminal Code and the Criminal Procedure Code to incorporate the definition of torture as set forth in the Convention;
- Extend a state visit invitation to the UN Special Rapporteur against Torture with a view to gaining an independent and comprehensive insight into the issue of sexual violence against girls in educational institutions.

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²³⁰ See CAT Committee, General Comment 3: *Implementation of article 14* (2012) para.12 Available at: <http://www2.ohchr.org/english/bodies/cat/comments.htm>;