

**DENOUNCING SEXUAL VIOLENCE
AGAINST ADOLESCENT GIRLS IN BOLIVIA**

**144th Session of Hearings
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Prepared by:

BETH STEPHENS
MARY K. CUSACK
MICHAEL PEREZ
Child and Family Advocacy Clinic
Rutgers School of Law - Camden
217 North Fifth Street
Camden, NJ 08102
Phone: 856-225-2570
Fax: 856-225-6666

DOUGLAS KEILLOR
COURTNEY MORAN
RICHARD WILSON
International Human Rights Law Clinic
American University
Washington College of Law
4801 Massachusetts Avenue NW
Washington, DC 20016
Phone: 202-274-4147
Fax: 202-274-0659

BRISA DE ANGULO
PARKER PALMER
MARIA LEONOR OVIEDO BELLOTT
Centro Una Brisa de Esperanza
Nº 166 Mayor Rocha
Entre Ayacucho y Junín
Cochabamba, Bolivia
Phone: (591-4) 452-7505

JULIETA MONTAÑO
La Oficina Jurídica Para La Mujer
Calle México Nº 358
Cochabamba, Bolivia
Phone: (591-4) 422-8928
Fax: (591-4) 425-1551

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I. SEXUAL ABUSE OF ADOLESCENTS IS ENDEMIC IN BOLIVIA

Adolescent girls in Bolivia suffer from high rates of sexual violence in multiple settings, including in the home, within the family, in schools, in custody, and through sex trafficking. Bolivia's failure to protect adolescent girls from sexual violence is a violation of its international human rights obligations.

A. Sexual violence against adolescents is widespread in Bolivia

Numerous studies have shown an alarmingly high rate of sexual violence against women, adolescent girls, and children in Bolivia.

1. The “extent, intensity, and prevalence” of violence against women in Bolivia borders on femicide.¹
2. Thirty-four percent of girls and twenty-three percent of boys in Bolivia have been sexually abused before age eighteen.²
3. Of adolescent girls ages 15 to 19 in Bolivia, 43.9 percent have been victims of physical violence,³ 11.1 percent have been victims of sexual violence by a partner,⁴ and 48.7 percent have been victims of emotional abuse.⁵
4. At least 70 percent of women in Bolivia have suffered from sexual violence or other abuse. Many women do not report the abuse they suffer.⁶ In 2003 and 2004, 88 percent of women suffered some kind of violence, compared to only 12 percent of men.⁷
5. Of women ages 15 to 49 in Bolivia, 52.3 percent have suffered from physical violence by a partner, 15.2 percent have suffered from sexual violence by a partner, and 53.8 percent have suffered from emotional violence by a partner.⁸
6. On average, twelve children and adolescents are raped every day in Bolivia. Sixty percent of suspects are repeat offenders.⁹

B. Manifestations of sexual violence against adolescent girls in Bolivia

¹ U.N. Committee on the Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Bolivia*, paras. 24-25, U.N. Doc. CEDAW/C/BOL/CO/4 (Apr. 8, 2008) [hereinafter “CEDAW, *Concluding Comments: Bolivia*”].

² Brisa De Angulo, *Child Sexual Abuse and the Conspiracy of Silence* (2009).

³ *No more! The right of women to live a life free of violence in Latin America and the Caribbean*, Economic Commission for Latin America and the Caribbean, p. 43, Figure 10 (Mar. 2009), <http://www.eclac.org/publicaciones/xml/4/32194/NoMore.pdf> [hereinafter “ECLAC, *No more!*”].

⁴ *Id.*, Figure 12.

⁵ *Id.*, Figure 8.

⁶ U.S. Department of State, *2010 Human Rights Report: Bolivia* (Apr. 8, 2011); Ramiro Barriga, *Violencia sexual en las Aulas*, LA RAZÓN (La Paz, Bolivia) (Jan. 15, 2011); IACHR, *Access to Justice and Social Inclusion*, para. 319.

⁷ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, para. 319 (June 28, 2007) [hereinafter “IACHR, *Access to Justice and Social Inclusion*”].

⁸ ECLAC, *No more!*, Table 1 and Figure 8 (fifty-four percent of Bolivian women who are married or live with a partner have been victims of psychological violence, such as verbal abuse).

⁹ *Violaciones a niñas sacuden al país pero gana la impunidad*. LA RAZÓN, Bolivia (Nov. 13, 2009).

Numerous studies have shown that adolescent girls suffer from sexual violence in the family, in school, in custody, in group homes, and through sex trafficking, evincing a widespread and far reaching societal problem.

1. Three out of four cases of sexual abuse involving minors occurs at home or in school.¹⁰
2. Ninety-seven percent of reported sexual abuse allegations in Bolivia are based on male relatives abusing their female teenage victims.¹¹
3. More than 50 percent of people living in Bolivia have been a victim of intra-family violence.¹²
4. Adolescents are subject to abuse in detention centers, state-run group homes, and other institutions.¹³
5. Trafficking of women and girls is common in Bolivia, and there is insufficient information regarding its causes and no measures exist to combat it at the national and local levels.¹⁴ In particular, young women and girls from rural areas in Bolivia are subjected to sex trafficking to urban areas.¹⁵

C. Bolivia's international obligations to protect and prevent sexual violence

Bolivia has an obligation to create an atmosphere of respect and dignity for adolescent girls, which includes protecting girls from all forms of violence and preventing sexual violence in particular.

1. Right to dignity and human treatment
 - a. *American Convention Article 5*: “Every person has the right to have his physical, mental, and moral integrity respected,” and “no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”
 - b. *IACHR Martí de Mejía v. Peru*: Rape constitutes a violation of the right to physical and mental integrity under Article 5 of the American Convention.¹⁶ After analyzing international humanitarian law as well as

¹⁰ Ramiro Barriga, *Violencia sexual en las Aulas*, LA RAZÓN (La Paz, Bolivia) (Jan. 15, 2011).

¹¹ Cimac Noticias, *Abuso sexual, amenaza latente para las y los niños en Bolivia* (July 24, 2007).

¹² ECLAC, *No more!*, p. 30.

¹³ *Abusan en Bolivia a 138 niños en hogares infantiles*, Pueblo en línea (Feb. 4, 2010). As of July 2009 at the SEDEGES facility Centro de Diagnostico para Mujeres, there were three adolescent victims of sexual violence being housed with fourteen juvenile offenders, without separation or distinct services. Adolescents that are 17 years old and accused of crimes are detained in adult facilities. For example, in 2009 there were two 17-year-olds and two 18-year-olds being detained in Centro de Orientación Femenina de Obrajes with 217 convicted and accused adult criminals.

¹⁴ Comm. on the Elimination of All Forms of Discrimination against Women, *Consideration of Reports Submitted by State Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Combined Second, Third and Fourth Periodic Reports of States parties, Bolivia*, U.N. Doc. CEDAW/C/BOL/2-4, para. 26 (Mar. 27, 2006) [hereinafter “CEDAW, Bolivia Report”].

¹⁵ U.S. Department of State, *2011 Trafficking in Persons Report: Bolivia* (June 27, 2011).

¹⁶ *Martí de Mejía v. Peru*, Inter-Am. C.H.R., Report 5/96 (1996).

the physical and emotional effects of rape, this Commission concluded that rape is cruel, inhuman, or degrading treatment because “rape causes physical and mental suffering” and “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.”¹⁷

- c. *IACHR Quintanilla v. El Salvador*: Rape violates the victim’s rights to physical, psychological, and moral integrity under Article 5 of the American Convention and her right to honor and dignity under Article 11 of the American Convention.¹⁸
- d. *IACtHR Gómez-Paquiyaui Brothers v. Peru*: In light of Article 19 on the rights of the child, states must provide greater protections to children regarding the rights in Articles 5 and 11 to dignity and humane treatment. Because the victims were children, the Court applied the “highest standard in determining the seriousness of actions that violate their right to humane treatment.”¹⁹

2. Duty to protect adolescent girls from violence

- a. *American Convention Article 19*: “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.”²⁰ In defining the scope and application of Article 19 and through incorporation by Article 29, this Commission and the Inter-American Court of Human Rights have used the Convention on the Rights of the Child (“CRC”) as part of a “comprehensive international *corpus juris* for the protection of the child.”²¹
- b. *IACHR Quintanilla v. El Salvador*: In applying the CRC to Article 19 of the American Convention, this Commission requires states to “take all appropriate . . . measures to protect the child from all forms of physical or mental violence . . . including sexual abuse.”²²
- c. *IACHR and IACtHR Minors in Detention v. Honduras, Villagrán-Morales*

¹⁷ *Id.* (holding that rape may also constitute torture when physical and mental pain and suffering is intentionally inflicted, it is committed with a purpose, and it is committed by a public official or at the instigation of a public official).

¹⁸ *Quintanilla v. El Salvador*, Inter-Am. C.H.R., Report 6/94, Conclusions paras. 1-2 (1994).

¹⁹ *Case of the Gomez Paquiyaui Brothers v. Peru*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 110, para. 170 (2004).

²⁰ American Convention on Human Rights, art. 19 (Nov. 22, 1969) [hereinafter “American Convention”].

²¹ *Case of Villagrán-Morales et al (“Street Children”) v. Guatemala*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 63, para. 194 (1999); *Minors in Detention v. Honduras*, Inter-Am. Ct. H.R. Report 41/99, para. 72 (1998) (“For an interpretation of a State’s obligations *vis-à-vis* minors, in addition to the provision of the American Convention, the Commission considers it important to refer to other international instruments that contain even more specific rules regarding the protection of children. Those instruments include the Convention on the Rights of the Child and the various United Nations declarations on the subject. This combination of the regional and universal human rights systems for purposes of interpreting the Convention is based on Article 29 of the American Convention and on the consistent practice of the Court and of the Commission in this sphere.”).

²² See *Quintanilla v. El Salvador*, Inter-Am. C.H.R., Report 6/94 (1994).

et al (“*Street Children*”) *v. Guatemala* and *Quintanilla v. El Salvador*: This Commission and the Court have applied the following CRC Articles to define “appropriate measures of protection” for children:

- *Article 2*: Non-discrimination and equal protection under the law.
 - *Article 3*: The best interest of the child in all social welfare institutions, courts of law, and other governmental bodies.
 - *Article 6*: Right to survival and development.
 - *Article 11*: Duty to combat child trafficking.
 - *Article 19*: Duty to protect against all forms of physical or mental violence, injury or abuse, or sexual violence.
 - *Article 27*: Right to physical, mental, spiritual, moral, and social development.²³
- d. *CRC Concluding Observations for Bolivia*: The Committee on the Rights of the Child found that Bolivia has failed to “prevent and react to violence against children . . . [and is] not equipped with sufficient means to assess, monitor and evaluate progress or shortcomings of the activities to end violence against children.”²⁴
- e. *Convention of Belém do Pará*: Bolivia must “pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence [against women].”²⁵
- f. *IACHR Maria da Penha Maia Fernandes v. Brazil*: Under Article 7 of the Convention of Belém do Pará, a state is responsible for failing to prevent private acts of violence against women when its pattern of response to domestic violence demonstrates tolerance and creates a “climate that is conducive to domestic violence.”²⁶
- g. *IACHR Access to Justice and Social Inclusion in Bolivia*: Bolivia fails to respond to violence against women adequately, creating a climate of

²³ *The Rights of the Child in the Inter-American Human Rights System*, 2d ed., OEA/Ser.L/V/II.133, Doc. 34, Inter-Am. C.H.R. para. 128 & 138 (2008) (“This means that there is a substantive connection between the [ACHR and CRC] and that they should be applied together in cases pertaining to children and adolescents.” (citing “*Street Children*” *v. Guatemala*, para. 194)); “*Street Children*” *v. Guatemala*, paras. 195 & 198; *Quintanilla v. El Salvador*, Inter-Am. C.H.R., Report 6/94 (1994); *see also* U.N. Comm. on the Rights of the Child, General Comment No. 13, The right of the child to freedom from all forms of violence, U.N. Doc. CRC/C/GC/13, para. 32 (April 18, 2011) [hereinafter “CRC General Comment 13”] (explaining the obligations of “all appropriate measures” under CRC Article 19).

²⁴ Comm. on the Rights of the Child, 52nd Session, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, Concluding Observations: The Plurinational State of Bolivia*, U.N. Doc. CRC/C/BOL/CO/4, para. 49 (Oct. 16, 2009) [hereinafter “CRC, *Concluding Observations: Bolivia*”] (finding that Bolivia has not responded adequately to high rates of violence against children).

²⁵ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”), art. 7 (June 9, 1994) [hereinafter “Convention of Belém do Pará”].

²⁶ *Maria da Penha Maia Fernandes v. Brazil*, Inter-Am. C.H.R., Report No. 54/01, paras. 55-56 (2001).

impunity and discrimination in the justice system.²⁷ There is no policy for prosecuting domestic violence because the state considers it a “private” matter.²⁸ Indeed, this Commission recognized Bolivia’s systematically discriminatory response to sexual violence as specifically contrary to the Convention of Belém do Pará.²⁹

²⁷IACHR, *Access to Justice and Social Inclusion*, para. 344 (describing “impunity in cases of crimes against sexual integrity” as “alarming”).

²⁸ *Id.* at paras. 345-347.

²⁹ *Id.* at para. 346.

- h. *United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)*: Bolivia's response to sexual violence against women is "not yet sufficient," given that "nine out of every ten Bolivian women suffer some kind of violence."³⁰
3. Discrimination in cultural and social patterns
- α. *American Convention Article 24*: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."
 - β. *Convention of Belém do Pará Article 6*: "The right of every woman to be free from violence includes . . . the right of women to be free from all forms of discrimination."
 - χ. *CEDAW*: Bolivia has the duty to eliminate "any distinction, exclusion or restriction made on the basis of sex." For example, Article 5 discusses appropriate measures to modify social and cultural patterns, while Article 15(1) explains equality before the law, and Article 16 explains equality in family relations.³¹
 - d. *CRC Article 2(2)*: "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."
 - e. *IACHR Maria da Penha Maia Fernandes v. Brazil*: Domestic violence against the petitioner amounted to discrimination against her as a woman.³²
 - f. *IACtHR González et al. ("Cotton Field") v. Mexico*: Given the widespread violence against women and girls in Ciudad Juárez, Mexico's failure to prevent abuse and murders of teenage girls amounted to gender-based discrimination.³³
 - g. *European Court of Human Rights Opuz v. Turkey*: Gender-based violence is a form of discrimination against women.³⁴ The failure of Turkey officials to take appropriate measures to prevent domestic violence and their treatment of violence against women as a private matter constituted discrimination against women.³⁵
 - h. *IACHR Access to Justice*: The high rate of sexual violence against women and girls in Bolivia and Bolivia's failure to take appropriate measures to

³⁰ CEDAW, *Bolivia Report*.

³¹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/36, arts 5, 15(1) & 16 (Sep. 3, 1981) (ratified by Bolivia on June 8, 1990) [hereinafter "CEDAW"].

³² *Maria da Penha Maia Fernandes v. Brazil*, para. 47.

³³ *Case of González et al. ("Cotton Field") v. Mexico*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 204, para. 231 (2009).

³⁴ *Opuz v. Turkey*, Eur. Ct. H.R., No. 33401/02, para. 191 (2009) (reviewing decisions by the CEDAW Committee, the Human Rights Committee, this Commission and the Court finding that gender-based violence is discrimination).

³⁵ *Opuz v. Turkey*, para. 202.

prevent such violence amounts to discrimination against all women and children in Bolivia.³⁶

II. BOLIVIA'S FAILURE TO ADDRESS SEXUAL VIOLENCE AGAINST ADOLESCENTS

The Plurinational State of Bolivia has failed to address the problem of sexual violence against adolescents. First, the State has not addressed the widespread and persistent societal views that violence against girls and women is permissible; that girls and women are inferior to men; and that fault lies with adolescent girls when they are victims of sexual violence. Second, the legal system perpetuates these views and promotes impunity by failing to educate the public about sexual violence; categorizing sexual violence as a private matter; failing to protect girls and women who make claims of sexual violence; dismissing allegations of sexual violence; and failing to pursue complaints. These systematic failings violate Bolivia's international obligations.

A. Bolivia has failed to address societal attitudes of sexual violence

1. The “*de jure* equality” that exists in Bolivia is not sufficient to achieve gender equality. Bolivia has not shown a clear commitment to addressing the causes of sexual violence committed against women and girls, including unequal power relations within the family. Violence committed against women “is rooted in fundamental cultural factors, aggravated by poverty and inequality.”³⁷
2. Bolivia’s efforts to raise awareness of sexual violence have made barely a dent in traditional stereotypes about the roles and responsibilities of women and men within the family, in the education system, and in society in general. These beliefs reinforce a sense of inferiority in women and girls and affect their status in all areas of life.³⁸
3. Bolivia’s modern Family Code and Child Code retain remnants of the 1831 Spanish Criminal Code, which was based on gender stereotypes that objectify women.³⁹ Bolivia needs to make more “efforts to eradicate practices and conduct that give rise to and perpetuate the notion that women are socially inferior.”⁴⁰
4. Adolescent girls are particularly vulnerable to sexual violence and exploitation within the home. The other members of the household keep

³⁶ IACHR, *Access to Justice and Social Inclusion*, paras. 328, 349, 370.

³⁷ IACHR, *Access to Justice and Social Inclusion*, paras. 61, 232, 307, 319, 375.

³⁸ CEDAW, *Bolivia Report*, para. 20.

³⁹ PAMELA CALLA ET AL., *ROMPIENDO SILENCIOS: UNA APROXIMACIÓN DE LA VIOLENCIA SEXUAL Y AL MALTRATO INFANTIL EN BOLIVIA*, 94-97 (2005). See Table One for a comparison of the evolution from “moral offenses” to “offenses of physical integrity,” detailing the similarities between modern Bolivian law and the laws enacted in the nineteenth century.

⁴⁰ IACHR, *Access to Justice and Social Inclusion*, paras. 146, 247 (2009); United Nations Children’s Fund/National Institute of Statistics of Bolivia (UNICEF/INE), *VIOLENCIA CONTRA LA NIÑEZ EN BOLIVIA* (2007).

silent to maintain the norm that men retain control of all feminine sexuality, rendering the violence generally invisible outside the privacy of the home.⁴¹

5. The negative attitudes toward girls and women have a dramatic impact on society's response to adolescent girls who report sexual abuse. Many people do not trust adolescent girls who report sexual violence, believing instead that the girls themselves are at fault.⁴²

A. Bolivia's legal system fails to address sexual violence as a public concern, which perpetuates discriminatory attitudes and leads to impunity

1. Societal and governmental obstacles result in unreported abuse

- a. In Bolivia, "violence against women is rendered 'invisible' as a consequence of the failure to report cases and the lack of mechanisms for recording and establishing statistics on the issue." All levels of Bolivian society deter victims from coming forward, through "procedural bureaucracy, lack of staff training, corruption, and family, social and official pressure against reporting cases, which leads to underreporting of sexual violence."⁴³ Around eighty percent of Bolivian women have been victims of violence, but only twenty percent of these victims have reported the incidents.⁴⁴
- b. Societal approval of parent-child relationships based on power and sometimes violence (often expressed through sexual mistreatment) acts as a barrier to justice for children.⁴⁵ For example, a researcher in Cochabamba, Bolivia, polled adolescents before and after they attended educational programs about their right to be free from abuse. Seventy percent of the adolescents who indicated they had been sexually abused also stated they had never reported the violence before taking the survey.⁴⁶
- c. Nine of every ten children suffer some form of abuse, six of which are physical, but most incidents go unreported because many children remain silent due to their fear of the perpetrators.⁴⁷

⁴¹ ROMPIENDO SILENCIOS at 38-40.

⁴² Brisa De Angulo, *Bolivian Socio-Cultural Patterns Discriminate Against Female Adolescent Victims of Sexual Assault* (2011).

⁴³ IACHR, *Access to Justice and Social Inclusion*, paras. 326-27, 375 (2007); Jill Torres, Ed., *Crime and Society*, Bolivia, University of San Diego, available at <http://www.rohan.sdsu.edu/faculty/rwinslow/samerica/bolivia.html>, online supplement to Winslow & Zhang, *Criminology: a Global Perspective*, Pearson (2008) [hereinafter "Torres, *Crime and Society*, Bolivia"].

⁴⁴ *Las violaciones, segunda causa de cárcel en Bolivia después del narcotráfico*, LOS TIEMPOS, Cochabamba, Bolivia (June 9, 2011); *Cochabamba: violencia sexual aumenta y el 80 percent no denuncia*, PERIODICO BOLIVIANO (July 12, 2011).

⁴⁵ IACHR, *Access to Justice and Social Inclusion*, paras. 326-27, 375.

⁴⁶ Brisa De Angulo, *Child Sexual Abuse and the Conspiracy of Silence*, 18 (2009).

⁴⁷ *Forense revisa a 5 niños por día por maltratos*, LOS TIEMPOS, Cochabamba, Bolivia (Nov. 15, 2009); *Registran 860 casos de abusos a menores de edad en Cercado*, LOS TIEMPOS, Cochabamba, Bolivia (Dec. 10, 2010).

2. Bolivia treats sexual violence as a private matter, to be resolved by private parties, without the involvement of the government

- a. The Bolivian legal system places the burden of investigation, apprehension, prosecution, and appeal on the victim of sexual violence. This private procedural onus keeps rape and other forms of sexual violence behind closed doors. Adolescent girls especially suffer when the perpetrator is an adult living in their own home. As a result, the burden of proof generally proves impossible, and leaves victims vulnerable to ongoing sexual violence.⁴⁸
- b. The conciliation process, known as “*tranze*” in Bolivia, encourages perpetrators to pay their victim for her silence. The prevalence of such agreements is partially attributable to victims’ lack of knowledge of the justice system and lack of adequate processes to help victims seek justice.⁴⁹
- c. This practice of *tranze* represents both a *de facto* and *de jure* failure of effective law enforcement. The conciliation process often results in the victim dropping the matter, or prosecutors rejecting complaints and dismissing for lack of evidence.⁵⁰ Additionally, police and other public officials precipitate these coerced agreements by taking “an attitude of skepticism about the complaint, in most cases associating sexual violence with physical violence and thereby minimizing it, especially if the woman is an adolescent.” The police, prosecutors, and other officials persuade or induce victims of sexual violence to agree to conciliation agreements.⁵¹
- d. Conciliation agreements often further endanger the victim, because they “increase women’s physical and emotional risk” due to the “unequal power relationships between the parties.” Moreover, the aggressor often does not respect such agreements, so they do not address the causes and consequences of violence.⁵²
- e. In the absence of state sponsored accountability for sexual violence, private parties sometimes resort to lynching in response to alleged rapes, particularly in rural areas.⁵³

⁴⁸ IACHR, *Access to Justice and Social Inclusion*, paras. 330-31, 337-38, 345, 348, 351-52, 375.

⁴⁹ *La mayoría de los casos de violación a menores en el campo queda impune*, OPINION.COM.BO, Cochabamba, Bolivia (Oct. 29, 2007).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Otro linchado en Potosí, esta vez por violación*, LOS TIEMPOS, Cochabamba, Bolivia (June 9, 2010); *Bolivia es “subcampeona” en linchamientos*, LOS TIEMPOS, Cochabamba, Bolivia (Oct. 28, 2008); INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Follow-Up Report: Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, paras. 61, 206 (2009) [hereinafter “IACHR, *Follow-Up Report: Access to Justice and Social Inclusion*”].

3.Failure to investigate, prosecute, or apprehend perpetrators of sexual violence

- a. Criminal prosecutions for rape and sexual violence committed in the home are essentially nonexistent. Prosecutorial discretion unjustifiably results in more than 70 percent of all complaints received being closed, rejected, or dismissed in Bolivia. Approximately 40 percent of the dismissed cases in Bolivia involve sexual crimes. Eighty-three percent of complaints are abandoned or lost for lack of evidence. Only 11.04 percent of family violence cases receive a judicial response, mostly in family courts, and only 0.04 percent receive a response from the criminal courts.⁵⁴
- b. The Bolivian legal system places the burden of investigation, apprehension, prosecution, and appeal on the victim of sexual violence. Crimes of sexual violence require the victim to file a private complaint. Even after Bolivia introduced the accusatorial prosecution procedure for domestic and sexual violence, in practice, the prosecutors and police in charge of investigations still place the burden of proof on the victim.⁵⁵ Such procedural onus upon victims keeps rape and other forms of sexual violence behind closed doors. Adolescent girls especially suffer from this requirement when the perpetrator is an adult living in their own home.⁵⁶
- c. There is a great disparity between the number of complaints of sex crimes and those that lead to denouncements and convictions.⁵⁷ Ninety-six percent of complaints and grievances that reach the public prosecutor are rejected due to the poor legal research process, contempt some prosecutors have for the statements of the victim, lack of witnesses, and requirements of scientific evidence that is often unavailable.⁵⁸
- d. In one study of four cities, police in Bolivia reported 900 allegations of sexual crimes in 2008, but only 0.04 percent led to convictions.⁵⁹
- e. Bolivian officials have many problems with apprehending perpetrators.⁶⁰ In most areas of Bolivia, the prosecutor issues a citation to the accused, informing him of the crime of which he is accused, who accused him, and when he must appear. This “set time” gives the accused ample opportunity and time to escape, rehearse and formulate a false story, destroy evidence, or even intimidate the victim or her family so they drop the charges.⁶¹

⁵⁴ IACHR, *Access to Justice and Social Inclusion*, paras. 118, 121, 139, 336, 348.

⁵⁵ *Id.*, paras. 330-31, 337-38, 345, 348, 351-52, 375.

⁵⁶ *Id.*

⁵⁷ *Las violaciones subieron de dos a 92 y el 99 por ciento queda sin sentencia: 3.399 niños, adolescentes y mujeres, agredidos en 2005*, LOS TIEMPOS, Cochabamba, Bolivia (Mar. 28, 2006).

⁵⁸ *Delito, impunidad y cárcel*, LA PRENSA, La Paz, Bolivia (June 6, 2005); *Ante el panorama de impunidad 60 jóvenes inician una cruzada de prevención en 70 OTBs: El 99 percent de las denuncias de abuso sexual queda impune*, LOS TIEMPOS, Cochabamba, Bolivia (Aug. 5, 2006).

⁵⁹ *Violaciones a niñas sacuden al país pero gana la impunidad*, LA RAZON, Bolivia (Nov. 13, 2009).

⁶⁰ See Parker John Palmer, *Mechanisms for the Recapture of Imputados: A Review and Proposal for Bolivia* (2010).

⁶¹ See *Código de Procedimiento Penal: Bolivia*, Art. 224

B. Bolivia's international legal obligations to confront sexual violence against adolescents

Bolivia has a strict obligation to investigate, prosecute and punish perpetrators of sexual violence and combat the underlying social attitudes that perpetuate violence. Failure to comply with this obligation represents discrimination against adolescent girls. As such, this Commission has an important role in ensuring Bolivia's compliance with its Convention obligations to combat sexual violence against adolescent girls.

1. The duty to respond to human rights abuses with due diligence

- a. *American Convention and IACtHR Velásquez-Rodríguez*: Bolivia must respond to victims of human rights abuses with due diligence. A state violates the American Convention when it treats abuses as a private matter or does not take claims of abuse seriously. Due diligence must be conducted “in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.”⁶²
- b. *Convention of Belém do Pará*: To eliminate violence against women, “the obligation of the State to act with due diligence takes on a special meaning in cases of violence against women.”⁶³
- c. *IACHR Follow-Up Report on Access to Justice and Social Inclusion in Bolivia*: This Commission has previously called on Bolivia to “redouble its efforts to effectively ensure due diligence in the investigation, prosecution, and punishment of violations of women’s rights.”⁶⁴

2. The obligation to combat discrimination and equal protection of law

- a. *American Convention Article 24 and Convention of Belém do Pará Article 7*: Every person is “equal before the law” and is “entitled, without discrimination, to equal protection of the law.”⁶⁵ Additionally, “the right of every woman to be free from violence includes . . . the right of women to be free from all forms of discrimination.”
- b. *IACHR Maria da Penha Maia Fernandes v. Brazil*: The failure of the government to adequately investigate domestic violence and protect the petitioner through the court system amounted to discrimination against her as a woman.⁶⁶
- c. *IACtHR González et al. (“Cotton Field”) v. Mexico*: The failure to

⁶² *Case of Velásquez-Rodríguez v. Honduras*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 4, para. 177 (1988).

⁶³ IACHR, *Access to Justice and Social Inclusion*, para 328.

⁶⁴ IACHR, *Follow-Up Report: Access to Justice and Social Inclusion*, para. 207.

⁶⁵ American Convention, art. 24.

⁶⁶ *Maria da Penha Maia Fernandes v. Brazil*, para. 47.

investigate the kidnapping of teenage girls was gender-based and therefore discriminatory.⁶⁷

- d. *ECHR Opuz v. Turkey*: The failure to exercise due diligence in

⁶⁷ “*Cotton Field*” v. *Mexico*, para. 231.

investigating and prosecuting gender-based violence amounted to discrimination against women.⁶⁸

⁶⁸ *Opuz v. Turkey*, para. 191 (reviewing decisions by the CEDAW Committee, the Human Rights Committee, this Commission and the Court finding that gender-based violence is discrimination).

- e. *CEDAW Committee*: Bolivia's failure to address societal attitudes about sexual violence constitutes discrimination against women and girls.⁶⁹
3. Bolivia's duty to modify social and cultural patterns of violence
- a. *Convention of Belém do Pará and CEDAW*: Bolivia has the duty to not only investigate all instances of violence against women with due diligence and stop discriminatory policies, but also to modify social and cultural patterns of discrimination and violence against women.
 - b. *Convention of Belém do Pará Article 7(e) and CEDAW Article 5(a)* : Bolivia is obligated to "adopt all appropriate measures . . . to modify legal or customary practices which sustain the persistence and tolerance of violence against women."⁷⁰ CEDAW's Article 5(a) similarly requires Bolivia to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes."⁷¹

III. BOLIVIA'S CRIMINAL JUSTICE SYSTEM FAILS TO PROVIDE JUSTICE TO ADOLESCENT GIRLS WHO ARE VICTIMS OF SEXUAL VIOLENCE

Bolivia's chaotic legal system fails to hold accountable perpetrators of sexual violence against adolescent girls, and it also revictimizes the adolescent victims. The problems begin with a statutory structure that, despite repeated recommendations from assorted international bodies, continues to condone rape if the rapist marries the victim, classifies rape of adolescents as a lesser crime than rape of other age groups, and maintains a lower age of consent for girls than for boys. The judicial system also places the burden on the victim to pursue a criminal prosecution, treating the violence as a private matter, and effectively only providing justice for the rich. The criminal justice system remains incoherent, with confusing procedures and jurisdictional rules, multiple delays, and inadequate resources. Adolescent victims of sexual abuse are revictimized by forensic doctors, prosecutors, and judges who blame them for the violence and fail to protect them from intimidation by the perpetrators.

A. Legal Procedures and Institutions

1. Laws and Policies that minimize and privatize sexual violence

Bolivia's laws and procedures minimize and privatize sexual violence against adolescent girls in multiple ways. First, several statutes minimize sexual violence. The rape marriage laws condone rape if the rapist marries the victim, thereby negating the criminal aspect of the rape and the societal need to punish such criminal conduct; estupro laws reflect a societal belief that adolescent girls cannot be trusted when they report sexual violence and that the crime is less significant because of

⁶⁹ Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 19* (1992).

⁷⁰ Convention of Belém do Pará, art. 7(e).

⁷¹ CEDAW; see also Comm. on the Elimination of All Forms of Discrimination against Women, *General Recommendation No. 3* (1987) (stating "all States parties effectively to adopt education and public information programs, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.").

their age; and, by maintaining different legal age of consent for boys and girls, the Bolivian legal system places young girls at greater risk for sexual violence. Second, as a result of the lack of resources and will of the criminal justice system, very little investigation, prosecution, or appeal is possible unless the victims and their families pay for or actually undertake these tasks. The result is to further privatize sexual violence. Third, the Bolivian legal system is widely viewed as corrupt.

- a. Multiple laws minimize the severity of sexual violence against adolescent girls, including *estupro*, rape marriage laws, and discrepancies between sexes in ages of consent.
 - i. Penal Code Article 309: *Estupro* is the act of unlawful sexual relations through seduction by an adult with an adolescent between ages 14 and 17. Unlike rape, which carries a penalty of 5 to 15 years in prison, or child rape, which carries a penalty of 10 to 20 years in prison, a person convicted of *estupro* faces only 2 to 6 years imprisonment.⁷²
 - ii. Penal Code Article 317: In cases of rape, *estupro*, or other sexual abuse of a person over the age of consent, the defendant may evade any punishment by marrying the victim.⁷³ About five percent of rapists marry their victims.⁷⁴
 - iii. Family Code Article 44 sets the minimum age of marriage for men at 16, but for women at 14. Family Code Article 81 considers a marriage that violates Article 44 to be legally valid if the adolescent girl is 14 years and one month old at the time of the challenge. Additionally, a marriage that violates Article 44 is legally valid if the adolescent girl conceives a child before age 14.⁷⁵
 - iv. Family Code Article 86 prevents an adolescent girl from challenging her marriage if her husband physically forced her to marry him, but she continues to live with him after the physical violence has stopped.⁷⁶
 - v. Law No. 1674 on Family and Domestic Violence contains loopholes that allow too many exceptions. Law No. 2033 on the Protection of Victims of Crimes against Sexual Freedom contains exceptions and loopholes that deny protections to victims of sexual abuse.⁷⁷
 - vi. Crimes against “sexual integrity” under Law No. 1678 require filing a public complaint. The prosecutor officially has responsibility to investigate, but in practice, the prosecutors place the burden on the victim.⁷⁸

⁷² See *Código de Procedimiento Penal: Bolivia*, Art. 309.

⁷³ *Código de Procedimiento Penal: Bolivia*, Art. 317.

⁷⁴ *Abusadores de menores de edad hacen de sus víctimas sus parejas*, LA RAZON (July 6, 2008).

⁷⁵ See Parker Palmer, *Legally Stripped: Discrimination Against Female Adolescents in Bolivia* (2011).

⁷⁶ See *id.*

⁷⁷ IACHR, *Access to Justice and Social Inclusion*, paras. 326-27, 375.

⁷⁸ *Id.*, paras. 304-06, 332-33, 345-46, 395.

- a. The Bolivian judicial system places the burden on the victim to investigate and pursue claims.
 - i. While rape is officially a public crime, victims must press charges rather than rely on police and prosecutors to pursue crimes.⁷⁹
 - ii. Generally, appellate courts in Bolivia are only accessible to the very wealthy. The Public Defender's office does not have a system to handle cases before the Supreme Court. Therefore, even if an adolescent girl with limited means can bring her complaint of sexual violence into the Criminal Court, it is highly unlikely she could ever appeal the Court's decision. This is especially true for girls accusing family members of sexual violence, because they may otherwise find themselves alone moving forward.⁸⁰
 - iii. The victim must pay for her physical exam to receive the requisite medical certificate for filing a private complaint. If a victim does not undergo this physical exam, her case will never reach a prosecutor.⁸¹
 - iv. Furthermore, the Bolivian government does not meet its responsibility to investigate and collect evidence of reported crimes, leaving that burden to the victim.⁸² In addition, the victim and her family often must apprehend the perpetrator as well.⁸³ Once the victim has located the perpetrator, she must wait for the assigned police officer to have free time to capture the perpetrator. The victim or her family must pay the transportation costs involved in apprehending the perpetrator.⁸⁴
 - v. Moreover, corruption in Bolivia pervades all levels of society, but judicial corruption is a chronic and increasing problem, despite efforts to reform the judicial system. In 2010, Transparency International Global found that Bolivian households consider the judiciary to be particularly marked by corruption, with 30 percent of the respondents admitting to have paid a bribe in 2008.⁸⁵

2. Judicial system incoherence: confused, overlapping, and delayed judicial proceedings

A lack of clear procedural and jurisdictional rules leads to repeated transfers of

⁷⁹ Torres, *Crime and Society, Bolivia*.

⁸⁰ *Id.*

⁸¹ IACHR, *Access to Justice and Social Inclusion*, paras. 126, 340, 345, 348.

⁸² *Id.*; El Centro de Información y Desarrollo de la Mujer (CIDEM), *Boletina Feminista Digital*, Segunda Época Año 1, No. 4, 25 de Noviembre de 2008, La Paz, Bolivia, available at <http://www.scribd.com/doc/63767027/LA-ESCOBA-Boletina-Feminista-SEGUNDA-EPOCA-ANO-1-N percentC2 percentBA-4 at 4>.

⁸³ *A fiscal no le preocupa intento de violación contra niña de 11 años*, LA PATRIA, Oruro, Bolivia (June 6, 2006).

⁸⁴ Brisa De Angulo, *Legal Practice and Social Constructs Override Legal Intent: Maintenance of the Revictimization of Child and Adolescent Victims of Sexual Abuse* (2010).

⁸⁵ José Miguel Fabbri, *Corruption in Bolivia: Reforming the Judiciary System* (2002); Global Advice Network, *Business Anti-Corruption Network, Bolivia Country Profile*, available at: <http://www.business-anti-corruption.com/country-profiles/latin-america-the-caribbean/bolivia/general-information/>.

cases from one court to another, multiple and conflicting rulings on the same issues, and extensive delays. Inadequate funding causes numerous problems, including inadequate investigation and collection of evidence, and the failure to select citizen judges, which leads to additional delays. All of these problems impact the victim, who must suffer through repeated postponements, re-trials, and an overwhelming sense that the justice system is not handling her case in an efficient and professional manner. If she persists despite the obstacles, the procedural errors often result in allowing a guilty perpetrator to go free.

- a. The Bolivian legal system suffers from a number of flaws, including lack of clarity regarding procedures and jurisdiction, and procedural delays caused by lack of docket and schedule control. The resulting delayed and repetitive procedures often drag out the process, without resolution, and lead many victims to simply abandon their cases.⁸⁶
- b. Individual prosecutors have too much discretion regarding whether to prosecute a certain perpetrator. As a result of differences and disagreements among prosecutors and judges, victims cannot predict what may happen in a given case, a problem that is especially acute in cases involving sexual violence.⁸⁷
- c. As a result of the lack of clear judicial procedures, the victim and her lawyers may not know whether they should pursue a case in the criminal system or the family court system. If they choose incorrectly, a case may be dismissed for lack of jurisdiction or transferred, with the resultant delays, to another judicial system.⁸⁸
- d. Legislation prohibiting family and sexual violence is not fully enforced, “in part because of the procedural bureaucracy, lack of staff training, corruption, and family, social, and official pressure against reporting cases.”⁸⁹
- e. Political instability contributes to the confusion, through the lack of coordination between local and national governments.⁹⁰
- f. The Bolivian judicial system continues to suffer from interference, corruption, and a lack of independence, which undermines victims’ access

⁸⁶ IACHR, *Access to Justice and Social Inclusion*, paras. 99, 118, 311, 326, 339; *Inadecuados procedimientos en casos de abuso sexual dañan más a víctimas*, OPINION, Cochabamba, Bolivia (Dec. 7, 2006). One ten-year-old girl who became pregnant after suffering rape had to endure the flawed Bolivian court system when trying to seek justice. *El IFFI expresó que respalda la decisión de los padres de interrumpir el embarazo de 76 días*. LOS TIEMPOS, Cochabamba, Bolivia (July 20, 2006).

⁸⁷ IACHR, *Access to Justice and Social Inclusion*, paras. 99, 118, 311, 326, 339.

⁸⁸ *Id.* One example of administrative confusion and departmental incompetence is when several different agencies have misplaced crucial biological evidence, as in the cases of two teenage girls who had been raped and murdered. *Las evidencias de la violación a dos jóvenes no aparecen*. LA RAZON (Dec. 7, 2005).

⁸⁹ IACHR, *Access to Justice and Social Inclusion*, paras. 99, 118, 311, 326, 339.

⁹⁰ *Id.*

to justice and fosters impunity. Vacancies have not been filled, due to the non-consensus of political parties. As a result, the judicial system lacks structure, a fact that permeates through all levels.⁹¹

- g. There are an overwhelming number of cases backlogged in Bolivian courts, especially in Cochabamba.⁹² Victims must often wait a long time to tell their stories, which sometimes they must repeat in public settings before officials who have not been properly trained.⁹³
- h. The low number of prosecutions for sex crimes may be due to prosecutors' lack of knowledge of the process to secure a conviction.⁹⁴

B. Bolivia's lack of resources and training of forensic doctors, judges, and prosecutors leads to a failure to protect adolescent victims from revictimization

Inadequately trained and insensitive medical and legal staff revictimize the adolescent victim of sexual abuse through inappropriate examinations and questions. They blame the victim for her ordeal, minimize the pain that she has suffered, fail to protect her from intimidation, and mishandle the investigation and prosecution of the crime.

1. Bolivia has not established specialized procedures for handling allegations of child sexual abuse.⁹⁵ Child and adolescent victims regularly suffer through multiple traumatic and inappropriate procedures:
 - a. From the moment the victim of sexual violence first files a complaint, she is met with untrained government officials.
 - b. Prosecutors and judges are not trained to deal with child and adolescent victims of sexual abuse, leading to inappropriate and oppressive questioning, as well as skepticism and unfounded assumptions about sexual violence.
 - c. Untrained forensic doctors perform painful and traumatizing medical examinations, which are required to initiate a complaint. Victims of sexual violence are subjected to "repeated forensic medical examinations that in most cases do not respect the minimum conditions of hygiene." The examinations often are not conducted in private. Most medical exams search only for physical, rather than sexual violence, and the rupture of the hymen, even when rupture is not relevant to the accusation. Such exams

⁹¹ U.N. Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Activities of her Office in the Plurinational State of Bolivia*, paras. 28-33, U.N. Doc. A/HRC/13/26/Add.2 (Mar. 18, 2010); U.N. Human Rights Council to the UN General Assembly, *Report of the United Nations High Commissioner for Human Rights on the activities of her Office in the Plurinational State of Bolivia*, para. 35, U.N. Doc. A/HRC/16/20/Add.2 (Feb. 2, 2011).

⁹² *Retardación: 70 mil juicios pendientes*. LOS TIEMPOS, Cochabamba, Bolivia (June 6, 2011).

⁹³ IACHR, *Access to Justice and Social Inclusion*, paras. 99, 118, 311, 326, 339 (June 28, 2007).

⁹⁴ *Las violaciones subieron de dos a 92 y el 99 por ciento queda sin sentencia: 3.399 niños, adolescentes y mujeres, agredidos en 2005*, LOS TIEMPOS, Cochabamba, Bolivia (Mar. 28, 2006).

⁹⁵ CRC, *Concluding Observations: Bolivia*, paras. 83-84.

prejudice those sexually active by choice and girls born without a hymen or whose hymens broke through non-sexual activities.⁹⁶

⁹⁶ IACHR, *Access to Justice and Social Inclusion*, paras. 353, 355.

2. Victims and witnesses are not protected from violence, threats, and other intimidation.⁹⁷
 - a. Perpetrators are rarely in custody, and easily flee, including leaving the country, during the long delays in the proceedings, and the police are unwilling or unable to capture fugitives.
 - b. Ineffective implementation of a 2000 law designed to curtail excessive pre-trial detention has created conditions in which those accused of sexual abuse easily escape accountability. Although judges still have the authority to order preventive detention for suspects deemed flight risks or to impose significant restrictions on a suspect's travel, they do so rarely. As a result, this well-intentioned law has resulted in ineffective prosecution and punishment of sexual violence crimes.⁹⁸
 - c. Lack of budgetary allocations for Family Protection Brigades, political instability, and government changes have left the Brigades powerless. Only about 30 percent of Bolivian municipalities have branches of the newly created Municipal Women's Offices and Comprehensive Municipal Legal Services.⁹⁹

C. Bolivia's international legal obligations to provide justice to adolescent victims of sexual violence

Under international law, Bolivia has the obligation to ensure justice and to provide a competent and fair judicial process that ensures the dignity and humane treatment of the victim throughout. However, the criminal justice system not only fails to provide justice, but also re-traumatizes and revictimizes adolescent girls who pursue justice.

1. Victim's right to competent and fair judicial system
 - a. *American Convention Articles 8 and 25*: "[E]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal."¹⁰⁰ Additionally, "[e]veryone has the right to simple and prompt recourse . . . to a competent court or tribunal for protection against acts that violate his fundamental rights."¹⁰¹
 - b. *CRC Articles 3, 12, and 39*: Requires that police, prosecutors, and courts act in the best interest of the child, assure the ability of children to be heard in court proceedings, and ensure the recovery and reintegration of child victims.
2. Right to dignity and human treatment

⁹⁷ *Id.*, paras. 138-39.

⁹⁸ Torres, *Crime and Society, Bolivia*.

⁹⁹ IACHR, *Access to Justice and Social Inclusion*, paras. 310-11, 340 (June 28, 2007).

¹⁰⁰ American Convention, art. 8(1).

¹⁰¹ *Id.* at art. 25(1).

- a. *American Convention Articles 5 and 11*: The criminal justice system dehumanizes adolescents and undermines their dignity. “Every person has the right to have his physical, mental, and moral integrity respected,”¹⁰² and “[e]veryone has the right to have his honor respected and his dignity recognized.”¹⁰³ These articles apply to the forensic doctors, prosecutors, judges, and police. Each step of the criminal justice system subjects girls to trauma and re-victimizes them rather than protects them. Furthermore, the state fails to protect girls from harassment, abuse, and violence during the criminal proceedings by allowing perpetrators to continue terrorizing their victims.

IV. REQUESTED RESPONSE BY THE COMMITTEE

It is important that the Commission take follow-up actions regarding sexual violence against adolescent girls in Bolivia. The Commission has the necessary authority under the American Convention on Human Rights Article 41 and the Rules of Procedure of the Inter-American Commission on Human Rights Article 15, including making recommendations to Bolivia, preparing studies or reports, requesting information from Bolivia, conducting on-site visits, and assigning a working group.¹⁰⁴ We respectfully request the Commission to conduct the following measures to ensure Bolivia’s compliance with its obligations regarding adolescent sexual violence.

A. Follow-up hearings or working groups

We urgently ask this Commission to conduct intensive monitoring and follow-up meetings or establish a working group on the issue of sexual violence against adolescent girls in Bolivia.

1. The need for on-going monitoring

Bolivia’s continued noncompliance with its international obligations necessitates the establishment of a working group dedicated to the implementation of substantive reforms. Periodic reports and Commission cases have raised these and similar issues for decades with little reform, for example:

- a. Inter-American Court of Human Rights, *Case of MZ v. Bolivia*, October 10, 2001.
- b. Inter-American Commission on Human Rights, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, 2007.
- c. Inter-American Commission on Human Rights, *Follow-Up Report – Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, 2009.
- d. Committee on the Rights of the Child, 52nd Session, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, Concluding Observations: The Plurinational State of Bolivia*, October 16, 2009.

¹⁰² *Id.* at art. 5.

¹⁰³ *Id.* at art. 11.

¹⁰⁴ *Id.* at art. 41; Rules of Procedure of the Inter-American Commission on Human Rights, art. 15.

- e. Committee on the Elimination of all Forms of Discrimination against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Bolivia*, April 8, 2008.
 - f. Committee on the Rights of the Child, *Consideration of Reports Submitted by States parties Under Article 44 of the Convention, Concluding Observations: The Plurinational State of Bolivia*, October 16, 2009.
2. Possible future hearings on sexual violence in Bolivia.

In addition to making recommendations and monitoring reforms, future Commission hearings could benefit from discussing the following related abuses:

- a. Adolescent abuse in detention centers, state-run group homes, and other institutions.¹⁰⁵
- b. Sex trafficking of women and girls.¹⁰⁶

B. On-site visits

We ask the Commission to consider conducting on-site visits that could include assessing: (1) the extent of sexual violence against adolescents; (2) Bolivia's criminal justice and social service responses; and (3) implementation of this Commission's recommendations.

C. Recommendations for legal and policy reforms

This Commission is authorized to “make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights.”¹⁰⁷ We encourage the Commission to consider the following recommendations for legal and policy reforms:

1. Recommended legal reforms
 - a. Repeal Bolivia's *estupro* law under Article 309 of the *Código de Procedimiento Penal*.
 - b. Repeal Bolivia's rape amnesty law in cases where the perpetrator marries the victim under Article 317 of the *Código de Procedimiento Penal*.¹⁰⁸ Bolivia offers “legal absolution” when a perpetrator of a sexual crime “marries the victim before the judgment is handed down.”¹⁰⁹
 - c. Raise the age of consent to marry for females from 14 to 18 and from 16 to 18 for males, making it the same for both genders and complying with

¹⁰⁵ Sexual abuse in children's group homes is widespread. Between July 2009 and January 2010, 138 people, including children and adolescents, were sexually abused in various children's homes in Cochabamba. In one home, older boys living there sexually abused at least 42 children ages four to thirteen. The home staff knew about this abuse, but did not report it or try to prevent it. *Abusan en Bolivia a 138 niños en hogares infantiles*, Pueblo en línea (Feb. 4, 2010).

¹⁰⁶ CEDAW, *Bolivia Report*, para. 26.

¹⁰⁷ American Convention, art. 41(b).

¹⁰⁸ See CEDAW, *Concluding Comments: Bolivia*, para. 7.

¹⁰⁹ IACHR, *Access to Justice and Social Inclusion*, paras. 304, 346 (June 28, 2007).

international standards.¹¹⁰

- d. Adopt and strengthen criminal procedural protections for adolescent victims of sexual abuse including:
 - i. Create a special technical unit for the investigation of crimes of sexual violence, with specialized, trained personnel, including specially trained forensic doctors, investigators, prosecutors, and judges.¹¹¹
 - ii. Create timetables and clear rules of procedure for all hearings and trials.
 - iii. Develop a program to effectively address jurisdictional disputes in sexual violence prosecutions.
 - iv. Implement a clear legal structure that handles sexual violence as a public crime subject to public, criminal laws.
 - v. Provide trial and hearing “safe havens” for victims (such as separate waiting rooms).
 - vi. Ensure that pre-trial release is strictly limited based on the risk to the victim and the victim’s family as well as the risk of flight, and that pending trial perpetrators’ ability to leave the country is strictly limited.
 - vii. Strongly enforce victim and witness intimidation laws.
 - viii. Respect confidentiality of adolescent victims at all stages of criminal proceedings.¹¹²
 - ix. The Committee on the Rights of the Child notes that during judicial proceedings with a child victim of violence, the child “should be treated in a child-friendly and sensitive manner throughout the justice process, taking into account their personal situation, needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.”¹¹³ Furthermore, the State must strictly apply its criminal law procedures “in order to abolish the widespread practice of *de jure* or *de facto* impunity.”¹¹⁴

2. Recommendations for policy reforms:

- a. Ensure that sexual violence is treated as a public offense, not a private matter, and that the state bears the burden of investigation and prosecution, including:
 - i. Eliminate the practice of police charging for “transportation” through adequately funding investigations, banning the practice, and punishing the practice.
 - ii. Pay all expenses related to forensic examinations and

¹¹⁰ See CRC, *Concluding Observations: Bolivia*, para 26.

¹¹¹ The friendly settlement in *MZ v. Bolivia* provides for similar measures, which Bolivia has not fulfilled.

¹¹² CRC, *Concluding Observations: Bolivia*, para 78(c).

¹¹³ CRC General Comment 13 at para. 54.

¹¹⁴ *Id.* at para. 55(c).

psychological examinations, including ensuring that sufficient forensic doctors are available or allowing other classes of trained health care professionals to conduct the requisite medical examination.

- iii. Assume the burden of all appeals, including legal expenses.
- b. Adequately resource and train personnel, including training and educating judges, lawyers, police, forensic doctors, SEDGES personnel, and all other necessary professionals regarding sexual violence against adolescents.¹¹⁵
- c. The Committee on the Rights of the Child notes that qualified professionals with specific and comprehensive training in children's rights should undertake child-sensitive investigations. The state must take "[e]xtreme care . . . to avoid subjecting the child to further harm through the process of the investigation." To achieve this, "all parties are obliged to invite and give due weight to the child's views."¹¹⁶
- d. Dedicate the necessary resources to ensure mental and physical recovery of adolescent victims and full reintegration into their communities.¹¹⁷
- e. Undertake public awareness campaigns and human rights education campaigns regarding adolescent sexual violence. The UNICEF and the CEDAW Committee have noted that Bolivia's efforts to address societal attitudes that lead to violence against women have so far fallen short.¹¹⁸

¹¹⁵ The friendly settlement in *MZ v. Bolivia* provides specific measures that Bolivia has not fulfilled which are appropriate in this context as well, including: proper training of forensic doctors, providing funds for facilities that allow for confidential forensic exams, dedicating 15% of its educational programs at the *Instituto de la Judicatura* to the promotion and protection of human rights, training judges and lawyers with respect to human rights, including sexual violence against women, regarding judge turnover, ensure newly appointed or elected judges are properly trained before handling child sexual abuse cases, and providing funds for manuals educating professionals with respect to sexual crime and the needs of survivors of sexual violence. *See also* CRC, *Concluding Observations: Bolivia*, para 78.

¹¹⁶ CRC General Comment 13 at para. 51.

¹¹⁷ *See* CRC, *Concluding Observations: Bolivia*, para 78; CRC General Comment 13, para 50-58.

¹¹⁸ *See* CEDAW, *Concluding Comments: Bolivia*, paras. 20, 24; United Nations Children's Fund/National Institute of Statistics of Bolivia (UNICEF/INE), *VIOLENCIA CONTRA LA NIÑEZ EN BOLIVIA* (2007).