



BOLIVIA

A Country Factsheet

INTRODUCTION

Bolivia has the second highest rate of sexual violence in Latin America and the Caribbean (after Haiti) during a woman's lifetime, according to data from the Pan-American Health Organization.¹ However, even these high numbers fail to capture the full extent of the abuse women and girls face as Bolivia has one of the lowest reporting rates for sexual violence in South America, a problem that has only been exacerbated during the lockdown as a result of COVID-19.

Bolivia has ratified numerous international and regional human rights conventions including the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (the Belém do Pará Convention). Despite this, protection gaps in the laws themselves, particularly the Penal Code of Bolivia, deny access to justice for many survivors of sexual violence as they provide a number of opportunities for perpetrators to escape justice.

Note: The information in this factsheet is largely derived from the report titled *Failure to Protect: How Discriminatory Sexual Violence Laws and Practices are Hurting Women, Girls, and Adolescents in the Americas*, published by Equality Now in September 2021. Please refer to the report for further information on these laws as well as a full list of recommendations.

¹ Violence Against Women in Latin America and the Caribbean, PAHO, 9 (2013). Available at <https://www.paho.org/hq/dmdocuments/2013/paho-vaw-exec-summ-eng.pdf>.

PROTECTION GAPS IN THE LAW

Force-Based Definition of Rape

What is the issue? Definitions of rape which are based on force or the threat of force, as opposed to lack of consent to the sexual intercourse, fail to meet international human rights standards² and are problematic for a number of reasons. Force-based definitions of rape risk leaving certain types of rape unpunished, contribute to rape myths and the perception that it is the responsibility of victims to protect themselves, significantly limit the extent to which crimes of rape can successfully be prosecuted, and leave room for significant impunity.

The Model Rape Law drafted by the UN Special Rapporteur on Violence against Women states that:

“Rape is an act of sexual nature committed without consent. Definitions of rape should explicitly include lack of consent and place it at its centre, stipulating that rape is any act of sexual penetration of a sexual nature by whatever means committed against a person who has not given consent.”³

What does Bolivian Law say?

- The definition of rape in the Penal Code is based on force, requiring intimidation, physical or psychological violence, taking advantage of a severe mental disease or insufficient intelligence of the victim, or any other disabling cause which prevents the victim from resisting.⁴
- The law does not define the term “consent” or provide presumptions against consent.

What needs to change? The Bolivian government should:

- Ensure that the definition of rape is amended so that it is not based on a requirement to prove force, but rather covers all forms of penetration with a body part or object committed without the victim’s voluntary, genuine, and willing consent, and in a wide range of coercive circumstances.
- Ensure that the law recognizes there are circumstances where it is not possible to give voluntary, genuine, and willing consent and that it must look more broadly at the issue of exploitation, including sexual violence in the context of family or other relationship where there is particular dependency and inequality of power relationships.

² See Inter-American Court of Human Rights, *Sentence in the Caso J. vs. Peru*, 27 November 2013, https://www.corteidh.or.cr/docs/casos/articulos/seriec_275_esp.pdf at para. 358; Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, §5.

³ Report of the Special Rapporteur on violence against women, its causes and consequences, *A framework for legislation on rape (model rape law)*, A/HRC/47/26/Add.1, 15 June 2021, p. 6.

⁴ Article 308, Penal Code of Bolivia, https://www.oas.org/dil/esp/Codigo_Penal_Bolivia.pdf

What is the issue? The crime of *estupro* usually describes cases in which an adult has sexual relations with a minor above the legal age of consent by means of seduction or deceit. The penalties for *estupro* are normally far lower than applicable penalties for rape. The existence of this discriminatory offense in relation to teenage girls contributes to impunity for rapists, as the lesser offense of *estupro* is often used to circumvent application of the rape offense. The United Nations Special Rapporteur on Violence Against Women has recommended that *estupro* provisions, where they exist, should be abolished.⁵

What does Bolivian Law say?

- The Penal Code of Bolivia contains an *estupro* provision, whereby having carnal access to a person between the ages of 14-18, through seduction or deceit, is considered as *estupro*.⁶ The offense of *estupro* is punishable with a lower penalty of imprisonment between 3-6 years, as compared to imprisonment of 15-20 years for rape.
- In the Bolivian justice system, the lesser offense of *estupro* is often used to circumvent rape charges, thereby denying justice to adolescent victims of rape and weakening the overall statutory scheme against sexual violence. Bolivian courts have been using the *estupro* law to allow adults who rape adolescents to avoid the full consequence of their crime.

What needs to change? The Bolivian government should:

- Repeal the *estupro* provision contained in Article 309 of the Penal Code. Repeal of discriminatory *estupro* provisions must be accompanied by a complete overhaul of sexual violence laws including adopting a consent-based definition of rape (as discussed above), to ensure that adolescent girls are protected from sexual violence in all circumstances. This is again because the current law has a requirement to prove additional violence and resistance which is not always possible and does not take into account the many different reactions to being raped.
- While existing *estupro* provisions remain in the statute books, prosecutors and judges should ensure that acts of sexual violence against adolescent girls which meet the threshold of the rape definition should always be prosecuted/ charged as rape and not *estupro*.

Procedural Gaps in the Law

Currently, the Penal Code of Bolivia has a limited statute of limitations for all offenses, including rape. A rape victim is only afforded 8 years to come forward and report the crime before prosecution is no longer possible.⁷ The statute of limitations for crimes related to sexual violence for minor victims is extended and only starts to run four years after majority (which is 18).⁸ Therefore minor victims of rape have until they reach the age of 30 to file a case. Short limitation periods during which rape cases may be brought forward impede access to justice for survivors, particularly given the various factors which cause delays in reporting. Additionally, **the Inter-American Court** in *Fernández Ortega et al. v. Mexico*⁹ and *Linda Loaiza López Soto v. Venezuela*¹⁰ has held that rape is a form of torture in certain circumstances. Since crimes against humanity such as torture should not have any statute of limitations,¹¹ and since international jurisprudence has drawn clear parallels between rape and torture, no limitation period should be imposed for rape.”

5 Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, A/HRC/47/26, 19 April 2021, paras 84-85.

6 Article 309, Penal Code of Bolivia, https://www.oas.org/dil/esp/Codigo_Penal_Bolivia.pdf

7 Article 29, Code of Criminal Procedure.

8 Article 30, Code of Criminal Procedure.

9 IACHR, *Fernández Ortega et al. v. Mexico*, Judgment of August 30, 2010, https://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf

10 IACHR, Report No. 33/16, Case 12,797. Merits. *Linda Loaiza López Soto and relatives. Venezuela*. July 29, 2016, para 209.

11 See, for example, CAT, Concluding Observations on Turkey, UN Doc. CAT/C/CR/30/5, 2003, §7(c); CAT, Concluding Observations on Chile, UN Doc. CAT/C/CR/32/5, 2004, §7(f).

In addition, the filing by a minor alone of a complaint of sexual violence is nearly impossible as it requires either parental authorization or the assistance of a service organization or ombudsman. This is problematic as often the perpetrators themselves are family or community members and other family members thus may not be willing to assist the survivor in reporting the incident. This contributes to a general lack of reporting of sexual violence against minors which in turn adds to the culture of impunity in such cases. For example, cases have been reported where an adolescent girl was sexually abused by her step-father and her mother refused to allow her to report the crime to the police.

The Bolivian government should:

- Ensure that the prosecution of rape, in cases of both adult and minor victims, is not subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict.
- Permit minors to file complaints of sexual violence on their own authority, without requiring parental permission or approval from any other person/body.

Lack of Effective Implementation of Existing Laws

In addition to gaps in legal protection, there is also failure to effectively implement laws on sexual violence and a systemic practice of enabling impunity for perpetrators of sexual violence, especially when committed against underage girls. Those women and girls who do report their abuse often face significant obstacles to achieving justice, including re-victimization, delays in prosecution, and unwillingness by police to believe survivors and take effective action to investigate sexual violence crimes. Further, prosecutors and judges are not commonly sensitized to structural sex inequality and are influenced by harmful rape myths and gender stereotypes. For instance, many judges still look exclusively for evidence of physical injuries and believe that rape cannot have taken place in the absence of such physical injuries.¹²

Further, the State's initiatives to protect and support survivors of gender-based violence have had little support from the government institutions charged with overseeing these efforts and also suffer from a lack of financial resources.

The Bolivian government should:

- Ensure that all forms of sexual violence offenses are treated as matters of public interest, which have to be investigated and prosecuted as a priority.
- Effectively implement laws on sexual violence, including by training justice system officials, including police, prosecutors and judges, to specifically deal with cases of sexual violence in a victim-centered and trauma-informed way and implement investigation and prosecution protocols to guide implementation of sexual violence legislation and processing of such cases in the judicial system. Ensure that such protocols also specifically address the needs of marginalized communities.
- Budget sufficient resources for programs to prevent and address sexual violence, actively and integrally including civil society, women and girls, and survivors of sexual violence in policy planning and budgetary processes, and taking a survivor-centered, holistic approach with a special focus on the needs of girls and adolescents.
- Implement age-appropriate sex and relationship education programs in schools, and public information and awareness campaigns aimed at promoting equality, dismantling negative stereotypes, and ending violence against women and girls.
- Develop and fund awareness-raising campaigns to inform the public, particularly women and girls, to understand their rights, and improve knowledge of laws related to sexual violence, available remedies and methods to preserve evidence prior to reporting.

¹² See Zulema Alanes Bravo, Sexual Violence against Girls and Adolescents: The Pending Idea of (In)justice, Fides Agency, 10 December 2017.

BRISA'S STORY BOLIVIA

A survivor of incest, who was failed and revictimized by the State and still awaits a fair trial at the national level, is now as a lawyer working to end sexual violence while her own case is pending before the Inter-American Court of Human Rights (IACtHR)

I was 15 years old the first time my 27-year-old cousin Eduardo molested me. I was petrified, totally numb. I couldn't react. I didn't understand what was going on. After that he raped me daily for eight months and brainwashed me into not telling anyone. He knew exactly how to control and manipulate me into staying silent, threatening to rape my little sisters and telling me it would destroy my parents if they knew what was happening.

I developed eating disorders and passed the days crying alone in my room. I tried to commit suicide. My parents knew something was wrong, but never suspected sexual violence. They took me to a special psychology center and that is where I disclosed what had been happening.

My parents and siblings were devastated. My parents were dismayed that they hadn't realized what was happening right in front of them and grieved that they hadn't been able to protect their daughter. After I broke the silence, a whole new world of self-blame opened up, which there shouldn't have been. My parents did the best they could. None of this was our fault, but the guilt persisted.

My parents became diehard champions of getting justice for me. Because I was one of the first adolescents to take a rape case to trial in Bolivia, we faced a lot of resistance. In Bolivia, victims of sexual violence are often blamed, and it is assumed that they had done something to deserve it. My parents begged dozens of lawyers to represent me and were repeatedly told, "I won't shame my name defending a rape victim." People said my case was a lost cause.

The judges didn't want to take my case either, which was shuffled from court to court over 20 times. That gave us great insight into how rape victims were and still are seen in Bolivia – as totally worthless.

When I eventually approached the prosecutor for help, she blamed me for the rape and humiliated me. She made me tell my story over and over again and subjected me to a grueling interrogation. She said she wouldn't stop until she discovered the lies, and that once she found them,

she would put me in jail. After hours of questioning, she told me, "You are a very selfish person. Don't you think about your family? Don't you feel bad that the man you are accusing could go to jail for seven years?"

My forensic exam was a nightmare. A male doctor accompanied by five male medical residents conducted my exam. They made fun of me as I stripped naked. They ordered me to lie on the exam table and then forced my legs open as the doctor probed in my vagina. This horrific exam occurred in a room with open windows. I was exposed to onlookers in the hall.

During the next few months, I went to various psychologists and attended so many meetings with lawyers and prosecutors that I lost count. My parents cried almost every evening, and spent countless hours doing legal research and gathering evidence. They did the work that the prosecutors and lawyers failed to do.

After years of this horror, I decided to become a lawyer to take my own case, as nobody else would help. I have dedicated my life to advocating for survivors of sexual violence and reforming the legal system so that it holds perpetrators accountable rather than revictimizing survivors.

I'm working to shape a society where sexual violence doesn't happen anymore; where girls are safe and don't have to fear their fathers, brothers, uncles, grandfathers, cousins, teachers, doctors, priests, pastors, or neighbors. It has to stop.

**Though Brisa wanted to bring rape charges against her cousin, the judge in her case used his discretion to reduce the charge of rape to one of estupro. Having failed to obtain justice before the national courts, Brisa has taken her case all the way to the Inter-American Court on Human Rights, where it is still pending. But, at the time of this report and almost two decades after she first reported the abuse, Brisa's abuser has still not been brought to justice.*

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