

## **ACCESS TO JUSTICE FOR CHILDREN: BOLIVIA**

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### **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

#### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

According to Bolivia's Constitution, ratified international agreements and human rights treaties prevail over domestic law, and the rights and duties established by the Constitution are to be interpreted in accordance with those instruments.<sup>1</sup> The Plurinational State of Bolivia is party to the CRC and ratified the Convention through Law No. 1152 in May 1990.<sup>2</sup> Bolivia has also ratified all three Optional Protocols to the CRC and was one of the first ten countries to join the Third Optional Protocol on a Communications Procedure.<sup>3</sup>

#### **B. Does the CRC take precedence over national law?**

According to Bolivia's 2009 Constitution, international human rights treaties prevail over domestic legislation.<sup>4</sup> As a result, the Constitution and all legislation have to be interpreted in light of all international human rights treaties ratified by Bolivia.<sup>5</sup> Upon ratification, the Convention became part of national law and is therefore enforceable with respect to promoting and defending the rights of children; however, Bolivia is still working on bringing other laws into full harmonisation with the Convention.<sup>6</sup>

#### **C. Has the CRC been incorporated into national law?**

Bolivia adopted a new Child Code (*Código niño, niña, y adolescente*, the "Child Code") in 2014,<sup>7</sup> incorporating most of the CRC provisions. However, according to the foreword of the new Child Code, "the Code falls within the framework composed of the international instruments ratified by Bolivia, but is also based

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<sup>1</sup> República de Bolivia Constitución de 2009 ("Constitution"), Art. 13 IV., available at: <http://pdba.georgetown.edu/Constitutions/Bolivia/bolivia09.html>.

<sup>2</sup> *Fourth periodic report of Bolivia to the UN Committee on the Rights of the Child*, CRC/C/BOL/4, 25 March 2009, para. 31, available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.BOL.4.pdf>.

<sup>3</sup> Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en).

<sup>4</sup> Constitution, Art. 13 IV.

<sup>5</sup> *Fourth periodic report of Bolivia to the UN Committee on the Rights of the Child*, para. 31; UN Committee on the Rights of the Child, *Summary Record of the 1432<sup>nd</sup> Meeting*, 23 March 2010, paras. 3 & 38, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSR.1432&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSR.1432&Lang=en).

<sup>6</sup> *Fourth periodic report of Bolivia to the UN Committee on the Rights of the Child*, para. 32.

<sup>7</sup> The Law 548 of 17 July 2014 established the new Child Code (available at: [http://www.unicef.org/bolivia/Codigo\\_NNA\\_-\\_Ley\\_548\\_.pdf](http://www.unicef.org/bolivia/Codigo_NNA_-_Ley_548_.pdf)) and repealed the previous 1999 Code (available at: <http://bolivia.infoleyes.com/shownorm.php?id=638>), pursuant to the Law's "Provisions on Repeals and Derogations", page 139.

on an analysis of the real situation and the day-to-day challenges of Bolivian infancy, childhood and adolescence, and in the context of our culture and ancestral values". The new Child Code entered into force in August 2014 but still lacks implementing measures. As a result, it is unclear which provisions are currently in force.<sup>8</sup>

Bolivia has made significant progress in harmonising its laws with the CRC since its last review by the Committee on the Rights of the Child in 2009.<sup>9</sup> Corporal punishment was abolished in all settings in 2014.<sup>10</sup> Alternative care of children and the juvenile justice system were enhanced by the new Child Code of 2014. The gap between positive law and indigenous customary law was reduced as the new Child Code created Committees of Children and Adolescents (*Comités de Niñas, Niños y Adolescentes*) within indigenous communities and accorded indigenous governments the same duties as municipal governments in protecting children's rights.<sup>11</sup> However, the minimum age for marriage has not changed, remaining at 14 years of age for girls and 16 years of age for boys, with parental authorisation.<sup>12</sup>

The following laws further address some of the rights promoted by the CRC:

- **Constitution:** Bolivia's new Constitution was enacted in 2009 and includes a specific section on children's rights (*Derechos de la Niñez, Adolescencia y Juventud*) in Art.s 58-61. Children are to be afforded all rights granted to other human beings, without limitation. A catalogue of rights specifically relating to children has been included in the text of the Constitution, such as the right to development<sup>13</sup> and the recognition of the prevalence of the best interest of the child.<sup>14</sup> The Constitution also recognises that the rights contained therein, including those granted by international human rights treaties,<sup>15</sup> are universally applicable,<sup>16</sup> making no distinction between different age groups.<sup>17</sup> The Constitution specifically forbids discrimination based on age<sup>18</sup> and creates and defines the office and powers of the Office of the Ombudsperson (*Defensoría del Pueblo*).<sup>19</sup>

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<sup>8</sup> The first meeting of the Ministry of Justice for implementing the Code only occurred in August 2015. See:

<http://www.justicia.gob.bo/index.php/noticias/notas-de-prensa/1768-el-ministerio-de-justicia-realizo-la-primer-reunion-para-la-implementacion-del-sistema-penal-para-adolescentes>.

<sup>9</sup> UN Committee on the Rights of the Child, *Concluding observations on the fourth periodic report of Bolivia*, CRC/C/BOL/CO/4, 16 October 2009, para. 7, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBOL%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBOL%2fCO%2f4&Lang=en).

<sup>10</sup> Global Initiative to End All Corporal Punishment of Children, *Corporal punishment of children in Bolivia*, August 2014, available at: <http://www.endcorporalpunishment.org/pages/progress/reports/bolivia.html>.

<sup>11</sup> Child Code, Arts 189 and 190.

<sup>12</sup> Family Code, Art. 44, available at: <http://www.acnur.org/Pdf/0845.pdf?view=1>.

<sup>13</sup> Constitution, Art. 59 I.

<sup>14</sup> Constitution, Art. 60.

<sup>15</sup> Constitution, Art. 14, III.

<sup>16</sup> Constitution, Art. 13 I.

<sup>17</sup> Constitution, Art. 14 I.

<sup>18</sup> Constitution, Art. 14 II.

<sup>19</sup> Constitution, Art. 218-224.

- Family and Domestic Violence Act: The Family and Domestic Violence Act (*Ley Contra la Violencia en la Familia o Doméstica*, the “Domestic Violence Act”) sets out the definition of domestic violence, the procedure for filing claims and prosecuting offenders, and the remedies available to victims, including children.<sup>20</sup>
- Criminal Code: The Criminal Code has been updated to include sections prohibiting certain crimes against children. Law No. 3160 criminalises the trafficking of children and adolescents and Law No. 3325 adds a chapter on slavery, human trafficking and child pornography to the Criminal Code.<sup>21</sup> Law 548 which created the Child Code also details and expands the crime of infanticide in Article 258 of the Criminal Code.<sup>22</sup>
- Office of the Ombudsperson: The Office of the Ombudsperson (*Defensor del Pueblo*) is a national institution for the protection of human rights as laid out in the 2009 Constitution.<sup>23</sup> It provides free services in terms of social and legal protection and human rights promotion.

#### D. Can the CRC be directly enforced in the courts?

As the CRC became national Bolivian law upon its ratification, it can be directly enforced in the courts.

#### E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The courts across Bolivia have frequently cited the CRC in their decisions, e.g. in determining the best interest of the child,<sup>24</sup> or in deciding on pre-trial detention of juvenile offenders.<sup>25</sup>

## II. What is the legal status of the child?

### A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children, through their representatives, can bring cases in domestic courts to challenge violations of children’s rights, including civil claims, private prosecutions and constitutional complaints (*Acción de amparo*) to challenge violations of constitutional guarantees for children.

<sup>20</sup> Domestic Violence Act, available at: <http://bolivia.infoleyes.com/shownorm.php?id=1716>.

<sup>21</sup> Criminal Code, available at: [https://www.oas.org/juridico/mla/sp/bol/sp\\_bol-int-text-cp.html](https://www.oas.org/juridico/mla/sp/bol/sp_bol-int-text-cp.html).

<sup>22</sup> Law 548, “Additional provisions” (*Disposiciones Adicionales*).

<sup>23</sup> Constitution, Part II, Title V, Chapter 2, Section 1.

<sup>24</sup> District Court of La Paz, *Alba v. Sillerico*, 2010, available at:

<https://www.crin.org/en/library/legal-database/alba-v-sillerico>; District Court of La Paz, *Delgado v.*

*Bernal*, 2010, available at: <https://www.crin.org/en/library/legal-database/delgado-v-bernal>; District Court of Cochabamba, *Llanto et. al. v. Corrales*, 2011, available at:

<https://www.crin.org/en/library/legal-database/llanto-et-al-v-corrales>.

<sup>25</sup> District Court of Cochabamba, *Vargas v. Rivero*, 2008, available at: <https://www.crin.org/en/library/legal-database/vargas-v-rivero>;

District Court of Sanata Cruz, *Seas v. Vidal*, 2011, available at:

<https://www.crin.org/en/library/legal-database/seas-v-vidal>.

The Child Code explicitly guarantees access to justice for all children, providing that children have the right to apply for protection and restitution of their rights, either directly or through a representative, to any person, entity or public or private body.<sup>26</sup> The Child Code also provides for specific fundamental rights of children, including special provisions regarding freedom, respect and dignity of children,<sup>27</sup> the right to education, culture and play,<sup>28</sup> and the rights of working children.<sup>29</sup> Violations of these freedoms can be challenged in the Child Courts (*Juez de la Niñez y Adolescencia*).<sup>30</sup>

Cases of domestic abuse or mistreatment or other violations of children's rights can be reported to the police or to the prosecution service (*Ministerio Público*) who are then required to take appropriate steps and bring the case before the authorities within 24 hours.<sup>31</sup>

The victim of a crime may initiate criminal proceedings by submitting a complaint. In the case of a child claimant, the complaint must be made through their legal representatives.<sup>32</sup>

The Constitution provides for specific claims in cases where constitutional guarantees have been violated, including constitutional guarantees for children.<sup>33</sup> These constitutional claims can, for example, be based on the violation of personal freedoms, illegal acts or omissions by state actors, privacy violations, or the unconstitutionality of laws or regulations.<sup>34</sup>

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Children up to 18 years of age<sup>35</sup> are represented by their parents or legal representatives in judicial proceedings.<sup>36</sup> A judge may alternatively appoint a special guardian in cases where the child's interests are opposed to those of the parent or legal representative or if the child does not have a legal representative.<sup>37</sup> If the appointed guardian is negligent in representing the child, he/she can be sentenced to a monetary fine.<sup>38</sup>

The Child Code provides for the right of children to be heard, in that children who are in a position to express their own judgment have the right to freely express their opinion on all matters affecting them, by means of their own

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<sup>26</sup> Child Code, Art. 157.

<sup>27</sup> Ibid., Arts 141-144.

<sup>28</sup> Ibid., Arts 115-121.

<sup>29</sup> Ibid., Art. 130-139.

<sup>30</sup> Ibid., Art. 198.

<sup>31</sup> Domestic Violence Act, Art. 25 & 28.

<sup>32</sup> Code of Criminal Procedure, Art. 78 & 79, available at: <https://www.iberred.org/sites/default/files/cprocedimientopenalboliviano.pdf>.

<sup>33</sup> Constitution, Title IV.

<sup>34</sup> Ibid., Title IV, Chapter II.

<sup>35</sup> Child Code, Art. 5.

<sup>36</sup> Ibid., Art. 194.I.

<sup>37</sup> Ibid., Art. 194.II.; see also: *Alba v. Sillerico* (child who reported his father for abuse was represented by state counsel).

<sup>38</sup> Child Code, Art. 194.III.

choosing, and their opinions must be considered.<sup>39</sup> Furthermore, the principle of the best interests of the child is one of the core principles of the Code, to be observed at all times.<sup>40</sup>

C. In the case of infants and young children, how would cases typically be brought?

In cases regarding infants and young children, cases would be brought in the same manner as outlined above in part II.B. Cases would typically be brought by the parents or legal representatives of the child. In case of a conflict of interest, children are represented by a representative appointed by the court.<sup>41</sup>

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

The Child Code provides for free legal assistance for all children, which is to be provided by an assigned counsel from the Office of the defence of childhood and children (*Defensoría de la Niñez y Adolescencia*).<sup>42</sup>

The Bolivian Code of Civil Procedure also allows applications for legal aid (*Beneficio de Gratuidad*) which, if granted, provides the right to designated counsel and freedom from judicial deposits, costs, and expenses.<sup>43</sup>

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

In its Concluding Observations on Bolivia's performance under the CRC in 2009, the UN Committee on the Rights of the Child noted with appreciation that the principle of the best interest of the child is incorporated in Bolivia's legislation, including in Article 60 of the new Constitution. However, the Committee voiced concern that children are nonetheless not fully treated as subjects of rights and regretted that the principle of the best interests of the child is still not reflected as a primary consideration in all legislative and policy matters affecting children. One of the Committee's special concerns was that the principle is not adequately implemented by all professionals, including the judiciary.<sup>44</sup>

### III. **How can children's rights violations be challenged before national courts?**

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The Constitution provides for specific claims in cases where constitutional guarantees have been violated, including constitutional guarantees for children.<sup>45</sup>

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<sup>39</sup> Ibid., Art. 122.

<sup>40</sup> Ibid., Art. 12.a).

<sup>41</sup> Ibid., Art. 194.II.

<sup>42</sup> Ibid., Arts 185, 188 and 262.h).

<sup>43</sup> Code of Civil Procedure, Chapter 5, available at: <http://bolivia.infoleyes.com/shownorm.php?id=232>.

<sup>44</sup> UN Committee on the Rights of the Child, *Concluding observations on the fourth periodic report of Bolivia*, para. 30.

<sup>45</sup> Constitution, Title IV.

These constitutional claims can, for example, be based on the violation of personal freedoms, illegal acts or omissions by state actors, privacy violations, or the unconstitutionality of laws or regulations,<sup>46</sup> and can be lodged subsidiarily with the Plurinational Constitutional Court (*Tribunal Constitucional Plurinacional*), unless other avenues of recourse are available.<sup>47</sup>

Children and their representatives may lodge complaints regarding violations of all children's rights and freedoms as laid out in the first book of the Child Code with the Child Courts, as provided for in the second book, Title I, Chapter III of the Child Code.<sup>48</sup> Any person with knowledge of a violation of children's rights must report this to the competent authorities.<sup>49</sup>

The Office of the Ombudsperson for Childhood and Adolescence (*Defensoría de la niñez y adolescencia*) can issue complaints to the competent authorities about violations of children's rights. It can intervene for the defence of children in administrative and judicial proceedings. It can conduct advocacy and bring administrative and legal actions necessary for the restitution of the rights of the child.<sup>50</sup>

The Office of the Ombudsperson has the power to “investigate, *ex officio* or pursuant to a complaint, acts or omissions which imply a violation of human rights, guarantees, individual or collective rights established by the Constitution, laws, treaties, and international agreements approved by the Bolivian State.”<sup>51</sup> Any person without exception can reach the Ombudsperson,<sup>52</sup> and can ask for their identity not to be disclosed when making a complaint.<sup>53</sup> The Ombudsperson only has the power to make recommendations and cannot bring challenges pursuant to its investigations.<sup>54</sup>

To challenge crimes listed in the Criminal Code, criminal prosecution can be either public (*pública*), public with private complaint (*pública a instancia de parte*), or private (*privada*):<sup>55</sup>

- Public prosecution: The Public Prosecutor (*Fiscalía/Ministerio Público*) is responsible for conducting prosecution in all cases that are not subject to public prosecution with private complaint or to private prosecution.<sup>56</sup> The victim of a crime may also initiate criminal proceedings by submitting a complaint to the prosecution service. In the case of a child claimant, the complaint must be made through their legal representatives.<sup>57</sup>

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<sup>46</sup> Ibid., Title IV, Chapter II.

<sup>47</sup> Code of Constitutional Procedure, Art. 54, available at: <http://www.lexivox.org/norms/BO-L-N254.xhtml>.

<sup>48</sup> Child Code, Arts 209 and following.

<sup>49</sup> Ibid., Art. 31.

<sup>50</sup> Ibid., Art. 188.

<sup>51</sup> Law 1818 of 22 December 1997 on the Ombudsperson, Art. 11.(2), available at: <http://www.defensoria.gob.bo/sp/quees.marco.asp>.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid., Art. 20.

<sup>54</sup> Ibid., Art. 30.

<sup>55</sup> Code of Criminal Procedure, Chapter I: Criminal Prosecution (Acción Penal), Arts 15 and following.

<sup>56</sup> Ibid., Art. 70.

<sup>57</sup> Ibid., Arts 78 and 79.



- Public with private complaint: The victim has to denounce the crime to the Public Prosecutor, which will then conduct the prosecution. However, when the victim is a child who has not attained the “age of puberty”, has no representative, or the crime was committed by his/her representative, the Public Prosecutor directly conducts the prosecution.<sup>58</sup> The crimes subject to public prosecution with private complaint that could concern children are violation of a duty of assistance, rape or kidnapping.<sup>59</sup>
- Private: The victim him/herself pursues the prosecution; the Public Prosecutor does not get involved.<sup>60</sup> The crimes subject to private prosecution would hardly concern children.<sup>61</sup>

As a result, the Public Prosecutor would most likely be the one to prosecute crimes against children listed in the Criminal Code.

### *Inter-American Commission on Human Rights*

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),<sup>62</sup> on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.<sup>63</sup> A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.<sup>64</sup> The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.<sup>65</sup> The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.<sup>66</sup> When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

### *Inter-American Court of Human Rights*

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<sup>58</sup> Ibid., Art. 17.

<sup>59</sup> Ibid., Art. 19.

<sup>60</sup> Ibid., Art. 18.

<sup>61</sup> Ibid., Art. 20.

<sup>62</sup> The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a “dual role” as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at: [http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm); American Convention on Human Rights, ‘Pact of San Jose, Costa Rica’, Chapter VII, available at: [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>63</sup> American Convention on Human Rights, Art. 44.

<sup>64</sup> Rules of Procedure of the Inter-American Commission on Human Rights, Art. 31-32, available at: <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>65</sup> Ibid., Art. 28.

<sup>66</sup> Ibid., Art. 23.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).<sup>67</sup> Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.<sup>68</sup> The Court's judgments are legally binding on the State against which they are made.

#### *UN Committee on the Rights of the Child*

Finally, once all domestic remedies have been exhausted, complaints against violations of children's rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,<sup>69</sup> which Bolivia has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.<sup>70</sup> The violations must concern a right granted by either the CRC, the Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict<sup>71</sup> and must have occurred after the entry into force of the Protocol on 14 April 2014.<sup>72</sup> Anonymous complaints are inadmissible and so are complaints not made in writing.<sup>73</sup> In addition, only complaints made in one of the working languages of the UN will be accepted.<sup>74</sup> After examining the complaint, the Committee can make recommendations to the State, which are not legally binding.<sup>75</sup>

#### B. What powers would courts have to review these violations, and what remedies could they offer?

The laws of Bolivia grant the courts broad powers to review violations of children's rights. The Constitutional Court, for example, can stop the enforcement of a harmful law or policy, annul a law, or issue orders to take steps to prevent a violation.<sup>76</sup> Despite these positive foundations for effective remedies in Bolivia's national laws, these are often not enforced effectively in practice and Bolivia's court system has been criticised as "corrupt and overburdened" in practice (for further details, see sections IV.F., IV. H. and IV.I. below).<sup>77</sup>

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<sup>67</sup> Ibid., Art. 45.

<sup>68</sup> American Convention on Human Rights, Art. 63.

<sup>69</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en).

<sup>70</sup> Ibid., Art. 5.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid., Art. 7(g).

<sup>73</sup> Ibid.

<sup>74</sup> Office of the United Nations High Commissioner for Human Rights, '23 FAQ about Treaty Body complaints procedures', available at: <http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

<sup>75</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Art. 10.

<sup>76</sup> Constitution, Art. 128 et seqq. and Art. 202 on the powers of the Constitutional Court.

<sup>77</sup> US Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human*



The Child Courts can review any case concerning a claim where the rights protected by the Child Code are threatened or violated.<sup>78</sup> The Child Courts have wide-ranging powers to review violations and can impose punishments or sanctions.<sup>79</sup> For example, the Child Courts can issue warnings, order the violation of children's rights to stop, order restitution, or issue restraining orders.<sup>80</sup>

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Constitutional challenges can be brought in the form of popular actions and therefore also do not require the naming of specific victims (see sections III.D and III.E. below).<sup>81</sup>

The Child Code requires that a complaint before a judge contain the names of the parents, legal representatives, or entity that is representing the interests of the child whose rights have been violated, but it does not seem to require the disclosure of the name of the child in question.<sup>82</sup>

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Collective action is possible, as laid out in Articles 135 and 136 of the Bolivian Constitution. Popular action (*Acción popular*) can be pursued against any act or omission of the authorities, individuals or groups who violate or threaten to violate collective rights and interests related to the homeland, public spaces, safety and public health, the environment and others rights of a similar nature as recognised by the Constitution. Popular actions may be brought at any time and there is no necessity to exhaust judicial or administrative proceedings before filing a claim. The claim can be filed by any person, either individually or on behalf of a community.<sup>83</sup>

Other constitutional claims can also be filed collectively, such as claims regarding the unconstitutionality of laws and regulations,<sup>84</sup> or complaints seeking to enforce a law.<sup>85</sup>

In criminal proceedings where crimes are linked, cases can be joined in front of the judge with jurisdiction over the most serious of the crimes.<sup>86</sup>

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*Rights Practices for 2013 - Bolivia*, at Section I. e., available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

<sup>78</sup> Child Code, Art. 168.

<sup>79</sup> Child Code, Art. 169.

<sup>80</sup> *Ibid.*, Art. 169.I.b).

<sup>81</sup> Constitution, Art. 135 et seq.

<sup>82</sup> Child Code, Art. 209.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*, Art. 132.

<sup>85</sup> *Ibid.*, Art. 134.

<sup>86</sup> Code of Criminal Procedure, Arts 67 and 68.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

As several constitutional challenges can also be filed collectively, as discussed in section III.D. above, these can also be brought by NGOs.<sup>87</sup>

It seems that NGOs may bring cases to the Ombudsperson. The Law on the Ombudsperson provides that “every individual or legal person that feels affected by arbitrary administrative acts and proceedings, violations of human rights or other illegal acts may file a complaint in front of the Ombudsperson, with no restrictions at all”.<sup>88</sup>

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

The Child Courts are the only courts able to hear and resolve civil disputes involving children.<sup>89</sup> Complaints to the Child Courts must be submitted in writing to the local court which is competent for the place where, in the following order: the violation of the child rights or the offence committed by a child was committed; the child lives; the child is temporarily living; the child's representatives' live.<sup>90</sup> The submission should contain the name, address and general information regarding the claimant.<sup>91</sup> The privacy of children (*reserva*) must be respected during the entire proceedings in order to protect their dignity and integrity;<sup>92</sup> the proceedings are confidential in that no information identifying the children can be published;<sup>93</sup> the personnel involved in children's trials must be specialised in children affairs;<sup>94</sup> and proceedings are informal.<sup>95</sup>

Constitutional justice is exercised by the Plurinational Constitutional Court.<sup>96</sup> Constitutional challenges, including *amparo* proceedings on the basis of violations of the rights enshrined in the Bolivian Constitution, are subsidiary and can only be brought as a last resort, if there are no other legal avenues for redress available, unless protection might otherwise come too late and irreparable damages are bound to ensue.<sup>97</sup>

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<sup>87</sup> Constitution, Art. 132, 134, 135.

<sup>88</sup> Law 1818 on the Ombudsperson, Art. 19.

<sup>89</sup> Civil Procedure Code, Art. 265.

<sup>90</sup> Child Code, Art. 199.

<sup>91</sup> *Ibid.*, Art. 209.

<sup>92</sup> *Ibid.*, Art. 193.d).

<sup>93</sup> *Ibid.*, Art. 262.m).

<sup>94</sup> *Ibid.*, Art. 193.a).

<sup>95</sup> *Ibid.*, Art. 193.b).

<sup>96</sup> Constitution, Art. 179 III, 196 et seqq.

<sup>97</sup> Code of Constitutional Procedure, Art. 54.

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

The Child Code provides for free legal counsel to any child through the Office of the Ombudsperson for Childhood and Adolescence, which seems to apply to all judicial proceedings.<sup>98</sup> Furthermore, Article 160.II. of the Child Code states the principle of gratuity in front of all courts and institutions dealing with children's rights. As a result, it seems that there would be no court fees.

In addition, the Bolivian Code of Civil Procedure allows applications for legal aid (*Beneficio de Gratuidad*) which, if granted, provides for the right to designated counsel and freedom from judicial deposits, costs, and expenses.<sup>99</sup>

Finally, all proceedings in front of the Ombudsperson are free.<sup>100</sup>

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

While there are organisations working towards the complete implementation of children's rights into the laws of Bolivia, such as the Andean Commission of Jurists (*Comision Andina de Juristas*),<sup>101</sup> we were unable to identify any independent NGOs or law firms which offer free legal assistance to children in the country.

Nonetheless, a special governmental service was recently established in Bolivia which is meant to provide free legal assistance to all victims of crime.<sup>102</sup> In December 2013, Bolivia adopted the Plurinational Service Act for Victim Assistance (*Ley del Servicio Plurinacional de Asistencia a la Víctima*) which introduces a new decentralised public institution under supervision of the Ministry of Justice and which is responsible for providing legal assistance to victims who lack financial resources, providing legal as well as social and psychological assistance during criminal proceedings in order to prevent victimisation.<sup>103</sup> But it is unclear so far whether this service has been providing effective legal services to children across the country.

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<sup>98</sup> Under Art. 188.e), the Office of the Ombudsperson for Childhood and Adolescence is empowered to "lodge defence actions and other legal and administrative actions necessary to the restitution of the rights of the child or adolescent."

<sup>99</sup> Civil Procedure Code, Chapter 5.

<sup>100</sup> Law 1818 on the Ombudsperson, Art. 2.

<sup>101</sup> Comision Andina de Juristas, see: <http://www.cajpe.org.pe/productos.html>.

<sup>102</sup> Plurinational Service Act for Victim Assistance, available at: <http://www.lexivox.org/norms/BO-L-N464.xhtml>.

<sup>103</sup> Ibid., Art. 2-3.

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

Criminal charges must be brought within three, five, or seven years from the day the crime was committed, depending on the penalty associated with the crime.<sup>104</sup> The Bolivian Criminal Code does not include any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children.

Complaints in front of the Ombudsperson must be brought within one year after the person became aware of the acts or omissions motivating the complaint.<sup>105</sup>

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

There are no specific provisions in the Bolivian Criminal Code and Code of Criminal Procedure for the hearing of child victims of crime, including sexual exploitation and sexual abuse. The UN Committee on the Rights of the Child has voiced concern regarding this gap and also at the lack of access to adequate medical and psychosocial services for children who are witnesses to or victims of crime.<sup>106</sup>

All children have the right to testify when they are a victim, duly accompanied by their family, in civil or criminal proceedings,<sup>107</sup> but only children from 16 years of age can testify as witnesses.<sup>108</sup> They also have the right to participate in judicial proceedings and to be heard by the judge, who will take into consideration their age and development,<sup>109</sup> when they are the defendant.<sup>110</sup> Nonetheless the UN Committee on the Rights of the Child has criticised the lack of respect for the views of the child in practice and voiced concern that the views of the child are sometimes not duly solicited or taken into account in various settings affecting the child, including in judicial proceedings.<sup>111</sup>

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

The Child Code states that in front of child judges the duration of the trial, from denunciation to sentencing, cannot exceed eight months, though any delay due to the child or adolescent increases the limit.<sup>112</sup> Furthermore, it adopts the principle of “concentration”, which means that proceedings must be undertaken

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<sup>104</sup> Criminal Code, Art. 101-02.

<sup>105</sup> Law 1818 on the Ombudsperson, Art. 21.

<sup>106</sup> UN Committee on the Rights of the Child, *Concluding observations on the fourth periodic report of Bolivia*, para. 83.

<sup>107</sup> Child Code, Art. 220.II.; *Fourth periodic report of Bolivia to the UN Committee on the Rights of the Child*, para. 195(j).

<sup>108</sup> Child Code, Art. 220.I.

<sup>109</sup> *Ibid.*, Art. 195.

<sup>110</sup> *Ibid.*, Art. 262.c).

<sup>111</sup> UN Committee on the Rights of the Child, *Concluding observations on the fourth periodic report of Bolivia*, para. 32.

<sup>112</sup> Child Code, Art. 264.

in the least number of acts possible.<sup>113</sup>

It is unclear whether these provisions are followed widely by the courts in practice and how long it might realistically take to get a case resolved in the Bolivian courts. As has been noted above, despite the positive legislative foundations in Bolivia's national laws, its judiciary has been criticised as "corrupt and overburdened".<sup>114</sup> The President of the Bolivian Council of Magistrates admitted in September 2013 that the backlog of cases in the Bolivian courts at that time amounted to 500,000 cases and that there were only 815 judges employed nationwide,<sup>115</sup> while the country has over 11 million inhabitants. The UN High Commissioner for Human Rights observed in 2014 that the insufficient coverage of the judicial system in Bolivia was critical.<sup>116</sup> Only 23 per cent of municipalities had a prosecutor at the time of the UN High Commissioner's report and there were only 69 public defenders nationally.<sup>117</sup> Other problems in the criminal justice system observed by the UN High Commissioner were related to deficiencies in institutional management and to weak judicial control.<sup>118</sup>

G. Appeal. What are the possibilities for appealing a decision to a higher court?

In the context of the Child Code, decisions can be appealed in front of the Appellate Tribunal.<sup>119</sup> The Departmental Courts of Justice (*Tribunales Departamentales de Justicia*) are the Appellate Tribunals and the Supreme Court of Justice (*Tribunal supremo de Justicia*) is the cassation court.<sup>120</sup>

All decisions and rulings of the Plurinational Constitutional Court are binding and directly enforceable, and there is no further ordinary appeal against them.<sup>121</sup>

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Research suggests that the Bolivian authorities generally respect court orders, but cases do exist where judges have been pressured to change their verdicts.<sup>122</sup> It is therefore unclear what practical impact judgments might have, despite the availability of various legal remedies in the laws.

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<sup>113</sup> Ibid., Art. 193.e).

<sup>114</sup> US Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2013 - Bolivia*, at Section I. e.

<sup>115</sup> Ibid.

<sup>116</sup> UN General Assembly, *Annual report of the United Nations High Commissioner for Human Rights*, 5 March 2014, paras. 47 & 48, available at: <http://www.ohchr.org/EN/countries/LACRegion/Pages/BOIndex.aspx>.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Child Code, Arts 314 and 315.

<sup>120</sup> Law on the Judicial Power of the 24 June 2010, available at: <http://www.lexivox.org/norms/BO-L-N25.xhtml>.

<sup>121</sup> Constitution, Art. 203.

<sup>122</sup> US Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2013 - Bolivia*, at Section I. e.

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

The Plurinational State of Bolivia is made up of several distinct cultures which can result in discrimination and exclusion of certain groups, particularly with regard to poor rural communities.<sup>123</sup> Some of the prevailing cultural traditions make it difficult to implement or enforce laws that would give credence to the CRC. For example, in rural areas, children are often married at a very young age.<sup>124</sup> Additionally, there is no culture of respect for children in many rural areas where “daily life reflects the perception of children as being objects and their parents’ property”.<sup>125</sup> Despite the laws prohibiting child abuse, rates are still high.<sup>126</sup> Communicating the rights guaranteed by the CRC and national laws can prove difficult, not only in urban areas where the media is skewed toward sensationalistic advertising, but even more so in rural areas where tradition is key and communication with the outside world can be minimal.<sup>127</sup>

- V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

When contemplating legal action to challenge a violation of children's rights in Bolivia, it will be important to consider the above mentioned persisting problems regarding the enforcement of laws and issues regarding fair and timely court proceedings, including corruption in the judiciary and other governing bodies (see sections IV.F., IV.H. and IV.I above).

In addition, some of the institutions established to protect the rights of children are still facing issues in terms of coordination. The UN Committee on the Rights of the Child has noted the establishment of new institutions relevant to the rights of the child, including the Vice-Ministry for Equality of Opportunities (*Viceministerio de Igualdad de Oportunidades*), the Office for Childhood and Adolescence (*Dirección de Niñez y Adolescencia*), the National Council for Childhood and Adolescence (*Consejo Nacional de la Niñez y Adolescencia*), the Commissions for Childhood and Adolescence (*Comisiones de la Niñez y Adolescencia*) and the Municipal Child Defence Offices (*Defensorias Municipales de Niñez y Adolescencia*). However, the Committee voiced concern at the weakness of these newly created institutions, and that the new strategy of decentralisation poses a number of difficulties in the coordination between national, departmental and municipal levels.<sup>128</sup>

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<sup>123</sup> *Fourth periodic report of Bolivia to the UN Committee on the Rights of the Child*, para. 130.

<sup>124</sup> *Fourth periodic report of Bolivia to the UN Committee on the Rights of the Child*, para. 36.

<sup>125</sup> UNICEF, *The Situation of Children in Bolivia*, 2010, available at: [http://www.unicef.org/bolivia/children\\_1540.htm](http://www.unicef.org/bolivia/children_1540.htm).

<sup>126</sup> UNICEF, *Working wonders for kids*, 25 February 2003, available at: [http://www.unicef.org/infobycountry/bolivia\\_1871.html](http://www.unicef.org/infobycountry/bolivia_1871.html).

<sup>127</sup> *Fourth periodic report of Bolivia to the UN Committee on the Rights of the Child*, para. 28.

<sup>128</sup> UN Committee on the Rights of the Child, *Concluding observations on the fourth periodic report of Bolivia*, para. 9.



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