



**HEARTLAND
ALLIANCE**
GLOBAL INITIATIVE FOR
SEXUALITY AND HUMAN RIGHTS

The Human Rights Situation of Lesbian, Gay, Bisexual, Transgender Persons in Bolivia

**Suggested List of Issues Submitted to the Country Report Task
Force on Bolivia**

**For the 107th Session of the Human Rights Committee, New York
11-28 March 2013**

Report presented by:

- Red de Travestis, Transexuales y Transgénero de Bolivia (Red TREBOL)
- Heartland Alliance for Human Needs & Human Rights – Global Initiative on Sexuality and Human Rights

January 2013

I. Introduction

The Red de Travestis, Transexuales y Transgénero de Bolivia (Red TREBOL) and the Global Initiative for Sexuality and Human Rights (GISHR) of the Heartland Alliance for Human Needs & Human Rights is honoured to submit these issues to the Human Rights Committee to assist the development of the List of Issues for the Committee's review of Bolivia's compliance with the International Covenant on Civil and Political Rights. This document was prepared by Jennifer Reinbold of the Vermont Law School Center for Applied Human Rights, working under the supervision of Professor Stephanie Farior; Marcelo Ernesto Ferreyra, Latin America and Caribbean Coordinator of GISHR; and Stefano Fabeni, Director of GISHR; with input from Rayza Torriani García, National President of Red TREBOL.

We propose the following issues to be raised in the review of Bolivia:

- Killings targeting trans people, which are taking place with impunity (article 6);
- The torture of trans people inflicted prior to their killing (article 7);
- Attacks targeting trans people because of their choice of clothing and other expressions of their chosen gender (article 19);
- The deprivation of equal access to education experienced by LGBT students in schools (articles 24 and 26);
- Discrimination and the lack of equality before the law and equal protection of the law for LGBT people in terms of health care, employment, social security and other social services (articles 2 and 26)
- The detriment to the realization of rights caused by the lack of legal recognition of one's gender identity on government-issued documents; discrimination, despite the explicit prohibition of discrimination on the basis of sexual orientation or gender identity in the Bolivian Constitution, with respect to the ability to adopt, inheritance, and the division of property (articles 2 and 26).

II. Suggested Issues, with background information and recommendations

Right to Life (art. 6)

Killings of LGBT people have been taking place with impunity in Bolivia. What plans does the State have to prevent and punish the killing of LGBT people? Please provide information on any investigation undertaken into the killing of Mini Britany (Lener Darío López Fernández), a travesti, who was strangled to death in January 2011, and Juana Apaza Mayta, a travesti, who was tortured and killed in March 2012, and other victims of similar crimes. Please also provide information on whether the perpetrators of these crimes have been identified and prosecuted, and if not, what steps the state plans to take in order to end the impunity of these killings.¹

Mini Britany (Lener Darío López Fernández), a travesti, was assassinated in Santa Cruz in the early morning of 22 January 2011. A witness reportedly saw the alleged perpetrators dispose of Mini's body in the Universidad Gabriel Rene Moreno neighborhood, on Portachuelo Street. The

¹ <http://transredbolivia-trebol.blogspot.com/>

authorities assume the murder was related to a supposed crime of passion, but the trans activist organization Red TREBOL doubts this supposition. The perpetrators have still not been identified or brought to justice.²

Between 2009 and 2011 seven travestis were assassinated while working as prostitutes in the cities of Santa Cruz, Yacuiba, and Trinidad. The perpetrators of these killings have still not been identified.³

A vicious killing of a travesti took place in March 2012, when a mob of around 400 people in the Villa Ingenio zone of District 13 of El Alto tortured, burned, and lynched Juana Apaza Mayta, who was forty-two years old. The chief of Homicides of the Police Task Force on Crime, Major Osvaldo Fuentes, explained that when locals saw this “man” dressed as a *cholita* (indigenous woman) a mob formed and murdered “him” simply because “he” was a travesti. Despite the presence of hundreds of people at this murder in broad daylight, no charges have been filed to date and there are no suspects.⁴

On 6 October 2012 in Santa Cruz, Luisa Duran, a travesti, was stabbed 52 times and killed.⁵

In Bolivia, Red TREBOL and other NGOs have been asking for public condemnation of killings of trans people. They are also requesting neighborhood patrols as well as public awareness campaigns about the LGBT community and of the treatment they suffer from other Bolivians.⁶

The local Civil Association of GLBT Social Development and Cultural Promotion reports that 30 homosexuals in Bolivia were killed in the last two decades and that none of these murders have been punished. This impunity perpetuates a cycle of violence against LGBT people.⁷

Steps that Bolivia should take in order to better protect the right to life are set out in the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. Per Principle 5, States should:

- a) Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity;
- b) Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family;

2 *Id*; Transgender Europe (TGEU), “List of 248 reported trans persons murdered in 2011” <http://www.transrespect-transphobia.org/uploads/downloads/TMM/TvT-TMM-2011-Namelist-en.pdf>

3 <http://www.eldeber.com.bo/imprimir.php?id=110203005227>

4 <http://www.erbol.com.bo/noticia.php?identificador=2147483956716>

5 Transgender Europe (TGEU), “List of 265 reported murdered trans persons from November 15th 2011 to November 14th 2012,” <http://www.transrespect-transphobia.org/uploads/downloads/TMM/TvT-TMM-TDOR2012-Namelist-en.pdf>

6 <http://transredbolivia-trebol.blogspot.com/>

7 <http://www.argentinaindependent.com/currentaffairs/newsfromlatinamerica/brazil-and-peru-number-of-gay-people-killed-in-2011-revealed/>

- c) Take all necessary legislative, administrative and other measures to ensure that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate such violence;
- d) Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation;
- e) Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.⁸

Freedom from Torture (art. 7)

What measures is the State taking to ensure protection of LGBT people against torture and other cruel, inhuman, and degrading treatment? Please provide information on what investigation has taken place into the torture, the burning, and killing by a mob of Juana Apaza Mayta, a travesti, in March 2012⁹, and other cases of torture of travestis.

As stated in General Comment No. 20, “It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether **inflicted** by people acting in their official capacity, outside their official capacity or **in a private capacity.**” Furthermore, “States parties should indicate when presenting their reports the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, **whether committed** by public officials or other persons acting on behalf of the State, or **by private persons. Those who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible** (Paragraph 13).”¹⁰

The seven travestis killed while working in the cities, mentioned in the discussion of article 6, were all reportedly tortured before they were killed. The president of Red TREBOL of Bolivia, Rayza Torriani, confirmed with people near the scene of the crimes that the victims were tortured before they were killed.¹¹

In addition, in the killing of Juana Apaza Mayta, the chief of Homicides of the Police Task Force on Crime, Major Osvaldo Fuente, reported that the body was found with signs of torture. Multiple wounds inflicted by sharp objects were found throughout the body, as well as second and third degree burns. The chief of police said the probable cause of death was a traumatic brain injury.¹²

⁸ http://www.yogyakartaprinciples.org/principles_en.htm

⁹ <http://www.erbol.com.bo/noticia.php?identificador=2147483956716>

¹⁰ <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/6924291970754969c12563ed004c8ae5?Opendocument>

¹¹ <http://www.eldeber.com.bo/imprimir.php?id=110203005227>

¹² <http://www.erbol.com.bo/noticia.php?identificador=2147483956716>

And, as mentioned in the discussion of article 6, it was discovered that Luisa Duran, a travesti, was stabbed 52 times before she died. The State should seek out the perpetrator prosecute that person for the killing and for the torture inflicted by the repeated stabbings.¹³

Freedom of Expression (art. 19)

Please provide information on what steps the State is taking to prevent, investigate, and punish attacks on trans people who are targeted because of their choice of clothing and other expressions of their chosen gender. Please also provide information on the assistance provided to the victims of these attacks.

“States parties should provide information on any specific regulation of clothing to be worn by women in public. The Committee stresses that such regulations may involve a violation of a number of rights guaranteed by the Covenant ... articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their ... right of self-expression”. (CCPR General Comment No. 28, Paragraph 13).¹⁴ The State has an obligation to prevent, investigate, and remedy against attacks by private persons on persons whose self-expression does not comply with societal expectations. (General Comment No. 34, Paragraphs 7, 8).¹⁵ The State’s obligation therefore includes the duty to protect against torture, killing, and other attacks motivated by individuals’ self-expression, including the self-expression of trans individuals.

Special Protection of Children (articles 24 and 26)

Please provide information on what measures the State is taking to secure children's access to education by preventing discrimination based on sexual orientation in schools, in accordance with articles 24 and 26 of the Covenant and Article 14 of the Bolivian Constitution. Please provide information on the steps taken as a result of the meeting between LGBT groups and the Minister of Education in May 2012 about including the theme of sexual diversity in school curriculum.¹⁶

General Comment No. 17 notes with respect to children: “In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression.”¹⁷ Discrimination against young LGBT people in school seriously hinders their access to education.

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<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=27&cad=rja&ved=0CFYQFjAGOBQ&url=http%3A%2F%2Fwww.transrespect-transphobia.org%2Fuploads%2Fdownloads%2FTMM%2FTvT-TMM-TDOR2012-Namelist-en.pdf&ei=hFC-UIKuE6aW0QGj2YHwDg&usg=AFQjCNG0mP4hot0gq0sFyl1IRWFFkqGaQA>

14 <http://www.unhcr.org/refworld/docid/45139c9b4.html>

15 <http://www.unhcr.org/refworld/docid/4e38efb52.html>

16 http://www.la-razon.com/sociedad/Gays-incluir-diversidad-curriculo-escolar_0_1639636062.html

17 <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/cc0f1f8c391478b7c12563ed004b35e3?OpenDocument>

According to the newspaper, *La Razón*¹⁸, the NGO “*Conexión Fondo de Emancipación*”¹⁹ conducted a survey which shows that among LGBT students in Bolivia, 10.9% of students have been expelled from an education institution due to their sexual orientation; 11.9% have been denied access to an educational institution; 48.1% have been discriminated against by the parents of other students; 84.6% have been discriminated by classmates; and 53.2% have been discriminated against by teachers.

In a July 2009 case which received attention in the press, a seventeen year-old was suspended and subsequently expelled from Bolivia IV high school in Sopocachi, La Paz, for holding his boyfriend’s hand in the school’s hallway. The official school statement described the infraction as “a violation of internal school rules.” It is known that there are other gay students at this high school, who attest to restraining from any public displays of affection in order to avoid disciplinary action.²⁰

At the end of May 2012, LGBT groups had their first meeting with the Minister of Education, Roberto Aguilar, to have him raise the issue of including sexual diversity in the school curriculum with the committee that handles the human rights curriculum, the *Comité Técnico de Construcción del Plan Plurinacional de Educación en Derechos Humanos*. The entity that runs this committee, the *Unidad de Género, Generacional y Social*, stated there was a possibility that the right of sexual diversity might be included in the human rights curriculum within the “comprehensive sexuality in education” material. However, the president of the *Junta Nacional de Padres de Familia*, Franklin Gutiérrez, asserted that the majority of parents will oppose adding this material to the curriculum as it would affect the principles and values that the parents teach their children. The parents do not believe children are born with a homosexual inclination, he said, and will not permit talking about homosexuality in schools. Additionally, Federico Pinaya, the president of the *Confederación de Maestros Urbanos*, stated that the proposal would complicate the structure of the curriculum, and it is not the right moment as the teachers themselves hold conservative views.²¹

The importance of education in helping students realize their human rights is highlighted in Yogyakarta Principle 16. The detriment to realizing that right when discriminated against in school can be lessened if the State does the following:

- a) Take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the education system without discrimination on the basis of sexual orientation or gender identity;
- b) Ensure that education is directed to the development of each student’s personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities;
- c) Ensure that education is directed to the development of respect for human rights, and of respect for each child’s parents and family members, cultural identity, language and

18 8 de cada 10 gays son rechazados en colegio – <http://www.la-razon.com/>

19 <http://www.conexion.org.bo/>

20 Colegial gay es expulsado por “empanadear” - <http://www.la-razon.com/>

21 http://www.la-razon.com/sociedad/Gays-incluir-diversidad-curriculo-escolar_0_1639636062.html

values, in a spirit of understanding, peace, tolerance and equality, taking into account and respecting diverse sexual orientations and gender identities;

d) Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, *inter alia*, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds;

g) Take all necessary legislative, administrative and other measures to ensure that discipline in educational institutions is administered in a manner consistent with human dignity, without discrimination or penalty on the basis of a student's sexual orientation or gender identity, or the expression thereof;

h) Ensure that everyone has access to opportunities and resources for lifelong learning without discrimination on the basis of sexual orientation or gender identity, including adults who have already suffered such forms of discrimination in the educational system.²²

Equality and Freedom from Discrimination (articles 2, 26)

1. What steps has the State taken to fully implement the right not to be discriminated against on the basis of sexual orientation and gender identity guaranteed in Article 14 of the Bolivian Constitution and protected under articles 2 and 26 of the Covenant? We are pleased to highlight that following the approval of the 2009 constitution, the Plurinational State of Bolivia is one of the two countries in the world that recognizes the constitutional principle of non-discrimination on grounds of sexual orientation *and gender identity*. However, such a good practice at constitutional level has not always been implemented through concrete actions to eliminate all forms of discrimination on grounds of sexual orientation and, particularly, gender identity. Please provide disaggregated data on instances of discrimination against LGBT people in public and private institutions, and information on what remedies are afforded in the event of discrimination. What concrete measures have been taken to ensure that public health facilities and employers do not discriminate against LGBT people with respect to the right to health care access and employment? What plans has the Vice-Ministry of Justice and Fundamental Rights made to ensure the LGBT community has full enjoyment of rights under the Covenant without discrimination?

In September 2011, LGBT groups and the Ombudsman, Rolando Villena, met to sign an agreement with the objective of establishing mechanisms to defend the rights and ensure the protection of people in the LGBT community. The issues were focused on health, recognition of gender identity, education, political organization, and economic security.²³

On August 16, 2012 several representatives of the LGBT community, including Rayza Torriani, the president of Red TREBOL, met with representatives of the Vice Ministry of Justice and Fundamental Rights to discuss The Plan of Action against Homophobia and Transphobia. The

22 http://www.yogyakartaprinciples.org/principles_en.htm

23 <http://www.opinion.com.bo/opinion/articulos/2011/0924/noticias.php?id=26381>

objective of the plan is to establish State policies that will improve the quality of life of LGBT persons.²⁴

According to the national newspaper, *La Razón*, 77.8 % of LGBT individuals have not received adequate medical attention from doctors and nurses, 65.3% have suffered discrimination from coworkers, 38.4% have been denied access to employment opportunities, and 37.6% have been denied promotion opportunities.²⁵

The lack of recognition of gender identity among those in the health sector can lead to serious consequences. One example is the case of Mariana, a thirty-two year old travesti who died from a poor-quality silicone injection in April 2012. She was admitted to the Japanese Hospital in Santa Cruz after suffering respiratory damage. She had been unable to find a medical professional to carry out the procedure. Her silicone injection, consisting of airplane fuel oil, had been performed by another travesti, Deysi D., who is not a doctor, and who injected the silicone in the chest area. This type of procedure is very dangerous.²² Without recognition of transgender people, and the accessibility of safe hospital treatments for body modification surgeries, people like Mariana will continue to suffer.

2. Are steps being taken so that a change in sex or gender is reflected on birth certificates, medical records, and government-issued identification cards? What steps are there to carry out the Plan of Action against Homophobia and Transphobia discussed in the August 2012 meeting between the Sexual Diversity Community and Vice-Ministry?²⁶ What plans does the State have to ensure there is equality before the law with respect to political rights? What measures is the State taking to promote equality for LGBT people with respect to:

- i. The ability to adopt
- ii. Inheritance
- iii. Division of property
- iv. Social Security²⁷

Lack of recognition of gender identity hinders access to State-issued identity papers and diminishes the realization of the rights to equality before the law and equal protection of the law in a wide range of areas. Without the legal recognition of transgender and travesti citizens, they cannot freely participate in the political and civil system. Because of this, in November 2011, Red TREBOL proposed a law, the *Ley de Identidad de Género*, to the Vice Minister of Equal Opportunities, Gardy Costas. This proposal consists of five articles that would allow for legal

24 Representantes de las diversidades sexuales se reunieron con autoridades del Viceministerio de Justicia para trabajar el Plan de Acción contra la Homofobia y Transfobia

25 https://webmail.vermontlaw.edu/owa/WebReadyView.aspx?t=att&id=RgAAAAAnzH05H7yoSLiLHpNUiW7FBwCHTGs9p8yzTKIBXOcsZILZAAAAk%2b92AACHTGs9p8yzTKIBXOcsZILZAAB2TNqaAAAJ&attid=BAAAAA&attcnt=1&pspid=_1355670174997_817925886

22 <http://www.eldeber.com.bo/nota.php?id=120410223530>

26 Representantes de las diversidades sexuales se reunieron con autoridades del Viceministerio de Justicia para trabajar el Plan de Acción contra la Homofobia y Transfobia

27 http://www.lostiempos.com/diario/actualidad/local/20111130/piden-equidad-y-respeto-en-estatutos_151457_314400.html

recognition of name changes, sex and gender status changes, and legally recognize transgender people by the gender with which they identify.²⁸

The importance of legal recognition for the realization of rights is illustrated in Yogyakarta Principle 3 regarding the right of everyone to recognition before the law. It notes that, “Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.” Therefore, Principle 3 indicates that States should:

- Guarantee that all individuals have the legal authority in civil matters and the ability to exercise such authority without discrimination on the basis of sexual orientation or gender identity. This should include the ability, under equal terms, to execute contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of the assets of their possessions;
- Adopt all legislative, administrative and other measures necessary to ensure that procedures exist whereby all State-issued forms of identification which indicate a person’s gender/sex – including birth certificates, passports, electoral records and other documents – reflects the individual’s self-identified gender identity;
- Ensure that identity documents will be recognized in all contexts where the identification or disaggregation of persons by gender is required by law or policy.

With respect to social security and other social protection measures, steps to ensure equality before the law and equal protection of the law are addressed in Yogyakarta Principle 13. These measures include employment benefits, parental leave, unemployment benefits, health insurance or care or benefits (including for body modifications related to gender identity), other social insurance, family benefits, funeral benefits, pensions and benefits with regard to the loss of support for spouses or partners as the result of illness or death.²⁹ Moreover, children are not to be subjected to

²⁸ <http://bolivia.unfpa.org/node/1157>

²⁹ *Id.*

Yogyakarta Principle 13:

States shall:

- A) Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to social security and other social protection measures, including employment benefits, parental leave, unemployment benefits, health insurance or care or benefits (including for body modifications related to gender identity), other social insurance, family benefits, funeral benefits, pensions and benefits with regard to the loss of support for spouses or partners as the result of illness or death;
- B) Ensure that children are not subject to any form of discriminatory treatment within the social security system or in the provision of social or welfare benefits on the basis of their sexual orientation or gender identity, or that of any member of their family;

discriminatory treatment within the social security or public benefit system on the basis of their own or a family member's sexual orientation or gender identity.

C) Take all necessary legislative, administrative and other measures to ensure access to poverty reduction strategies and programmes, without discrimination on the basis of sexual orientation or gender identity.