Bolivia: In-Depth Legislative Assessment

Child Labor, Forced Labor, and Human Trafficking

**TABLE OF CONTENTS**

[Introduction 3](#_Toc72933621)

[Section I: Overview of Bolivia Government and Legal Framework 4](#_Toc72933622)

[A. Introduction to Bolivia 4](#_Toc72933623)

[1. Population 4](#_Toc72933624)

[2. History 4](#_Toc72933625)

[3. Economic Profile 5](#_Toc72933626)

[4. Education and Literacy Rates 6](#_Toc72933627)

[B. Legal System and Government 7](#_Toc72933628)

[1. Constitution 7](#_Toc72933629)

[2. Executive Branch 8](#_Toc72933630)

[3. Legislative Branch 10](#_Toc72933631)

[4. Judicial Branch 12](#_Toc72933632)

[C. Sources of Law and Practice 13](#_Toc72933633)

[1. Legislation 13](#_Toc72933634)

[2. Other Sources (Customary, Common Law, Religious Law, Etc.) 13](#_Toc72933635)

[D. Status of International Law in Bolivia 13](#_Toc72933636)

[Section II: Stakeholders 15](#_Toc72933637)

[A. Actors and Agencies Responsible for the Enforcement of Child Labor, Forced Labor, and Human Trafficking Laws 15](#_Toc72933638)

[B. Other Legislative Stakeholders 16](#_Toc72933639)

[Section III: Process to Amend or Enact Legislation, Regulations, Policies and Plans 20](#_Toc72933640)

[Section IV: Current Bolivian Law on Child Labor, Forced Labor, and Human Trafficking 21](#_Toc72933641)

[A. The Children and Adolescent Code 21](#_Toc72933642)

[B. General Labor Law 23](#_Toc72933643)

[C. The Education Law 24](#_Toc72933644)

[D. The Comprehensive Law Against Trafficking and Smuggling of Persons 24](#_Toc72933645)

[E. The Penal Code and Code of Penal Procedure 28](#_Toc72933646)

[F. The Constitution 31](#_Toc72933647)

[Section V: Bolivia’s International Commitments 32](#_Toc72933648)

[A. U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 32](#_Toc72933649)

[B. ILO Convention No. 138 on the Minimum Age for Admission to Employment 34](#_Toc72933650)

[C. ILO Convention No. 182 on the Worst Forms of Child Labour 37](#_Toc72933651)

[D. ILO Convention No. 029 on Forced Labour 38](#_Toc72933652)

[E. Additional International Commitments 38](#_Toc72933653)

[1. U.N. Convention on the Right of the Child 38](#_Toc72933654)

[2. ILO Recommendation No. 190 on the Worst Forms of Child Labour 40](#_Toc72933655)

[3. ILO Recommendation No. 146 on the Minimum Age for Admission to Employment 41](#_Toc72933656)

[4. Inter-American Convention on the International Traffic of Minors 43](#_Toc72933657)

[5. Rome Statute of the International Criminal Court 44](#_Toc72933658)

[Section VI: Additional Legislative Gaps and Barriers 45](#_Toc72933659)

[A. Child Labor 45](#_Toc72933660)

[1. Legislative Barriers to Criminalizing Offenders and Repairing Victims 45](#_Toc72933661)

[2. Legislative Barriers Preventing Law Enforcement Action 46](#_Toc72933662)

[B. Forced Labor 47](#_Toc72933670)

[1. Legislative Barriers to Criminalizing Offenders and Repairing Victims 47](#_Toc72933671)

[2. Legislative Barriers Preventing Law Enforcement Action 47](#_Toc72933672)

[C. Human Trafficking 48](#_Toc72933676)

[1. Legislative Barriers to Criminalizing Offenders and Repairing Victims 48](#_Toc72933677)

[2. Legislative Barriers Preventing Law Enforcement Action 49](#_Toc72933678)

[Section VII: Summary of Recommendations 50](#_Toc72933679)

[A. The Children and Adolescent Code 50](#_Toc72933680)

[B. General Labor Law 50](#_Toc72933681)

[C. The Comprehensive Law Against Trafficking in Persons 51](#_Toc72933682)

[D. The Penal Code and Code of Penal Procedure 51](#_Toc72933683)

[E. Regulation to the Law No. 2026 Boy, Girl and Adolescent Code 51](#_Toc72933684)

# Introduction

This paper is intended to assist Lawyers Without Borders, in partnership with Winrock International and Partners of the Americas, in its work in Bolivia as part of the U.S. Department of Labor project ATLAS: Attaining Lasting Change for Better Enforcement of Labor and Criminal Law to Address Child Labor, Forced Labor and Human Trafficking.

The paper provides an overview of Bolivian Government and legal framework; the relevant legislative stakeholders; Bolivia’s current laws and practices with regard to child labor, forced labor, and human trafficking; its applicable international commitments; and an analysis of the legislative barriers to enforcement and victim assistance for each area of law. It further contains a detailed “Table of Proposed Amendments,” attached hereto as an Appendix, and concludes by summarizing the recommendations set forth therein.

# Section I: Overview of Bolivia Government and Legal Framework

## Introduction to Bolivia

### Population

The population of Bolivia as of July 2020 was 11,639,909 people, with approximately 49.55% of the population under the age of 25.[[1]](#footnote-1)

The population is comprised of numerous ethnic groups, including the following main groups: mestizo (mixed white and Amerindian ancestry) (68%), indigenous (20%), white (5%), cholo/chola (2%), and black (1%).[[2]](#footnote-2) As of 2009, approximately 44% of census respondents identified at least in part as a member of an indigenous group, such as the Quechua or Aymara.[[3]](#footnote-3) Bolivia’s 2009 constitution designates Spanish and all indigenous languages spoken in Bolivia as “official” languages.[[4]](#footnote-4) Spanish is spoken by the majority of the population (60.7%); the remainder of the population predominantly speaks native indigenous languages, including Quechua (21.2%), Aymara (14.6%), and Guarani (0.6%).[[5]](#footnote-5)

Roman Catholicism is the largest religion in Bolivia (76.8% of the population), followed by Evangelical and Pentecostal Christianity (8.1%), Protestantism (7.9%), and other or no religious affiliation (7.2%).[[6]](#footnote-6)

### History

In 1825, Bolivia, named after the nineteenth century independence fighter Simon Bolivar, gained independence from Spanish rule.[[7]](#footnote-7) Since independence, Bolivia’s government has experienced chronic instability marked by approximately 190 military and political coups.[[8]](#footnote-8) Democratic civilian rule was not established until 1982.[[9]](#footnote-9)

Bolivia faced political unrest until 2006, when Bolivians elected Evo Morales in a landslide victory as the country’s first indigenous president.[[10]](#footnote-10) Morales led Bolivia’s “Movement Towards Socialism” (“MAS”) party, which consolidated the indigenous majority, championed labor unions, and protected coca farming from foreign intervention.[[11]](#footnote-11)

Morales was re-elected twice as President between 2009 and 2014 before reaching the term limit established by Bolivia’s constitution.[[12]](#footnote-12) Although he lost a referendum in February 2016 to approve a constitutional amendment that would have expanded term limits and allowed him to seek re-election, in 2017, Bolivia’s constitutional court ruled that all term limits violate human rights, allowing Morales to seek re-election for a fourth term in 2019.

Morales won re-election in October of 2019, but his main challenger, over whom Morales had only narrowly obtained victory, refused to accept the legitimacy of this result.[[13]](#footnote-13) Protests erupted amidst reports of irregularities from Organization of American States (“OAS”) observers.[[14]](#footnote-14) Morales resigned and fled Bolivia, seeking asylum first in Mexico before receiving refugee status in Argentina. [[15]](#footnote-15)

On November 12, 2019, opposition Senator Jeanine Añez declared herself interim president, and Bolivia’s constitutional court recognized her succession.[[16]](#footnote-16) On November 23, 2019, a MAS-led Congress annulled the October elections.[[17]](#footnote-17) The new presidential election was originally scheduled to take place in May of 2020 but was delayed until October 2020 due to the coronavirus pandemic.[[18]](#footnote-18) On October 18, 2020, Bolivians elected Luis Arce—Morales’s Economics minister and chosen candidate—in a peaceful election characterized by OAS as “exemplary.”[[19]](#footnote-19) Arce was inaugurated on November 8, 2020.

### Economic Profile

Although Bolivia is rich in natural resources (including natural gas, forests, and arable land) and has a high potential for growth, its status (along with Paraguay) as one of South America’s two landlocked nations adversely impacts its ability to trade.[[20]](#footnote-20) Following decades of highly variable growth and an economic crisis in the 1980s, between 2002 and 2014, Bolivia’s Gross Domestic Product (“GDP”) grew an average of 4.7% annually; the incidence of poverty fell from 63% to 39%; extreme poverty decreased from 39.5% to 17%; and the average per capita income of the poorest two quintiles of the population rose faster than any other country in the Latin American and Caribbean region.[[21]](#footnote-21) Nonetheless, Bolivia’s incidence of poverty (39%) remains high in comparison to the Latin American average (25%).[[22]](#footnote-22)

Bolivia’s hydrocarbon sector accounts for nearly half of Bolivia’s total exports, and its mining and agricultural commodities (such as zinc, tin, gold, and soybeans) account for one-third and one-sixth of its global exports, respectively.[[23]](#footnote-23) High commodity prices between 2010 and 2014 propelled Bolivia’s rapid GDP growth, with Bolivia’s GDP growing 6.8% in 2013 and 5.4% in 2014.[[24]](#footnote-24)

Nonetheless, Bolivia faces several impediments to sustained economic growth. *First*, a large percentage of its population sits at or below the poverty line and is therefore vulnerable to falling into extreme poverty.[[25]](#footnote-25) The poorest Bolivians’ lack of access to adequate health services, high rates of early pregnancy, increase in the prevalence of HIV/AIDS, and inadequate access to education exacerbate the economic challenges they face. *Second*, productivity growth has not increased with GDP; rather, realized productivity gains are attributable to the reallocation of labor from agriculture, a lower productivity industry, to slightly higher productivity services.[[26]](#footnote-26) *Third*, there is very little private or foreign investment in Bolivia when compared to other Latin American and Caribbean countries.[[27]](#footnote-27) Finally, Bolivia’s private sector is comprised of many small firms operating within an informal structure and with little market competition.[[28]](#footnote-28)

Combined, these factors inhibit Bolivia’s ability to profit from of non-tradable goods and make Bolivia’s economy highly vulnerable to market swings in oil and mining commodity prices. Bolivia’s GDP growth rate has steadily fallen since 2014 in conjunction with the global decline in oil prices.[[29]](#footnote-29) In light of the sharp decreases in oil and mining commodity prices in the wake of the coronavirus pandemic, Bolivia’s economy is expected to further contract by 7.3% in 2020, and poverty is expected to increase by 9%.[[30]](#footnote-30)

### Education and Literacy Rates

In Bolivia, nearly 92.5% of the total population over the age of fifteen can read and write.[[31]](#footnote-31) There is a slight disparity between men (96.5%) and women (88.6%).[[32]](#footnote-32) These literacy rates represent a significant increase since 1975, when the total literacy rate hovered at around sixty percent.[[33]](#footnote-33)

Bolivia’s youth have much higher literacy rates than its older population. Bolivians between the ages of fifteen and twenty-four have a 99.4% literacy rate; in contrast, the literacy rate for Bolivians ages sixty-five and older is 67.5%, with a significant disparity between men over sixty-five (82.6%) and women over sixty-five (54%).[[34]](#footnote-34)

Participation in education for children has increased over the past five years. Approximately 93% of school-aged children are enrolled in primary education, and approximately 77% of adolescents are enrolled in secondary education.[[35]](#footnote-35) While the number of out-of-school children has decreased since 2014, the number of out-of-school adolescents has increased by approximately 25,000.[[36]](#footnote-36) The available data on participation in education dates from 2018; it is therefore unclear how COVID-19 has impacted education rates.

## Legal System and Government

### Constitution

In 2009, Morales and a MAS-led Congress enacted a new constitution declaring Bolivia a Plurinational State comprised of multiple indigenous populations.[[37]](#footnote-37) The new constitution explicitly rejects “the colonial, republican and neo-liberal State in the past” and promises to “take on the historic challenge of constructing a Unified Social State of Pluri-National Communitarian law.”[[38]](#footnote-38) It further guarantees the free determination of indigenous tribes, including the right to autonomy, self-government, culture, recognition of their institutions, and consolidation of their territorial entities.[[39]](#footnote-39)

The constitution declares that sovereignty resides in the Bolivian people and characterizes Bolivia as a participatory democracy, exercised through the following forms:

* Direct participation such as referendums, citizens legislative initiatives, revocations of terms of offices, assemblies, councils, and prior consultation;
* Representative participation through the election of representatives by “universal, direct and secret vote”; and
* Communal participation through election, designation or nomination of authorities and representatives pursuant to processes created by native indigenous nations and peoples.[[40]](#footnote-40)

The constitution authorizes the State to organize its public power through four bodies—Legislative, Executive, Judicial, and Electoral[[41]](#footnote-41)—and defines “Control, Defense of Society, and Defense of the State” as functions of the State.[[42]](#footnote-42) Under the Constitution, these bodies and functions cannot be combined into a single body, and their powers cannot be delegated.

Bolivia’s constitution contains numerous provisions directly applicable to human trafficking, sexual violence, and child labor. In its enumeration of multiple types of inviolable rights, the constitution defines the following as fundamental rights, among others:

* + - * 1. the right for everyone, in particular women, to not have to suffer physical, sexual, or psychological violence;
				2. the requirement that the State adopt necessary measures to prevent, eliminate, and punish sexual and generational violence “as well as any action or omission intended to be degrading to the human condition, to cause death, pain, and physical, sexual or psychological suffering” in public and private;
				3. the right for everyone not to be submitted to a forced disappearance; and
				4. the right for everyone not to be submitted to servitude or slavery, which includes the express prohibition of the trade and trafficking of persons.[[43]](#footnote-43)

Section V of Chapter II (Fundamental Rights) is dedicated to the rights of children, adolescents, and youth. Among other rights, the constitution prohibits “[a]ny form of violent punishment against children or adolescents” as well as forced work and child labor.[[44]](#footnote-44) The constitution also declares children’s and adolescents’ rights, guarantees, and protections “the object of special regulation.”[[45]](#footnote-45)

### Executive Branch

The executive branch of Bolivian government consists of the President, the Vice President, and the Ministers of State. The President and Vice President are elected officials. To win election, they must receive fifty percent plus one of the valid votes cast, or a minimum of forty percent with a difference of at least ten percent between the victor and the second place candidate; if no candidates meet these requirements, a second round of voting occurs, and the winner is determined by a simple majority vote.[[46]](#footnote-46)

According to the constitution, the President’s and Vice-President’s terms of service are five years, and both may be reelected once for a continuous term of ten years.[[47]](#footnote-47) However, Bolivia’s Plurinational Constitutional Court abrogated term limits in 2017. The President is not fully immune from all acts committed while President; rather, one of the conditions upon which his mandate shall end is the imposition of a final condemnatory sentence in a criminal matter.[[48]](#footnote-48)

The constitution vests the President with the following powers, among others:

* To propose and direct the policies of the government of Bolivia;
* To appoint Ministers of State and coordinate their actions;
* To direct foreign policy, sign international treaties, name public diplomats and consuls, and generally admit foreign officials;
* To promulgate laws which are then approved by the Plurinational Legislative Assembly;
* To administer state revenues;
* To present a proposed General Budget of the State to the Plurinational Legislative Assembly during its first 30 sessions;
* To present an annual written report on the course and state of Public Administration to the Plurinational Legislative Assembly;
* To enforce decisions of the courts;
* To name candidates, nominated by the Plurinational Legislative Assembly, for Controller General of State, President of the Bank of Bolivia, the Regulatory Organ of the Banks and Financial Entities, and the Presidents of those Entities;
* To preserve the security and defense of the State, including holding the position of Commander in Chief of the Armed Forces and appointing a Commander in Chief (if the President does not hold onto this role), Commanders of the Army, Air Force, and Navy, and General Commander of the Bolivian Police;
* To designate the Attorney General of Bolivia;
* To declare a state of emergency; and
* To exercise maximum authority over the Bolivian Agrarian Reform Services, including the granting of executable titles in the distribution and redistribution of land.[[49]](#footnote-49)

The Vice President’s powers are more circumscribed and are limited to assuming the Presidency under certain conditions, coordinating the relations between the Executive Organ and the Plurinational Legislative Assembly, participating in Council of Ministers sessions, and assisting the President in general governance and foreign policy.[[50]](#footnote-50) The Vice President also presides over the Plurinational Legislative Assembly.

Ministers of State function as heads of administrative agencies, which propose and direct governmental policies related to the Ministry’s expertise, issue administrative norms, and resolve administrative matters within the Ministry.[[51]](#footnote-51) Ministers may not be directors, shareholders, or owners of a financial entity or enterprise that has a contractual relationship with the Bolivian government, nor can Ministers directly or indirectly either have a contract pending fulfillment with or be indebted to the State.[[52]](#footnote-52)

### Legislative Branch

The legislative branch of the Bolivian government is comprised of a bi-cameral Plurinational Legislative Assembly, which consists of a Chamber of Senators and a Chamber of Deputies. There are 36 Senators, who are directly elected in multi-seat constituencies by proportional representation.[[53]](#footnote-53) The Chamber of Deputies is larger, with 130 seats.[[54]](#footnote-54) 70 Deputies are elected in single-seat constituencies by a simple majority vote; 53 Deputies are elected in single-seat constituencies by proportional representation vote; and 7 Deputies who are apportioned to non-contiguous rural areas are directly elected in single-seat constituencies by simply majority vote.[[55]](#footnote-55)

Senators and Deputies are elected to five-year terms. They may only be reelected once for a single additional continuous term. Throughout their term, Assembly members enjoy a “personal privilege” protecting them from criminal prosecution for opinions, communications, representations, requests, questions, denouncements, proposals, and expressions or any legislative act of reporting.[[56]](#footnote-56) However, they are not immune from prosecution for other crimes and may be detained for “flagrant” crimes during their term.[[57]](#footnote-57)

Ordinary sessions of the Plurinational Legislative Assembly start on August 6th of every year and are continuous, with two recesses of fifteen days per year. In extraordinary cases of urgency, the President or the Plurinational Legislative Assembly’s President may request that the Assembly meet.

The Plurinational Legislative Assembly is tasked with many different functions, including:

* To approve and execute its budget;
* To dictate, interpret, repeal, abrogate, and modify laws;
* To elect six of its members to the Plurinational Electoral Organ by two-thirds vote;
* To pre-select members for the Plurinational Constitutional Court, the Supreme Court of Justice, the Agro-Environmental Court, and the Council of Magistrates;
* To approve the creation of new territorial units and establish their boundaries;
* To approve the economic and social development plan presented by the Executive branch;
* To approve the General State Budget presented by the Executive branch within sixty days of receipt;
* To approve contracts of public importance regarding natural resources and strategic areas signed by the Executive branch;
* To ratify international treaties;
* To establish a monetary system;
* To establish a system of measures;
* To question and, if necessary, impose censure on Ministers of State at the request of any member in the Assembly;
* To undertake investigations by way of commissions;
* To monitor and oversee public enterprises;
* To authorize the use of military troops outside of Bolivia; and
* To create or modify taxes at the central level of the state at the initiative of the Executive branch.[[58]](#footnote-58)

Both houses of Congress have human rights committees, on which Senators and Deputies sit for one-year terms.

### Judicial Branch

The judicial branch is split into four court systems with varying jurisdictions

* the Supreme Court of Justice and underlying departmental courts of justice, which exercise ordinary jurisdiction;
* the Agro-Environmental Court, which exercises agro-environmental jurisdiction;
* native legal authorities, which exercise rural native indigenous jurisdiction; and
* the Plurinational Constitutional Court, which interprets the Bolivian constitution.[[59]](#footnote-59)

Ordinary jurisdiction shares equal status with rural native indigenous jurisdiction.[[60]](#footnote-60) The constitution also creates a Council of Ministers of Justice, which oversees the administration of and disciplinary regime for the various court systems.[[61]](#footnote-61)

The Supreme Court of Justice is the highest court of ordinary jurisdiction. It is internally organized into specialized chambers and comprised of elected Magistrates. The Plurinational Legislative Assembly pre-selects candidates for election by a two-thirds majority vote, and Magistrates are elected by a simple majority of the population’s vote. Each Magistrate serves a six-year term and may not be re-elected.

The Agro-Environmental Court is the highest court of agro-environmental jurisdiction and hears appeals in actions involving agrarian real estate; forestry; the environment; water; rights of use and enjoyment of natural renewable, hydraulic, and forest resources; and biodiversity. It is comprised of elected Magistrates who must have experience as an agrarian judge and as a legal practitioner or university professor in the subject matter for eight years. Like Magistrates on the Supreme Court of Justice, Agro-Environmental Court Magistrates serve one six-year term and may not be re-elected.

Rural native indigenous jurisdiction recognizes the right for rural indigenous nations to adjudicate legal matters involving nation members pursuant to their own established law. Members of indigenous nations are subject to this jurisdiction regardless of whether they are “plaintiffs or defendants, claimants or accusers, whether they are persons who are denounced or accused, or are appellants or respondents.”[[62]](#footnote-62) It also applies to acts carried out or effecting people within the native indigenous nations’ jurisdictions. [[63]](#footnote-63)

Finally, the Plurinational Constitutional Court is the arbiter of constitutional interpretation. Its mandate includes assuring the supremacy of the constitution, exercising constitutional control, and safeguarding respect for and enforcement of constitutional rights.[[64]](#footnote-64) The Plurinational Constitutional Court is comprised of elected Judges from both the ordinary jurisdiction system and the rural native indigenous jurisdiction system who serve one six-year term and cannot be re-elected.[[65]](#footnote-65) Candidates must have at least eight years of experience in constitutional law, administrative law, or human rights law.[[66]](#footnote-66) Decisions of the Plurinational Constitutional Court are binding and non-appealable.[[67]](#footnote-67)

## Sources of Law and Practice

### Legislation

The Bolivian Constitution is primary and supreme source of law in Bolivia.[[68]](#footnote-68) The Plurinational Legislative Assembly also passes specific laws, which are sent to the President for signature. Finally, the courts create controlling jurisprudence within their jurisdictions.

### Other Sources (Customary, Common Law, Religious Law, Etc.)

Secondary sources of law include custom, doctrine, and jurisprudence. Doctrine includes the systematic collection of information written by jurists or legal scholars that answer some legal questions.[[69]](#footnote-69) Custom includes the “permanent daily repetition of acts and forms of conduct”.[[70]](#footnote-70) Jurisprudence includes rulings from the Supreme Court and the Plurinational Constitutional Court.[[71]](#footnote-71)

## Status of International Law in Bolivia

Although sovereignty lies in the Bolivian people, the constitution expressly recognizes that international treaties and conventions ratified by Bolivia’s Legislative Assembly and “which recognize human rights and prohibit their limitation in States of Emergency” prevail over Bolivian law. [[72]](#footnote-72) All rights and duties set forth in the constitution are to be interpreted in accordance with ratified international human rights treaties.[[73]](#footnote-73)

According to the United Nations Office of the High Commissioner on Human Rights, as of 2008-2009, Bolivia has ratified all seven major international human rights instruments, including the Optional Protocols to the Convention on All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Covenant on Civil and Political Rights (ICCPR).[[74]](#footnote-74)

With respect to treaties focused on child labor, forced labor, and human trafficking, Bolivia has ratified the Worst Forms of Child Labour Convention (C182),[[75]](#footnote-75) the Forced Labour Convention of 1930 (C029),[[76]](#footnote-76) the Minimum Age Convention of 1973 (C138),[[77]](#footnote-77) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the “Palermo Protocol”).[[78]](#footnote-78)

# Section II: Stakeholders

Multiple actors and governmental bodies are involved in the creation and enforcement of laws associated with the prevention of child labor, forced labor, and human trafficking.

## Actors and Agencies Responsible for the Enforcement of Child Labor, Forced Labor, and Human Trafficking Laws

Government actors and bodies that enforce child labor, forced labor, and human trafficking laws include:

* **Public Ministry:** The constitution establishes a Public Ministry to defend the law and the general interests of society, including by bringing public criminal actions.[[79]](#footnote-79) The Public Ministry is run by the Prosecutor, who is appointed by a two-thirds vote of the Plurinational Legislative Assembly to serve one six-year term with no possibility of being designated again.[[80]](#footnote-80) The Prosecutor works with various local municipal offices to enforce laws regarding child labor, forced labor, and human trafficking.
* **Ministry of Justice (“MOJ”)**: The MOJ trains judges and prosecutors on specialized techniques for investigating and prosecuting trafficking as well as chairs the Plurinational Council against Human Trafficking and Smuggling, which coordinates anti-trafficking efforts on the national leveland the Plurinational System for the Comprehensive Protection of Children and Adolescents, which coordinates review of plans pertaining to children’s and adolescent’s rights.[[81]](#footnote-81)
* **Ministry of Labor, Employment and Social Security (“MOL”):** TheMOL trains labor inspectors on recognizing child labor and other indicators of forced labor, conducts inspections of employers suspected of violating relevant child and forced labor laws, levies penalties against employers who engage in these practices, and refers cases of suspected forced labor to the MOJ. [[82]](#footnote-82) For suspected child labor, the MOL refers cases to municipal Offices of the Child Advocate for further investigation in coordination with the Prosecutor’s Office.[[83]](#footnote-83) In 2018, the MOL had six inspectors investigating child labor and reporting instances of forced labor and trafficking but did not collect statistics on the number of children removed from hazardous situations.[[84]](#footnote-84)
* **Offices of the Child Advocate**:[[85]](#footnote-85) Employees of these municipal offices accompany MOL inspectors to workplaces and refers cases as appropriate to the Prosecutor’s office and social services.[[86]](#footnote-86) The Offices of the Child Advocate also registers children ages 14 and older for work through Bolivia’s Child and Adolescent Information System (“SINNA”).[[87]](#footnote-87)
* **Attorney General’s Office**:The Attorney General’s Office oversees all human trafficking investigations and prosecutions at the national level.[[88]](#footnote-88) In conjunction with the Bolivian National Police, the Attorney General’s National Coordinator’s Office pursues human trafficking cases.[[89]](#footnote-89)
* **Bolivian National Police**:Bolivia’s National Police operates a special division called the Special Force in the Fight Against Crime (“FELCC”).[[90]](#footnote-90) The FELCC runs a small department called the Trafficking in Persons Division, which is comprised of 15 investigative human trafficking units.[[91]](#footnote-91)

## Other Legislative Stakeholders

In addition to the Plurinational Legislative Assembly, many other Ministries, governmental commissions and councils, and national and local non-governmental organizations (“NGOs”) contribute to the legislative process in Bolivia with respect to child labor, forced labor, and human trafficking.

* **Human Rights Ombudsman:** The Legislative Assembly must appoint a Public Human Rights Ombudsman for a period of six years.[[92]](#footnote-92) The Ombudsman files legal actions based on the violation of Bolivians’ constitutional rights and proposes and recommends modifications to laws and government. Each year, the Ombudsman must submit an annual report to the Plurinational Legislative Assembly regarding the status of human rights in Bolivia.[[93]](#footnote-93) The Ombudsman also oversees the Human Rights of Children Working in Sugarcane, Brazil Nuts, and Mining program, which seeks to eliminate child labor in those industries, and participates in multiple cross-governmental initiatives addressing child labor and human trafficking as described *infra*.[[94]](#footnote-94)
* **National Commission for the Progressive Education of Child Labor:** This is a commission that coordinates national enforcement efforts for child labor. It is led by the MOL and includes the MOJ, the Ministry of Education, and the Ministry of Planning, as well as several NGOs.[[95]](#footnote-95)
* **Plurinational System for the Comprehensive Protection of Children and Adolescents:** This MOJ-led program coordinates efforts to implement the Plurinational Plan for Children and Adolescents, the Coordinating Council for Children and Adolescents, and the Congress on Children’s rights.[[96]](#footnote-96) Its role includes evaluating national plans, public policies, reports, and budget allocation related to children’s and adolescents rights.[[97]](#footnote-97)
* **Plurinational Council against Human Trafficking and Smuggling Persons:** This is a cross-governmental body that coordinates anti-trafficking efforts and implements national laws and policies on human trafficking and smuggling.[[98]](#footnote-98) It is comprised of multiple ministries—including the MOJ, which chairs it—the Prosecutor, the Human Rights Ombudsman, and various NGOs.[[99]](#footnote-99) In 2019, it met four times and, through the Ombudsman’s office, launched an awareness campaign related to education on appropriate documentation for children and adolescents for transport drivers to aid with the identification of trafficking case.[[100]](#footnote-100)There are also department-level offices within the Council that assist nine of Bolivia’s departments, including the Special Force in the Fight Against Crime, the MOL, the ministries of Migration and Education, the Human Rights Ombudsman’s Office, and NGO representatives.[[101]](#footnote-101)
* **Ministry of Health (“MOH”)**: The MOH administers medical tests in the commercial sex industry, although it does not independently screen for trafficking indicators.[[102]](#footnote-102)
* **Ministry of Education (“MOE”):** Although its focus is broader than child labor initiatives, the MOE assists with child labor and trafficking training and awareness programs in schools and with parents in towns near Bolivia’s international borders.[[103]](#footnote-103) The MOE also participates in various cross-government bodies that coordinate the enforcement of child labor laws, including the National Commission for the Progressive Eradication of Child Labor, discussed *infra.*
* **The Institute for Normalization of Quality**: This is a quasi-governmental organization that operates a certification program for sugar producers who do not use child and forced labor.[[104]](#footnote-104)
* **International NGOs:** Several large international NGOs have operating collaborations with the Bolivian government in the sphere of child labor, forced labor, and human trafficking, such as the Office of the United Nations High Commissioner for Human Right (“OHCHR”) and the United Nations Office on Drugs and Crime (“UNODC”). Other international NGOs with a presence in Bolivia include Human Rights Watch and Amnesty International.
* **Local Groups:** Bolivia has a multitude of local civil society groups focused on human rights generally, in addition to organizations focused specifically on child labor, forced labor, and human trafficking.

The former category includes:

* + Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo, a national association of NGOs, government institutions, and civil society organizations defending human rights in Bolivia;
	+ Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia (UNATSBO), a national association that represents the interests of the child workers.
	+ Unión Nacional de Instituciones para el Trabajo de Acción Social (“UNITAS”), a group of approximately twenty civil society groups that promote democracy and human rights in Bolivia; and
	+ Derechos en Acción, a group of lawyers focused on the protection of human rights through strategic litigation, research, and education.

The latter category includes:

* + Fundación Construir, an organization that, in addition to other programs, aims to prevent child trafficking and sexual exploitation;
	+ Fundación Munasim Kullakita, is an institution with a community-based methodology, address the problematic of Commercial Sexual Violence (CSV) in girls and adolescents (NAs) women between 10 and 18 years of age and since 2012, expanding its coverage to people in situations of social suffering (boys, girls, adolescents and adults in situations of consumption of psychoactive substances and street life). This NGO is a referent in HT in Bolivia[[105]](#footnote-105);
	+ World Vision Bolivia, is an NGO working in programs related to the protection of children and violence[[106]](#footnote-106).
	+ Alianza Libres Sin Violencia, a conglomeration of approximately fifty organizations and civil society groups that seeks to address violence against women, and specifically human trafficking, through research, advocacy, and the monitoring of the implementation of public policies;
	+ Capacitación y Derechos Ciudadanos (“CDC”) Bolivia, an organization that focuses on providing legal support to child laborers as well as other marginalized populations (e.g., the LGBTQ community);
	+ Centro de Capacitación y Servicio para la Mujer (“CECASEM”), an organization that seeks to train women in rural areas to combat human trafficking;
	+ Fundación Esperanza en la Justicia y los Derechos Humanos, a foundation that offers legal assistance to women and children who experience conflict with the law or any kind of violence and discrimination;
	+ Casa de la Mujer, a women’s shelter that provides legal support to women and children experiencing violence.[[107]](#footnote-107)

# Section III: Process to Amend or Enact Legislation, Regulations, Policies and Plans

Article 163 of the Bolivian constitution describes in detail the process for enacting or amending legislation. For bills presented by a member of either the Chamber of Senators or Chamber of Deputies, the Chamber of origin initiates the legislative process before sending it to the other Chamber for review. Otherwise, bills are first sent to the Chamber of Deputies, where they are remanded to specific commissions for further development, unless the bills relate to decentralization, autonomies, and land registry, in which case the bills go first to the Chamber of Senators. An absolute majority[[108]](#footnote-108) of members of the originating Chamber must approve each bill before it passes to the reviewing Chamber. The reviewing Chamber may either approve the bill as authored or make amendments; if the latter, the originating Chamber must accept the amendments by an absolute majority or meet within twenty days to debate the bill. The Plenary of the Plurinational Legislative Assembly will then decide which version of the bill to pass. If the reviewing Chamber does not approve or modify a bill within thirty days of receipt, the Plenary considers the bill instead of the full reviewing Chamber. If rejected, the bill can be reintroduced in the next legislative session. [[109]](#footnote-109)

Once approved by the Assembly, bills are sent to the Executive branch for promulgation. The President may comment on the bill within ten working days from its receipt, at which point the bill is sent back to the Assembly. The Assembly may modify the law to incorporate the President’s comments, or the President of the Assembly may promulgate the law without incorporating the comments. The final law must be published immediately in the Official Gazette.[[110]](#footnote-110)

Laws that do not originate in either of the Chambers come from a variety of sources, including the President, the Ministries, or other groups convened for the purpose of drafting legislation. For example, in 2016, Bolivia held a National Justice Summit to craft a legislative package to reform the judicial system.[[111]](#footnote-111) The Summit convened members of the three branches of government as well as experts to provide recommendation on judicial reform, which were sent to the MOJ to draft the law.[[112]](#footnote-112) The MOJ then sent the law to the Legislative Assembly, which convened a commission to oversee the implementation of the recommendations.[[113]](#footnote-113)

# Section IV: Current Bolivian Law on Child Labor, Forced Labor, and Human Trafficking

Bolivia has five key laws governing child labor, forced labor, and human trafficking:

* + - * 1. the Children and Adolescent Code (Ley Nº 548 Ley Código Niña, Niño y Adolescente);
				2. the General Labor Law (Ley General del Trabajo);
				3. the Education Law (Ley N° 070 Ley de la Educación Avelino Siñani - Elizardo Pérez);
				4. the Comprehensive Law Against Trafficking and Smuggling of Persons (Ley N° 263 Ley Integral Contra la Trata y Trafico de Personas); and
				5. the Penal Code and Code of Penal Procedure (Ley Nº 1768 Código Penal y Código de Procedimiento Penal).

This white paper addresses each in turn, as well as relevant provisions of the Constitution.

## The Children and Adolescent Code

In July 2014, Bolivia passed the Children and Adolescent Code (Ley Nº 548 Ley Código Niña, Niño y Adolescente) (as amended in 2018, the “Code”), which set out the standards for the implementation of children’s rights. The Code defined children as a person from birth to 12 years of age and adolescents as a person between the ages of 12 and 18. The stated purpose of the Code is to “recognize, develop and regulate the exercise of the rights of children and adolescents to guarantee those rights as the responsibility of the State.”

The 2014 law lowered the minimum age of employment to 10, with restrictions. Lowering the age of employment enabled children as young as 10 to access labor rights and protections. Fulltime work was permitted at 14; work done for a child’s family, with the requirement of attending school, was permitted at the age of 10; and part time work outside of the home was permitted at the age of 12.

In 2017, the Plurinational Constitutional Court declared parts of the Code unconstitutional insofar as it permitted children under 14 to work.[[114]](#footnote-114) In December 2018, the Code was amended to raise the minimum age of employment to 14, which is consistent with the ILO exception for developing economies. Given the pushback in Bolivia to increasing the minimum age of employment further, it may also be beneficial to permit light work for children, provided there are restrictions in place, such as a light work list.

A summary of some of the relevant articles in the Code are set out below:

* **Article 115 (Right to education)**:Children and adolescents are guaranteed the right to free, comprehensive and quality education aimed at the full development of their personality, skills, physical and mental capacities.
* **Article 129 (Minimum age)**: The minimum age for employment is set at 14 years of age.
* **Article 130 (Guarantees)**: Bolivia guarantees adolescent employees over 14 years of age the same rights as adult workers.
* **Article 131 (Assent and authorization):** The girl, boy, and adolescent aged 10-18 years must freely express their consent to carry out any work activity. The employer is obligated to have written permission from the parents or guardian of such child or adolescent through a form issued by the Ministry of Labor, Employment and Social Welfare, which must be authorized by the Office of the Child Advocate (workers aged 12-14) or the Ministry of Labor, Employment and Social Welfare (workers over 14). The Offices of the Child Advocate must authorize all work activity and self-employment of girls, boys, and adolescents aged 10-18 and must conduct a comprehensive medical assessment that certifies adolescents’ physical and mental ability to perform the authorized work.
* **Article 132 (Protective labor provisions for employed adolescents):** The working day for adolescents may not exceed 8 hours a day and 40 hours a week and their workday should not go beyond 10pm.
* **Article 133 (Protective labor provisions for self-employed adolescents):** “Self-employed” adolescent workers may not work beyond 10pm and no authorization may be granted for work activity that is considered to be dangerous to “life, health, integrity or image.”
* **Article 135 (Prohibited Acts):** The following acts, among others, are prohibited: (i) labor exploitation, (ii) performance of work activity without consent or fair remuneration, (iii) work activity outside the country, (iv) illegal retention and (v) carrying out work activity after 10pm at night.
* **Article 136 (Hazardous Activities)**: Work activities and jobs that by their nature and condition are dangerous, unhealthy or threaten the dignity of the child or adolescent are prohibited, which shall include (among others) sugarcane and chestnut harvest, mining, fishing in rivers and lakes, brickwork, sales of alcoholic beverages and collection of waste. The Ministry of Labor, Employment and Social Welfare must adapt the list of these hazardous work activities and jobs at least every five years.[[115]](#footnote-115)
* **Article 139 (Inspection and Supervision)**: The Ministry of Labor, Employment and Social Welfare division, carries out “permanent inspections and supervisions in the workplace” of adolescents to ensure there is no violation of labor rights. The MOL refers violations to the Municipal Office of the Child Advocate.

## General Labor Law

Passed into law in 1942, the General Labor Law (Ley General del Trabajo) determines the rights and obligations arising from work and employment relationships in Bolivia. Chapter V of the General Labor Law specifies regulations on the work of women and minors.[[116]](#footnote-116) A summary of some of the relevant articles in the General Labor Law are set out below:

* **Articles 8 and 58 (Minimum Age):** To enter into employment contracts, those over 14 and under 18 will require the authorization of their parents or guardians and, failing that, authorization of the Labor Inspector. Employment of minors under the age of 14 is prohibited, except for apprenticeships. Minors under the age of 18 may not be hired for work beyond their physical strength that may hinder their normal physical development. Note that the Children and Adolescent Code amends this Article so that the exceptions from the Code also apply to Article 58.
* **Article 59 (Dangerous Work):** Work that is deemed “dangerous, unhealthy, heavy work” or occupations that are harmful to “morality and good customs” is prohibited for minors. The General Labor Law does not specify “dangerous, unhealthy, heavy work”; rather, Article 72 states that the General Labor Regulations will classify “unhealthy and dangerous industries” and prescribe protection and defensive measures against employment in such industries.
* **Article 60:** Children under 18 years of age may work only during the daytime. The General Labor Law does not provide a definition of “day”. However Article 46 specifies that night work is to be understood as the hours between 8pm and 6am and Article 47 states that an “effective working day” is the “time during which the worker is at the employer’s disposal.” Finally, the General Labor Law provides that an effective working day will not “exceed 8 hours per day and 48 hours per week.”[[117]](#footnote-117)

## The Education Law

This law (Ley N° 070 Ley de la Educación Avelino Siñani - Elizardo Pérez), passed in 2010, states that universal free education is a right, and it is the responsibility of the State to “sustain, guarantee and manage” state education. The Law also states that education is compulsory until high school. According to UNESCO’s profile of Bolivia, compulsory education in Bolivia lasts 14 years from age 4 to age 17.[[118]](#footnote-118)

## The Comprehensive Law Against Trafficking and Smuggling of Persons

The Comprehensive Law Against Trafficking and Smuggling of Persons (Ley N° 263 Ley Integral Contra la Trata y Trafico de Personas) (the “CLATP”) was passed as Law No. 263 on July 31, 2012. Its purposes are: (i) to establish measures for the prevention of human trafficking and related crimes; (ii) to implement and consolidate public policies for the protection, care and comprehensive reintegration of victims of human trafficking; (iii) to strengthen the response of the criminal justice system against human trafficking crimes; and (iv) to promote and facilitate national and international cooperation against human trafficking crimes.[[119]](#footnote-119) The scope of the law applies to Bolivian citizens as well as foreigners who are in Bolivian territory. Additionally, the law applies to Bolivian citizens who are in a foreign territory.

The CLATP provides several key definitions related to human trafficking activities. The table below provides a summary of the definitions (based on an English translation of the law)[[120]](#footnote-120):

| Term | Definition |
| --- | --- |
| Abuse of a Vulnerability Situation | To take advantage of or take advantage of situations of: addiction to any substance, disease, pregnancy, income or immigration status irregular, precarious social survival, physical or mental disability, disability, childhood and adolescence, for their submission for the purposes of Trafficking and Smuggling of Persons, and crimes related. |
| Exploitation | The obtaining of economic or other benefits through the forced participation of another person in: acts of prostitution, sexual and / or labor exploitation, worst forms of child labor, forms of debt bondage and others, forced labor, illicit sale and extraction of human fluids, tissues, cells or other organs. |
| Servitude | A state of dependence or submission of the will in which the perpetrator induces or forces the victim to perform acts, work or services for various purposes, through deception, threats, coercion or other forms of violence. |
| Debt Bondage | Any job or service that is required of a person who does not have choice or knowledge about the consequences of loans or advances wages that he receives, generating his subjection and submission. |
| Customary Servitude | The action by which a person is subjected or exploited by another, under links associated with local customs and traditional practices, such as *padrinazgo*, *compadrazgo*, any other spiritual bond or *empatronamiento* relationship. |
| Servile Marriage | The labor and/or sexual exploitation of a member of the couple and implies situations of slavery, isolation, control and physical, sexual and reproductive violence. |
| Illegal Guardianship and Adoption | The procedure of custody and adoption of boys, girls and adolescents that is carried out without complying with the legal requirements and regulations stipulated in national regulations and international instruments. |
| Forced Labor | Any work or service performed by a person, under threat or coercion, with or without the consent of the person. Awarding wages or other Compensation does not necessarily mean that the work is not forced or compulsory. |
| Threat | The coercion that is exercised towards the victim through violence or physical or psychological restriction, so that he or she does not file a complaint with the competent authorities, for fear loss of job, non-payment of wages, financial penalty for debts, intimidation of the family or others. |
| Sex Tourism | The use of people to offer them in sexual services related to: tourist, cultural or natural packages, promoted through erotic messages and images broadcast by any means of telecommunication, information technology and media. |
| Forced Begging | Forcing a boy, girl, adolescent or adult to ask money or other benefits on the street or any other public or private place, in favor of a third. |

While the general definition of trafficking in persons (which may also be found in the Penal Code) is in line with the definition promulgated under the Palermo Protocol,[[121]](#footnote-121) Bolivian law does not specify a separate definition for the trafficking of a child. Per the Palermo Protocol, “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth.”[[122]](#footnote-122) Thus, Bolivia should amend its definition of “trafficking in persons” to clarify that the “means” element is not required in the case of trafficking in children.

It should be noted that the Bolivian government is currently reviewing proposed changes to CLATP. The proposed revisions include changes to Article 6 (Definitions), including adding definitions of trafficking in persons and of illicit trafficking of migrants.

Among other things, the CLATP set up an institutional framework, structured as per the relevant regulations,[[123]](#footnote-123) to formulate, approve and execute the law against trafficking in persons. At the National level, the institutional framework required the creation of the Plurinational Council,[[124]](#footnote-124) which comprised members from the Executive Branch, public institutions, and organized civil society.[[125]](#footnote-125) At the Departmental level, the institutional framework required the creation of a Departmental Council in every department.[[126]](#footnote-126)

The CLATP also established mechanisms for the prevention of trafficking in persons such as: (i) educational programs, both formal[[127]](#footnote-127) and informal[[128]](#footnote-128); (ii) regulations related to the dispersal of information through the communications sector,[[129]](#footnote-129) including via social media[[130]](#footnote-130); (iii) regulations for public employment services[[131]](#footnote-131) and private employment agencies[[132]](#footnote-132) to follow with respect to trafficking in persons; (iv) monitoring systems for improving the security of citizens[[133]](#footnote-133); and (v) action protocols for improving border controls.[[134]](#footnote-134)

The CLATP further provided provisions for the protection and reintegration of victims of human trafficking, particularly children and adolescents. These provisions included: (i) the elimination of redundant investigative procedures to prevent the revictimization of those subjected to human trafficking[[135]](#footnote-135); (ii) measures such as name changes, temporary residence changes, security and temporary protection, and the use of Gessell Chambers[[136]](#footnote-136) during investigation to safeguard the intimacy, privacy and identity of victims[[137]](#footnote-137); (iii) special precautions to protect victims who are children or adolescents[[138]](#footnote-138); (iv) the creation of Centers of Specialized Reception for the care and physical, psychological, social, economic and cultural reintegration of victims[[139]](#footnote-139); (v) the free transfer of victims to their place of origin by operators of passenger transport services[[140]](#footnote-140); and (vi) a special labor insertion program provided by the Public Employment Service.[[141]](#footnote-141)

Title III of CLATP criminalizes various crimes related to human trafficking via modifications to the Penal Code, which is discussed below.[[142]](#footnote-142)

Some of the additional relevant provisions are as follows:

* **Article 36**: The Bolivian Police will be responsible for: (i) patrolling places suspected of human trafficking activity; (ii) verifying facilities where sexual services are complained of being offered; (iii) examining seized computers for electronic proof of human trafficking networks; and (iv) carrying out cyber patrols of public internet pages.
* **Article 37:** The Public Ministry will design, formulate and execute policies and institutional strategies for criminal prosecution and designate, in each Department, Specialized Prosecutors against human trafficking.
* **Article 38:** The Armed Forces will, in coordination with the Bolivian Police and the Public Ministry, cooperate in the actions of patrolling and controlling borders and places away from the country to support the actions related to the combat against human trafficking.
* **Article 41**: The Prosecutor may request the competent jurisdictional authority to intercept and record telephone calls when there are serious indications of the participation of a person in associations or organizations engaged in human trafficking.
* **Article 42**: The complaint for a human trafficking crime may be filed verbally or in written form by the victims or third parties, without complying with formal procedural requirements.
* **Article 43**: A human trafficking victim is exempt from being investigated and charged for the commission of other crimes that are a direct result of their situation.
* **Article 45**: The Ministries of Foreign Affairs and Government will seek and strengthen bilateral, multilateral or regional relations for the protection of victims, as well as the prosecution and punishment, of human trafficking and related crimes.
* **Article 46**: When the victim is a national Bolivian and is in foreign territory, the Ministry of Foreign Affairs, the Embassies and consulates will promote either their voluntary repatriation, or the cooperation of the State of residence to guarantee the victim’s human rights.

## The Penal Code and Code of Penal Procedure

The Penal Code and Code of Penal Procedure (Ley Nº 1768 Código Penal y Código de Procedimiento Penal) identifies penalties for crimes related to human trafficking and forced labor.

**Article 281*bis*** provides for imprisonment of 10-15 years for the crime of trafficking in persons, which is composed of the following elements:[[143]](#footnote-143)

* *Act*: Whoever, by means of deception, intimidation, abuse of power, force, coercion, threats, abuse of the victim’s dependency or vulnerability, or the granting or receipt of payments by himself or a third person,
* *Means*: Induces or favors the recruitment, transfer, transportation, deprivation of liberty, or reception of people inside or outside the national territory, even with the consent of the victim,
* *Purpose*: For any of the following purposes: (i) sale or other acts of disposition of a human being with or without profit; (ii) unlawful extraction, sale or disposal of body fluids or fluids, cells, human organs or tissues; (iii) reduction to slavery or analogous state; (iv) labor exploitation, forced labor or any form of servitude; (v) costumbrista servitude; (vi) commercial sexual exploitation; (vii) forced pregnancy; (viii) sex tourism; (ix) guardianship or adoption; (x) forced begging; (xi) servile marriage, free union or in fact servile; (xii) recruitment of people to participate in armed conflicts or religious sects; (xiii) employment in criminal activities; and (xiv) unlawful conducting of biomedical research.

The sanction will be aggravated by one-third when the perpetrator is a public servant, a medical professional or diplomat; is a spouse or partner; is related to the victim up to the fourth degree of consanguinity or second degree of affinity; or is in charge of guardianship, custody, care, or education of the victim. The sanction will be 15-20 years when the victim is a boy, girl, or adolescent, person with physical disability, illness or mental deficiency, or a pregnant woman; the perpetrator is part of a criminal organization, or an injury is very serious or results in the loss of life or integrity, or safety of the victim is endangered.[[144]](#footnote-144) If the death of the victim occurs as a result of the crime, the prescribed sanction will be imposed for the crime of murder.[[145]](#footnote-145)

It should be noted that while the general definition of trafficking in persons found in the Penal Code is in line with the definition promulgated under the Palermo Protocol,[[146]](#footnote-146) Bolivian law does not specify a separate definition for the trafficking of a child. Per the Palermo Protocol, “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth.”[[147]](#footnote-147) Thus, Bolivia should amend its definition of “trafficking in persons” to clarify that the “means” element is not required in the case of trafficking in children.

Other related provisions of the Penal Code include:

***Penal Provisions:***

* **Article 321*bis***[[148]](#footnote-148) provides for whoever, in order to obtain direct or indirectly economic benefit for self or for a third party, promotes, induces, favors or facilitates entry or exit by any means the illegal transfer of a person: (i) from Bolivia to another State in which said person is not a national or permanent resident, an imprisonment of 5-10 years, and (ii) from one department or municipality in which said person is a permanent resident to another, through deception, violence, threat, an imprisonment of 4-7 years. The sanctions will be aggravated by half when: (i) the transport conditions endanger the physical or psychological integrity of the victim; (ii) the author is a public servant, in charge of protecting the rights and integrity of people in vulnerable situations, part or member of a delegation or diplomatic mission during the commission of the crime, or part of a criminal organization; (iii) the activity is habitual and for profit; or (iv) the crime is committed against more than one person. The penalty will be aggravated by two-thirds when the victim is a boy, girl, or adolescent, a person with physical disability, illness or mental deficiency, or pregnant. If the victim is subjected to any form of violence or risk that results in their death, including by suicide, the penalty established for the crime of murder shall be imposed.
* **Article 178**[[149]](#footnote-149) provides for imprisonment of 1-3 years for the omission of a complaint by a public servant or a servant who, for reason of their position, has the obligation to promote the reporting of crimes. If the victim is a boy, girl, or adolescent, the penalty will be increased by one-third.
* **Article 203*bis***[[150]](#footnote-150) provides for aggravation of imprisonment by one-third for the crimes of material falsehood, ideological falsity or use of a falsified instrument, when committed to facilitate crimes of trafficking in persons and related crimes.
* **Article 321*ter***[[151]](#footnote-151)provides for imprisonment for 3-8 years for a public servant who, without due authorization, reveals information obtained in the exercise of their functions that allows or gives rise to the identification of a victim, witness or complainant of trafficking in persons and related crimes.

***Procedural Provisions:***

* **Article 282**:[[152]](#footnote-152) During the investigation of crimes related to trafficking in persons, in the absence or insufficient means of proof, the Public Ministry may request the Judge of Criminal Investigation to authorize the intervention of undercover agents, specialized members of the Bolivian Police. The undercover agent will keep the Prosecutor in charge of the functional direction of the investigation. The testimonial statements of the undercover agent will not be sufficient to establish a conviction, if there is no additional evidence validly incorporated into the process. The undercover agent will not be exempt from the corresponding responsibility, if in the course of the investigation, they perform acts other than those specifically entrusted, or with evident excess or disproportionality.

## The Constitution

As discussed briefly in Section I.B.1 *supra*, the Bolivian Constitution has several Articles directly addressing child labor, forced labor, and human trafficking. A summary of these Articles is set out below:

* **Article 15** provides that every person has the right to life and physical, psychological, and sexual integrity. It prohibits torture and the suffering of cruel, inhuman, degrading or humiliating treatment. In addition, Article 15 mandates that everyone, and in particular women, have the right not to suffer physical, sexual, or psychological violence among their families as well as in society; requires the State to adopt measures necessary to prevent, eliminate, and punish sexual and generational violence as well as actions intended to be degrading, to cause death, and to cause physical, psychological, or sexual suffering, in private or in public; prohibits submission to forced disappearances; and prohibits servitude, slavery, and human trafficking.
* **Article 46** provides every person with the right to dignified, safe work, without discrimination and with a fair, satisfactory remuneration or salary. It also declares that everyone has the right to a stable source of work under equitable and satisfactory conditions, and requires the State to protect the exercise of work in all forms. Finally, Article 46 prohibits all forms of forced work or other analogous exploitation that obligates a person to work without his or her consent or without fair remuneration.
* **Article 61** prohibits any form of violent punishment against children or adolescents as well as forced work and child labor. It further provides that the activities of children and adolescents, both within their families and society, must be directed toward their full development as citizens. Finally, it declares the rights, guarantees, and institutional mechanisms for the protection of children to be objects of special regulation.
* **Article 398** outlaws “Latifundo” and double title. “Latifundo” is defined to include the non-productive holding of land, including the exploitation of land that applies a system of servitude, quasi-slavery, or slavery. Double title is not defined.

# Section V: Bolivia’s International Commitments

## U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

Along with the United Nations Convention against Transnational Organized Crime (“**UNTOC**”), Bolivia has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the “**Palermo Protocol**”), with the declared reservation that it does not consider itself bound by the provisions of article 15, which deals with the settlement of disputes arising from the Palermo Protocol.

The UNTOC is the main international instrument with respect to transnational organized crime. States that ratify the UNTOC commit themselves to taking a series of measures against transnational organized crime, including: (i) the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); (ii) the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and (iii) the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.

The UNTOC is supplemented by three protocols, each of which targets specific areas and manifestations of organized crime. One of these supplementary protocols is the Palermo Protocol. The key relevant provisions of the Palermo Protocol are as follows:

* **Article 2**: The purposes of the Palermo Protocol are: (a) to prevent and combat trafficking in persons, with particular attention to women and children; (b) to protect and assist the victims of such trafficking, with full respect for their human rights; and (c) to promote cooperation among States Parties in order to meet those objectives.
* **Article 3**: “Trafficking in persons” is defined as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. “Exploitation” shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. In addition, the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means outlined above. “Child” is defined as any person less than 18 years of age.
* **Article 5**: Each State Party shall adopt legislative and other measures as may be necessary to establish as criminal offences the conduct outlined in Article 3 above when committed intentionally. These are also to include: (i) attempting to commit such an offence; (ii) participating as an accomplice in such an offence; or (iii) organizing or directing other persons to commit such an offence.
* **Article 6**: Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, in particular the provision of: (i) appropriate housing; (ii) counselling and information; (iii) medical, psychological and material assistance; and (iv) employment, educational and training opportunities. Each State Party shall take into account the age, gender and special needs of victims, in particular the special needs of children. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.
* **Article 7**: Each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently.
* **Article 8**: The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall, at the request of the receiving State Party, without undue and reasonable delay: (i) with due regard for the safety of the person, facilitate and accept the return of that person; (ii) verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party; and (iii) agree to issue such travel documents or other authorization as may be necessary to enable a returning person without proper documentation to travel to and re-enter its territory.
* **Article 9**: States Parties shall establish comprehensive policies, programmes and other measures: (i) to prevent and combat trafficking in persons; and (ii) to protect victims of trafficking in persons, especially women and children, from revictimization. States Parties shall also: (i) take or strengthen measures to alleviate the factors that make persons (especially women and children) vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity; and (ii) adopt or strengthen legislative and other measures to discourage the demand that fosters all forms of exploitation of persons (especially women and children) that leads to trafficking.
* **Article 10**: States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should, amongst other things, take into account the need to consider human rights and child- and gender-sensitive issues.
* **Article 11**: States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons, including: (i) establishing, subject to sanction, the obligation of commercial carriers to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State; (ii) taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences related to trafficking in persons; and (iii) considering strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.
* **Article 15**: States Parties shall endeavor to settle disputes concerning the interpretation or application of this Protocol through negotiation. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

Bolivia has largely implemented the Palermo Protocol into its domestic law.

## ILO Convention No. 138 on the Minimum Age for Admission to Employment

Now an agency of the United Nations, the International Labour Organization (the “**ILO**”) was established in 1919. The ILO seeks to set labor standards, develop policies and devise programs promoting decent work for all women and men. ILO Convention No. 138 was adopted in a General Conference of the ILO in 1973 with the purpose of raising the minimum age for admission to employment or work to a level consistent with the “fullest physical and mental development of young persons.” Bolivia ratified ILO Convention No. 138 in 1997. References to “Members” are to countries which are bound by this Convention due to having ratified it.

The relevant articles in this Convention are set out below:

* **Article 1**: Each Member undertakes to pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.
* **Article 2**: Each Member shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory, and subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation. The minimum age shall not be less than the age of compulsory schooling and, in any case, shall not be less than 15 years. However, a Member whose economy and educational facilities are insufficiently developed may, after consultation with organizations of employers and workers concerned (where such exist) initially specify a minimum age of 14 years.
* **Article 3**: The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years. The types of employment or work to which this article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned (where such exist). However, national laws or regulations or the competent authority may, following such consultation, authorize employment or work of this type from the age of 16 years provided that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity.
* **Article 4**: The competent authority, in so far as necessary, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise. Each Member shall list in its first report on the application of this Convention any categories which may have been so excluded, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of those excluded categories and the extent to which effect has been given or is proposed to be given to this Convention in respect of such categories. However, employment or work covered by Article 3 above shall not be excluded from the application of this Convention.
* **Article 5**: A Member whose economy and administrative facilities are insufficiently developed may initially limit the scope of application of this Convention. Any such Member shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of this Convention. As a minimum, these provisions shall be applicable to: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes (subject to certain exclusions).
* **Article 6**: This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years old in undertakings where such work is carried out in accordance with conditions prescribed by the competent authority, and is an integral part of: (i) a course of education or training for which a school or training institution is primarily responsible; (ii) a program of training mainly or entirely in an undertaking which program has been approved by the competent authority; or (iii) a program of guidance or orientation designed to facilitate the choice of an occupation or line of training.
* **Article 7**: (i) National laws or regulations may permit the employment or work of persons 13 to 15 years old on light work which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programs approved by the competent authority, or their capacity to benefit from the instruction received. (ii) National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not completed their compulsory schooling on work which meets the requirements in (a) and (b) above. The competent authority shall determine the activities in which employment or work may be permitted under this article, and shall prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. A member which has availed itself of the provisions of Article 4 above may substitute the ages 12 and 14 for 13 in Paragraph (i) of this Article 7 and 15 and the age 14 for the age 15 in Paragraph (ii) of this Article 7.
* **Article 8**: The competent authority may allow exceptions to the prohibition of employment or work provided for in Article 2 above, for such purposes as participation in artistic performances; these are to be effected by permits granted in individual cases. Such permits shall limit the number of hours during which, and prescribe the conditions in which, employment or work is allowed.

The table below sets out the minimum age at which children can start work for each category of work identified in the Convention:[[153]](#footnote-153)

|  |  |  |
| --- | --- | --- |
|  | **Minimum Age** | **Exceptions for Developing Countries** |
| **Hazardous work** Any work which is likely to jeopardize children’s physical, mental or moral health, safety or morals should not be done by anyone under the age of 18.  | 18 (16 under strict conditions)  | 18 (16 under strict conditions)  |
| **Basic Minimum Age** The minimum age for work should not be below the age for finishing compulsory schooling, and in any case not less than 15.  | 15 | 14 |
| **Light work** Children between the ages of 13 and 15 years old may do light work, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training.  | 13-15 | 12-14 |

Key departures from this Convention in Bolivian legislation are contained in the Table of Proposed Amendments in the Appendix.

## ILO Convention No. 182 on the Worst Forms of Child Labour

Bolivia ratified ILO Convention No. 182 in 2003, which calls for the prohibition and elimination of the worst forms of child labor as a matter of urgency. References to “Members” are to countries that are bound by this Convention due to having ratified it.

Key provisions of this Convention are set out below:

* **Article 1**: Each Member shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency.
* **Article 2**: The term “child” in this Convention applies to all persons under the age of 18.
* **Article 3**: The term “the worst forms of child labour” comprises: (i) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (ii) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (iii) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and (iv) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.
* **Article 4**: The types of work referred to under (iv) above (i.e. work likely to harm the health, safety or morals of children) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, particularly paragraphs 3 and 4 of ILO Convention 190 (as to this, see (D) below).
* **Article 5**: Each Member shall establish or designate appropriate mechanisms to monitor the implementation of national law provisions giving effect to this Convention.
* **Article 6**: Each Member shall design and implement programs of action to eliminate as a priority the worst forms of child labor.
* **Article 7**: Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the national law provisions giving effect to this Convention, including the provision and application of penal or other appropriate sanctions. Each Member shall, taking into account the importance of education in eliminating child labor, take effective and time-bound measures to: (i) prevent the engagement of children in the worst forms of child labor; (ii) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration; (iii) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labor; (iv) identify and reach out to children at special risk; and (v) take account of the special situation of girls
* **Article 8**: Members shall take appropriate steps to assist one another in giving effect to this Convention through enhanced international cooperation and/or assistance, including support for social and economic development, poverty eradication programs and universal education.

Bolivia has largely implemented Convention 182 into its domestic law.

## ILO Convention No. 029 on Forced Labour

Bolivia ratified the ILO Convention No. 029 on Forced Labour on May 31, 2005. Signatories undertake to suppress the use of forced or compulsory labor. The Convention defines forced or compulsory labor as work/service extracted involuntarily under the menace of penalty. The Convention specifically excludes:

* military service,
* service that is a part of the normal civic obligations of the citizens of a fully self-governing country,
* service as a result of a conviction in a court of law (not at the service at the disposal of private individuals or companies),
* service in cases of emergencies such as war or threatened calamity (fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and anything else that might endanger the existence of the whole population), and
* minor communal service done in the direct interest of the community. [[154]](#footnote-154)

Finally, Article 25 states that forced or compulsory labor should be a penal offence that is strictly enforced.[[155]](#footnote-155)

Bolivia does not include forced labor as a separate offence in its legislation. Rather, it is identified as a type of trafficking under The Comprehensive Law Against Trafficking in Persons.

## Additional International Commitments

Below is a short summary of Bolivia’s additional international commitments related to child labor, forced labor, and human trafficking.

### U.N. Convention on the Right of the Child

The U.N. Convention on the Rights of the Child (the “**CRC**”) is regarded as the most complete statement of children’s rights produced, and is the most widely-ratified international human rights treaty. It sets out the civil, political, economic, social and cultural rights that all children are entitled to. Bolivia signed and ratified the CRC in 1990.

The Articles relating to child labor in the CRC are set out below. Articles relating to education have also been included due to the link between the lack of available education and increased child labor. References to “States Parties” are to countries which are bound by the CRC as a result of having ratified it.

The relevant articles in this Convention are set out below:

* **Article 1**: Every human being under the age of 18 is to be considered to be a child, unless under the law applicable to the child, majority is attained earlier.
* **Article 2**: States Parties shall respect and ensure the rights set forth in the CRC without discrimination of any kind.
* **Article 11**: States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
* **Article 19**: States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation while in the care of parents, legal guardians or any other person who has care of the child.
* **Article 28**: States Parties recognize the right of the child to education. With a view to achieving this right progressively and on the basis of equal opportunity, States Parties shall, in particular: (i) make primary education compulsory and available free to all; (ii) encourage the development of different forms of secondary education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (iii) make higher education accessible to all on the basis of capacity by every appropriate means; (iv) make educational and vocational information and guidance available and accessible to all children; and (v) take measures to encourage regular attendance at schools and the reduction of drop-out rates.
* **Article 32**: States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article, and in particular: (i) provide for a minimum age or minimum ages for admission to employment; (ii) provide for appropriate regulation of the hours and conditions of employment; and (iii) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.
* **Article 33**: States Parties shall take all appropriate measures to protect children from the illicit use of narcotic drugs and psychotropic substances, and to prevent the use of children in the illicit production and trafficking of such substances.
* **Article 34**: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse, and shall in particular take all appropriate measures to prevent: (i) the inducement or coercion of a child to engage in any unlawful sexual activity; (ii) the exploitative use of children in prostitution or other unlawful sexual practices; and (iii) the exploitative use of children in pornographic performances and materials.
* **Article 35**: States Parties shall take all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

### ILO Recommendation No. 190 on the Worst Forms of Child Labour

Recommendation No. 190 was adopted to supplement ILO Convention No. 182, and its provisions should be applied in conjunction with that Convention.[[156]](#footnote-156) References to the “Convention” and “Articles” in this section are to ILO Convention No. 182 and the relevant articles of ILO Convention No. 182 respectively.

* + 1. **Programmes of Action**

The programs of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, and should aim at, among other things: (i) identifying and denouncing the worst forms of child labor; (ii) preventing the engagement of children in or removing them from the worst forms of child labor, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs; and (iii) giving special attention to: (a) younger children; (b) girls; (c) the problem of hidden work situations, in which girls are at special risk; (d) other groups of children with special vulnerabilities or needs; (iv) identifying, reaching out to and working with communities where children are at special risk; and (v) informing, sensitizing and mobilizing public opinion and concerned groups, including children and their families.

* + 1. **Hazardous Work**

In determining hazardous work (i.e., work likely to harm the health, safety or morals of children, referred to in Article 3(d) of the Convention), and in identifying where it exists, consideration should be given to, among other things: (i) work which exposes children to physical, psychological or sexual abuse; (ii) work underground, under water, at dangerous heights or in confined spaces; (iii) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; (iv) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and (v) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer. However, a Member may authorize employment in the above-categories from the age of 16 provided that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

* + 1. **Implementation**

Information and data: Detailed information and statistical data on the nature and extent of child labor should be compiled and kept up to date. Members should also take into account the importance of an effective system of birth registration, including the issuance of birth certificates. Relevant data concerning violations of national provisions for the prohibition and elimination of the worst forms of child labor should be compiled and kept up to date.

National mechanisms and international cooperation: Members should establish or designate appropriate national mechanisms to monitor the implementation of national provisions for the prohibition and elimination of the worst forms of child labor. Members should also, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labor.

Establishment of criminal offences: Members should provide that the following worst forms of child labor are criminal offences: (i) forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (ii) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and (iii) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons. Members should ensure that penalties, including, where appropriate, criminal penalties, are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention. Other criminal, civil or administrative remedies should also be provided where appropriate to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labor.

### ILO Recommendation No. 146 on the Minimum Age for Admission to Employment

This Recommendation was adopted to supplement ILO Convention No. 138. References to the “Convention” and “Articles” in this section are to ILO Convention No. 138 and the relevant articles of ILO Convention No. 138 respectively

* + 1. **National Policy**

High priority should be given to planning for and meeting the needs of children and youth in national development policies and programs and to the progressive extension of the inter-related measures necessary to provide the best possible conditions for physical and mental growth of children and young persons.

Special attention should be given to the following: (i) firm national commitment to full employment, and the taking of measures designed to promote employment-oriented development in rural and urban areas; (ii) the progressive extension of other economic and social measures to alleviate poverty wherever it exists and to ensure family living standards and income which are such as to make it unnecessary to have recourse to the economic activity of children; (iii) the development and progressive extension, without any discrimination, of social security and family welfare measures aimed at ensuring child maintenance, including children's allowances; (iv) the development and progressive extension of adequate facilities for education and vocational orientation and training appropriate in form and content to the needs of the children and young persons concerned; and (v) the development and progressive extension of appropriate facilities for the protection and welfare of children and young persons, including employed young persons, and for the promotion of their development.

Full-time attendance at school or participation in approved vocational orientation or training programs should be required and effectively ensured up to an age at least equal to that specified for admission to employment in accordance with Article 2 of the Convention.

The following should be considered: (i) measures such as preparatory training, not involving hazards, for types of employment or work in respect of which the minimum age prescribed in accordance with Article 3 of the Convention is higher than the age of completion of compulsory full-time schooling; and (ii) analogous measures where the professional exigencies of a particular occupation include a minimum age for admission which is higher than the age of completion of compulsory full-time schooling.

* + 1. **Minimum Age**

The minimum age should be fixed at the same level for all sectors of economic activity. Members should progressively rise to 16 years the minimum age for admission to employment or work specified in pursuit of Article 2 of the Convention.

* + 1. **Hazardous Employment**

Where the minimum age for admission to types of work or employment which are likely to jeopardize the health, safety or morals of young persons is still below 18 years, immediate steps should be taken to raise it to that level.

In determining the types of employment or work to which the above applies, full account should be taken of relevant international labor standards, such as those concerning dangerous substances, agents or processes (including ionizing radiations), the lifting of heavy weights, and underground work.

* + 1. **Conditions of Employment**

Special attention should be given to the following:

(i) provision of fair remuneration and its protection;

(ii) strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, in order to allow enough time for education and training (including the time needed for relevant homework), for rest during the day and for leisure activities

(iii) granting (save in genuine emergency) of a minimum consecutive period of 12 hours per night rest, and of customary weekly rest days;

(iv) granting of an annual holiday with pay of at least four weeks;

(v) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes; and

(vi) maintenance of satisfactory standards of safety and health and appropriate instruction and supervision

* + 1. **Enforcement**

Labor inspection and administration: Measures to ensure the effective application of the Convention and this Recommendation should include: (i) the strengthening as necessary of labor inspection and related services; and (ii) the strengthening of services for the improvement and inspection of training in undertakings. Labor inspectors can play an integral role in supplying information and advice more effective means of ensuring compliance with relevant provisions. Labor administration services should work in close cooperation with the services responsible for the education, training, welfare and guidance of children and young persons.

Special attention: Special attention should be paid: (i) to the enforcement of provisions concerning employment in hazardous types of employment or work; and (ii) in so far as education or training is compulsory, to the prevention of the employment or work of children and young persons during the hours when instruction is available.

Verification of ages: The following measures should be taken to facilitate the verification of ages: (i) public authorities should maintain an effective system of birth registration, which should include the issue of birth certificates; (ii) employers should be required to keep and to make available to the competent authority registers or other documents indicating the names and ages or dates of birth, of children and young persons employed by them, or receiving vocational orientation or training in their undertakings from them; and (iii) children and young persons working in the streets, in outside stalls, in public places, in itinerant occupations or in other circumstances which make the checking of employers' records impracticable should be issued licenses or other documents indicating their eligibility for such work.

### Inter-American Convention on the International Traffic of Minors

Ratified by Bolivia in 2003, this Convention was developed with a view to prevent and punish the international traffic in minors, as well as to regulate its penal and civil aspects. The Convention applies to any minor, defined as a human being below the age of eighteen, habitually residing in a State Party or located in a State Party at the time when their abduction, removal or retention, or attempted abduction, removal or retention, for unlawful purposes or by unlawful means occurs. The unlawful purpose could include prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor's habitual residence or the State Party where the minor is located. The unlawful means could include kidnaping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institution having care of the child, or any other means unlawful in either the State of the minor's habitual residence or the State Party where the minor is located. The penal aspects of the Convention related mainly to relations between the State Parties when conducting proceedings related to the objectives of the Convention. Under the domestic law of a State Party, the Convention merely stated that the “State Parties undertake to adopt effective measures … to prevent and severely punish the international traffic in minors defined” in the Convention.

### Rome Statute of the International Criminal Court

Bolivia has been a State Party to the Rome Statute of the International Criminal Court (ICC) since 2002. Article 7 defines enslavement as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”

# Section VI: Additional Legislative Gaps and Barriers

Although Bolivia has adopted several of the core international conventions prohibiting child labor, forced labor, and human trafficking, multiple barriers exist to implementing and enforcing these standards. This white paper addresses legislative gaps and barriers for each area of law.

## Child Labor

### Legislative Barriers to Criminalizing Offenders and Repairing Victims

While the minimum age for employment is set at 14, Bolivia’s child labor legislation may still be non-compliant with international law. Article 129(I) of Bolivia’s Children and Adolescent Code simply states that “The minimum age for work is set at fourteen (14) years of age.”[[157]](#footnote-157) Although the stated minimum age of 14 is in and of itself compliant with international law, pursuant to the ILO’s Convention No. 138, the minimum age for employment “shall not be less than the age of completion of compulsory schooling.” Because the compulsory age of education in Bolivia is 17,[[158]](#footnote-158) Bolivia should in theory raise the minimum age of work to 17 in order to meet its international obligations. In addition to this, the code could be modified to permit light work for children ages 14 to 16. However, practically, this would likely be hard to accomplish as the minimum age for work was only recently raised to 14 and due to the strong position of the influential UNATsBO (Union of Child Workers in Bolivia, or Asociación de Niños, Niñas y Adolescentes Trabajadores de Bolivia) which favors permitting child labor.

Additionally, the Labor Code allows children under the age of 14 to work as “apprentices,” which is an undefined term without clear limitations on age, type of work, permissible hours, or other similar restrictions. Moreover, “apprentices” are not included in the Children and Adolescent Code’s Article 126, which codifies children’s and adolescent’s right to protection at work. Child apprentices therefore do not enjoy the same protections as children employees, even though there may be no functional difference between an apprentice and an employee. Key recommendations in this area include codifying protections for child apprentices in the Children and Adolescent Code to bring the law in line with Bolivia’s obligations under ILO Convention No. 138, which sets the minimum age of employment at 14 in developing countries, and ILO Convention No. 182 and the Palermo Protocol, which outlaw forced child labor.

Please consult the Table of Proposed Amendments in Appendix A for a comprehensive list of departures in Bolivian law from international conventions.

### Legislative Barriers Preventing Law Enforcement Action

Several definitions in key provisions of the Children and Adolescent Code are sufficiently vague to render enforcement difficult. For instance, Article 133 states that no authorization can be granted for work activity for children and adolescents that is “dangerous to life, health, integrity or image.” These terms are not defined. Neither are the terms “labor exploitation” or “fair consent and fair remuneration.” Similarly, CLATP bans “the worst forms of child labor” without specifying what that term includes or cross-referencing to other laws or international conventions, such as ILO Convention No. 182, Article 3. Clarifying these definitions, as suggested in the Table of Proposed Amendments in Appendix A, will help law enforcement effectuate these provisions.

Further, there are no criminal penalties for employing a child under the age of 14 or for failing to prosecute such actions. Although Bolivia’s Penal Code makes “labor exploitation, forced labor, or any form of servitude” a criminal offense under Article 281 (Trafficking in Persons), and imposes an increased penalty when a child is the victim, the Penal Code does not criminalize violations of the Children and Adolescent Code. Rather, the Children and Adolescent Code places the burden of enforcement on the MOL and the Municipal Offices of the Child Advocate, not the Prosecutor. Specifically, Article 139 directs the MOL to inspect and enforce the laws in conjunction with the Municipal Offices of the Child Advocate, who then pursue “restitution through the legal process.”[[159]](#footnote-159) Neither the Children and Adolescent Code nor regulations promulgated thereunder specify what restitution is owed or what legal process ensues. Criminalizing abuses of the Children and Adolescent Code, in addition to clarifying the penalties for violation, will aid law enforcement in pursuing and prosecuting violators.

With respect to law enforcement accountability, regulations promulgated under Bolivia’s Children and Adolescent Code mandate that complaints against public servants for not prioritizing the rights of children and adolescents must be reported immediately to the servants’ supervisor and presented to the Vice Ministry of Youth, Children and the Third Age, which then “follows up” on the complaints and publishes an annual report compiling the complaints. Following that action, no other accountability measures are required.

For further discussion, please consult the Table of Proposed Amendments in Appendix A for a comprehensive list of Bolivian law departures from international conventions.

## Forced Labor

### Legislative Barriers to Criminalizing Offenders and Repairing Victims

The key legislative barriers to criminalizing forced labor offenses and repairing victims are, quite simply, that Bolivia has few legal prohibitions against forced labor. Unlike with child labor and human trafficking, Bolivia does not have a specific law focused on the prevention of forced labor. Critically, the General Labor Law contains no prohibition against forced labor, nor is forced labor criminalized in the Penal code or CLATP. In particular, Convention No. 029, Article 25 requires member nations to make forced labor As such, Bolivia has not fully met its international commitments in this area. Key recommendations in this area include prohibiting forced labor under the General Labor Code and penalizing forced labor under the Penal Code.

In addition, CLATP defines forced labor as “any work or service performed by a person,*under threat or coercion*, with or without the consent of the person” and regardless of whether the person is paid.[[160]](#footnote-160) However, the means used for forced labor are not limited to threats or coercion; rather, as recognized in the ILO Convention No. 029 on Forced Labour, Article 2, forced labor is “any service which is exacted from any person *under the menace of any penalty*.”[[161]](#footnote-161) For example, individuals may be forced into labor if their wages are kept artificially low such that they cannot earn enough to leave their job. As it stands, CLATP’s definition of forced labor is too narrow and not in line with ILO Convention No. 129. Bolivia can remedy this inadequacy by inserting other means for compelling forced labor (e.g., violence, fraud, deception) in the CLATP definition or replacing the current language in CLATP with the language used in the ILO Convention No. 129 (“under the menace of penalty”). Finally, though Bolivia’s Penal Code does not criminalize forced labor on its own, forced labor is recognized as a form of exploitation as part of the crime of human trafficking.[[162]](#footnote-162)

### Legislative Barriers Preventing Law Enforcement Action

Because Bolivia does not specifically prohibit forced labor as a separate offense, cases are not prosecuted on this basis. The legislative barriers preventing law enforcement action in the context of human trafficking, which can include forced labor, are discussed in Section VI.C *infra.*

## Human Trafficking

### Legislative Barriers to Criminalizing Offenders and Repairing Victims

Though CLATP is fairly comprehensive in criminalizing human trafficking and upholding Bolivia’s commitment under the Palermo Protocol, there is some lack of clarity regarding the definitions of crimes related to human trafficking. Revising the law to clarify definitions that do not derive from the international conventions would dispel confusion. Key gaps, as well as recommendations to fill them, are as follows:

* CLATP and the Penal Code do not specify a separate definition for the trafficking of a child. Per the Palermo Protocol, “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth.”[[163]](#footnote-163) Thus, Bolivia should amend its definition of “trafficking in persons” to clarify that the “means” element is not required in the case of trafficking in children.
* Under Article 6(3), “servitude” is defined as “a state of dependence or submission of the will to a person . . .” While “servitude” is not defined in international law, it is worth noting that in an earlier draft of the Palermo Convention,servitude was defined to mean “the status or condition of dependency of a person who is [unjustifiably] compelled by another person to render any service and *who reasonably believes that he or she had no reasonable alternative but to perform the service.*”[[164]](#footnote-164) (emphasis added). To provide additional protection to trafficking victims, Bolivia might consider broadening the scope of the term “submission of the will” in its definition to “servitude” to include circumstances in which alternatives to performing the service might be available to victims of trafficking but they are not *believed to be reasonable*.
* To help align the definition with that of the Supplementary Convention on the Abolition of Slavery (1956),[[165]](#footnote-165) it is recommended that the definition of “debt bondage” in Article 6(4) be modified to include the element of *disproportionality* of the job or service rendered as compared to the debt.
* Article 6(8) ought not to limit the means used for inducing forced labor to “threat” and “coercion,” as it currently does. Expanding the list to include other means (such as “violence,” “deception,” and “fraud”) is recommended. In the alternative, Bolivia might consider replacing the list with the broad term “menace of any penalty,” which is used in the Forced Labour Convention, 1930 (No. 29).[[166]](#footnote-166) Furthermore, the definition of forced labor should be modified to include the key element of involuntariness, by adding “which the said person has not offered voluntarily.”
* Article 6(9) defines “threat” as coercion that results in a failure to “file a complaint with the competent authorities, for fear of a loss of job, non-payment of wages, financial penalty for debts, [and] intimidation of the family or others.” This definition of “threat,” framed in terms of effects or consequences, significantly restricts the scope of the term.

As noted above, the Bolivian government is currently reviewing proposed modifications to CLATP. The proposals include modifications to the definitions section, such as adding definitions of trafficking in persons and illicit trafficking in migrants.

With respect to repairing victims, persons convicted of trafficking in persons are required to make reparations for damages as per several articles of the Penal Code. However, it is unclear whether or not the damages in the case of human trafficking are to be monetary. Regardless of the form of compensation, it is important for Bolivian law to ensure that the procedure for obtaining compensation is well outlined so that victims are not frustrated and discouraged from making claims, or from otherwise cooperating with the prosecution.[[167]](#footnote-167)

### Legislative Barriers Preventing Law Enforcement Action

Provisions of CLATP relating to cross-border efforts at combating human trafficking are very broad and lack specificity. Such provisions pose challenges for law enforcement, the judiciary and other relevant Bolivian institutions to effectively curb cross-border human trafficking, especially in coordination with foreign governments and international bodies. Provisions having to do with international cooperation and action protocols, especially surrounding border surveillance, exchange of nationally sourced data, repatriation, and reciprocity could include more details.

Although CLATP calls for the formation of departmental councils—entities that execute an action plan at the departmental level related to crimes against trafficking in persons—it has been reported that some departments, such as La Paz and Pando, do not have consolidated plans.

# Section VII: Summary of Recommendations

This section summarizes proposed changes to Bolivian law to conform to international conventions, to adequately criminalize offenses, and to compensate victims, as articulated in the Table of Proposed Amendments, attached hereto as Appendix A.

## The Children and Adolescent Code

Recommended changes to the Children and Adolescent Code largely pertain to raising the minimum age of employment from 14 to 17 and incorporating apprenticeships into the right to protection at work. Key recommendations include:

* **Article 126 (Right to Protection at Work)**: Expand protections for all working children under 18, not just under 14, and to children working as apprentices.
* **Article 129 (Minimum Age to Work)**: Raise the minimum age of employment, including apprenticeships, from 14 to 17 to align with the ILO Convention No. 138’s requirement that the minimum age of employment be equal to or greater than the age of completion for compulsory schooling which, in Bolivia, is 17.[[168]](#footnote-168) Permit children ages 14 to 16 to engage in light work. Create a light work list.
* **Article 132 (Protective labor provisions for employed adolescents)**: Expand this Article to include apprenticeships and edit the age to include all adolescents under 18.
* **Article 136 (Work activities and dangerous, unhealthy or attentive to dignity)**: Update the hazardous work list.

In general, the Code will need to be realigned throughout to match the increased minimum age for work.

## General Labor Law

Recommended changes to the General Labor Law involve cross referencing to other pertinent laws to ensure those provisions fall within the scope of the law, as well as enacting a provision specifically related to forced labor:

* **Article 58**: Raise the minimum age of employment from 14 to 17 and expressly refer to exceptions codified in the Children and Adolescent Code.
* **New Article**: Enact a new, standalone article prohibiting forced labor or services or other forms of labor exploitation, mirroring the language of the ILO Convention No. 29 on Forced Labour.

## The Comprehensive Law Against Trafficking in Persons

Recommended changes to CLATP focus on expanding the definitions of forced labor to include means other than threat or coercion, such as deception, fraud, or violence, or replace reference to threats or coercion with “menace of any penalty” in order to align with ILO Convention No. 29 on Forced Labour. A definition of child trafficking should also be added, which should not require the “means” element to be met.

## The Penal Code and Code of Penal Procedure

Recommended changes include criminalizing forced labor in a provision separate from human trafficking in order to align with ILO Convention No. 29 on Forced Labour, Article 25.

## Regulation to the Law No. 2026 Boy, Girl and Adolescent Code

The only recommended change to these regulations contemplates expressly referencing the Children and Adolescent Code and the eradication of forced labor in Article 47, which governs the formulation, monitoring, and enforcement of policies regarding the protection of working children and adolescents.

1. Central Intelligence Agency, The World Factbook – South America: Bolivia (Dec. 17, 2020) [https://www.cia.gov/the-world-factbook/countries/bolivia/#people-and-society] [hereinafter the “World Factbook”]. [↑](#footnote-ref-1)
2. *Id.* Bolivian census surveys have used varied terminology to describe people of mixed indigenous backgrounds over the past several decades. For example, in 2001, the Bolivian census did not provide “mestizo” as a response choice, and thus a higher proportion of respondents identified themselves as belonging to one of the enumerated indigenous ethnicity choices. *See id.* “Mestizo” and “cholo” are often used interchangeably. [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. *Id.* Several of the languages designated official in Bolivia’s 2009 constitution are now extinct. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. *Id.*; *see also* Congressional Research Service, Bolivia: An Overview (Oct. 2, 2019) [https://crsreports.congress.gov/product/pdf/IF/IF11325]; Julie Turkewitz, *How Bolivia Overcame a Crisis and Held a Clean Election*, N.Y. Times (Oct. 23, 2020) [https://www.nytimes.com/2020/10/23/world/americas/boliva-election-result.html]. [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. Kathryn B. Botham, *Bolivia’s Legal Gamble: Negotiating Nationalization*, 26 Wis. Int’l L.J. 507, 519 (2008). [↑](#footnote-ref-10)
11. *See id.* [↑](#footnote-ref-11)
12. World Factbook, *supra* note 1. [↑](#footnote-ref-12)
13. Congressional Research Service, Bolivia: Presidential Resignation and Aftermath (Jan. 7, 2020) [https://www.everycrsreport.com/files/20191219\_IN11198\_8db8617a3ecb264e64f2de76138f048eca85be93.pdf]. [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. *Id.* [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. Maria Silvia Trigo & Anatoly Kurmanaev, *Bolivia Under Blockade as Protesters Choke Access to Cities*, N.Y. Times (Aug. 7, 2020) [https://www.nytimes.com/2020/08/07/world/americas/bolivia-roadblock-blockade.html]. [↑](#footnote-ref-18)
19. Turkewitz, *supra* note 7. [↑](#footnote-ref-19)
20. *See* The World Bank Group, International Development Association, International Bank For Reconstruction and Development, International Finance Corporation, and Multilateral Investment Guarantee Agency, Country Partnership Framework for the Plurinational State of Bolivia for the Period FY 16-FY 20 1 (Nov. 4, 2015) [http://documents1.worldbank.org/curated/en/921771468186539912/pdf/100985-REVISED-OUO-9-R2015-0221.pdf] [hereinafter the “Bolivia Country Partnership Framework”]; Zach J. Kleiman, *The Long, Not-So Pacific Struggle for the Coast: A Border Dispute Between Chile and Bolivia*, 22 L. & Bus. Rev. of the Ams. 247, 249 (2016). [↑](#footnote-ref-20)
21. Bolivia Country Partnership Framework, *supra* note 21, at 1. The World Bank defines “extreme poverty” as living on less than $1.90 per person per day. [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. *Id.* at 7. [↑](#footnote-ref-23)
24. World Factbook, *supra* note 1. [↑](#footnote-ref-24)
25. Bolivia Country Partnership Framework, *supra* note 21, at 7. [↑](#footnote-ref-25)
26. *Id.* at 8. [↑](#footnote-ref-26)
27. *Id.* [↑](#footnote-ref-27)
28. *Id.* [↑](#footnote-ref-28)
29. World Factbook, *supra* note 1. Notably, Bolivia’s GDP growth rate was 0.6% higher than the United States in 2019. *See* Central Intelligence Agency, The World Factbook – Country Comparison: GDP-Real Growth Rate [https://www.cia.gov/library/publications/the-world-factbook/fields/210rank.html#BL]. [↑](#footnote-ref-29)
30. The World Bank, Bolivia: Overview, Oct. 27, 2020 [https://www.worldbank.org/en/country/bolivia/overview#1]. [↑](#footnote-ref-30)
31. World Factbook, *supra* note 1. [↑](#footnote-ref-31)
32. *Id.* [↑](#footnote-ref-32)
33. United Nations Educational, Scientific and Cultural Organization (“UNESCO”), Bolivia (Plurinational State of)—Education and Literacy (2020) [http://uis.unesco.org/en/country/bo] [hereinafter, “UNESCO – Bolivia”]. [↑](#footnote-ref-33)
34. *Id.* [↑](#footnote-ref-34)
35. *Id.* UNESCO does not define “children” or “adolescent” in its report. [↑](#footnote-ref-35)
36. *Id.* [↑](#footnote-ref-36)
37. James M. Cooper, *Legal Pluralism and the Threat to Human Rights in the New Plurinational State of Bolivia*, 17 Wash. U. Global Stud. L. Rev. 1, 25-26 (2018). [↑](#footnote-ref-37)
38. Bolivia Constitution, Preamble. [↑](#footnote-ref-38)
39. Bolivia Constitution, Part I, Title I, Ch. I, Art. 2. [↑](#footnote-ref-39)
40. Bolivia Constitution, Part I, Title I, Ch. III, Art. 11. [↑](#footnote-ref-40)
41. The Electoral Organ is an independent branch of the Bolivian government that oversees elections. It is comprised of a seven-member Supreme Electoral Tribunal, nine Departmental Electoral Tribunals, Electoral Judges, an anonymously-selected Juries at Election Tables, and Election Notaries. [↑](#footnote-ref-41)
42. *Id.* at Art. 12. [↑](#footnote-ref-42)
43. Bolivia Constitution, Part I, Title II, Ch. II, Art. 15. [↑](#footnote-ref-43)
44. Bolivia Constitution, Part I, Title II, Ch. V, § V, Art. 61. [↑](#footnote-ref-44)
45. *Id.* [↑](#footnote-ref-45)
46. Bolivia Constitution, Part II, Title II, Ch. I, § II, Art. 166. [↑](#footnote-ref-46)
47. *Id.* at Art. 168. [↑](#footnote-ref-47)
48. *Id.* at 170. [↑](#footnote-ref-48)
49. *Id.* at Art. 172. [↑](#footnote-ref-49)
50. *Id.* at Art. 174. [↑](#footnote-ref-50)
51. Bolivia Constitution, Part II, Title II, Ch. I, § III, Art. 176. [↑](#footnote-ref-51)
52. *Id.* at Art. 177. [↑](#footnote-ref-52)
53. World Factbook, *supra* note 1. [↑](#footnote-ref-53)
54. Bolivia Constitution, Part II, Title I, Ch. I, Art. 146. [↑](#footnote-ref-54)
55. World Factbook, *supra* note 1. [↑](#footnote-ref-55)
56. Bolivia Constitution, Part II, Title I, Ch. I, Art. 151. [↑](#footnote-ref-56)
57. *Id.* at Art. 152. [↑](#footnote-ref-57)
58. *Id.* at Art. 158. [↑](#footnote-ref-58)
59. Bolivia Constitution, Part II, Title III, Ch. I, Art. 179. [↑](#footnote-ref-59)
60. *Id.* [↑](#footnote-ref-60)
61. Bolivia Constitution, Part II, Title III, Ch. V, Art. 193. [↑](#footnote-ref-61)
62. Bolivia Constitution, Part II, Title III, Ch. IV, Art. 191. [↑](#footnote-ref-62)
63. *Id.* [↑](#footnote-ref-63)
64. Bolivia Constitution, Part II, Title III, Ch. VI, Art. 196. [↑](#footnote-ref-64)
65. *Id.* at Arts. 197-200. [↑](#footnote-ref-65)
66. *Id.* at Art. 199. [↑](#footnote-ref-66)
67. *Id.* at Art. 204. [↑](#footnote-ref-67)
68. Mauricio Ipina Nagel, *The Bolivian Legal System and Legal Research*, NYU Hauser Global Law School Program [https://www.nyulawglobal.org/globalex/Bolivia.html#:~:text=Bolivian%20legal%20system%20has%20as,%2C%20custom%2C%20doctrine%20and%20jurisprudence]. [↑](#footnote-ref-68)
69. *Id.* [↑](#footnote-ref-69)
70. *Id.* [↑](#footnote-ref-70)
71. *Id.* [↑](#footnote-ref-71)
72. Bolivia Constitution, Part I, Title II, Ch. I, Art. 13. [↑](#footnote-ref-72)
73. *Id.* [↑](#footnote-ref-73)
74. United Nations Human Rights: Office of the High Commissioner, OHCHR in Bolivia (2008-2009) [https://www.ohchr.org/EN/Countries/LACRegion/Pages/BOSummary0809.aspx#:~:text=Bolivia%20has%20ratified%20all%20seven,and%20Political%20Rights%20(ICCPR)]. [↑](#footnote-ref-74)
75. International Labour Organization, Ratifications of C182- Worst Forms of Child Labour Convention, 1999 (No. 182) [https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\_INSTRUMENT\_ID:312327] [hereinafter, “ILO C182”]. [↑](#footnote-ref-75)
76. International Labour Organization, Ratifications of C029 – Forced Labour Convention, 1930 (No. 29) [https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\_INSTRUMENT\_ID:312174] [hereinafter, “ILO C029”]. [↑](#footnote-ref-76)
77. International Labour Organization, Ratifications of C138 – Minimum Age Convention, 1973 (No. 138) [https://www.ilo.org/dyn/normlex/de/f?p=1000:11300:0::NO:11300:P11300\_INSTRUMENT\_ID:312283]. [↑](#footnote-ref-77)
78. United Nations Treaty Collection, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Status [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=XVIII-12-a&chapter=18&clang=\_en]. [↑](#footnote-ref-78)
79. Bolivia Constitution, Part II, Title V, Ch. II, § II, Art. 225. [↑](#footnote-ref-79)
80. *Id* at Arts. 226-227 [↑](#footnote-ref-80)
81. U.S. Dep’t of State, 2020 Trafficking in Persons Report: Bolivia [https://www.state.gov/reports/2020-trafficking-in-persons-report/bolivia/] [hereinafter “2020 DOS TIP Report”] [↑](#footnote-ref-81)
82. U.S. Dep’t of State, Bolivia Country Report on Human Rights Practices for 2018 26 (2018) [https://www.justice.gov/eoir/page/file/1148411/download] [↑](#footnote-ref-82)
83. *Id.* [↑](#footnote-ref-83)
84. *Id.* [↑](#footnote-ref-84)
85. Alternate translations call this the “Ombudsmen for Children and Adolescents” or the “Defenders for Children and Adolescents” (original: Defensorías de la Niñez y Adolescencia). [↑](#footnote-ref-85)
86. U.S. Dep’t of Labor, Child Labor and Forced Labor Reports, 2019 Findings on the Worst Forms of Child Labor – Bolivia Table 5 [https://www.dol.gov/agencies/ilab/resources/reports/child-labor/Bolivia] [hereinafter “2019 DOL Child Labor Report”] [↑](#footnote-ref-86)
87. *Id.* [↑](#footnote-ref-87)
88. *Id.* [↑](#footnote-ref-88)
89. *Id.* [↑](#footnote-ref-89)
90. *Id.* [↑](#footnote-ref-90)
91. *Id.* [↑](#footnote-ref-91)
92. Bolivia Constitution, Part II, Title V, Ch. II, § I, Arts. 219-21. [↑](#footnote-ref-92)
93. *Id.* at Art. 221. [↑](#footnote-ref-93)
94. 2019 DOL Child Labor Report, *supra* note 86, at Table 10. [↑](#footnote-ref-94)
95. *Id.* at Table 8. [↑](#footnote-ref-95)
96. *Id.* [↑](#footnote-ref-96)
97. *Id.* [↑](#footnote-ref-97)
98. *Id.* [↑](#footnote-ref-98)
99. *Id.* [↑](#footnote-ref-99)
100. *Id.* [↑](#footnote-ref-100)
101. *Id.* [↑](#footnote-ref-101)
102. 2020 DOS TIP Report, *supra* note 82. [↑](#footnote-ref-102)
103. 2019 DOL Child Labor Report, *supra* note 86, at Table 10. [↑](#footnote-ref-103)
104. *Id.* [↑](#footnote-ref-104)
105. https://munasimkullakita.org/ [↑](#footnote-ref-105)
106. https://www.worldvision.bo/ [↑](#footnote-ref-106)
107. The World Justice Project, Leading Organizations – Bolivia [https://worldjusticeproject.org/resource-hub/leading-organizations?geography=29&factor=All&name=]. [↑](#footnote-ref-107)
108. The difference between an absolute and simple majority is not defined in the English translation of the Bolivian constitution. [↑](#footnote-ref-108)
109. Bolivia Constitution, Part II, Title I, Ch. II, Art. 163. [↑](#footnote-ref-109)
110. *Id.* at Art. 164. [↑](#footnote-ref-110)
111. The Editors, *Comprehensive Reform Remains Elusive for Bolivia’s Troubled Justice System*, World Politics Review (Dec. 3, 2018) [https://www.worldpoliticsreview.com/trend-lines/26893/comprehensive-reform-remains-elusive-for-bolivia-s-troubled-justice-system]; *see also* Human Rights Watch, Bolivia: Events of 2018 [https://www.hrw.org/world-report/2019/country-chapters/Bolivia]. [↑](#footnote-ref-111)
112. *Id.* [↑](#footnote-ref-112)
113. *Id.* [↑](#footnote-ref-113)
114. International Labour Organization, Individual Case (CAS) - Discussion: 2018, Publication: 107th ILC session (2018), Minimum Age Convention, 1973 (No. 138) - Bolivia (Plurinational State of) [https://www.ilo.org/dyn/normlex/de/f?p=NORMLEXPUB:13100:0::NO::P13100\_COMMENT\_ID:3953291]. [↑](#footnote-ref-114)
115. It has now been over five years since the last update of this list. [↑](#footnote-ref-115)
116. Though “minor” is not specifically defined in the General Labor Law, Article 58 refers to Minors as those under 18 years of age: “Minors under 18 years of age may not be hired for work beyond their strength or that may retard their normal physical development.” [↑](#footnote-ref-116)
117. General Labor Law, Art. 46. [↑](#footnote-ref-117)
118. UNESCO – Bolivia, *supra* note 34. [↑](#footnote-ref-118)
119. Comprehensive Law Against Trafficking and Smuggling of Persons, Art. 3. [↑](#footnote-ref-119)
120. *Id.* at Art. 6. [↑](#footnote-ref-120)
121. U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Article 3. [↑](#footnote-ref-121)
122. Id. [↑](#footnote-ref-122)
123. Regulation of the Comprehensive Law Against Trafficking and Smuggling of Persons, Supreme Decree No. 1486 (“Regulation Against Trafficking”) sets up the structure of the Plurinational Council and its sessions, lays out the functions of the Technical Secretariat of the Plurinational Council (exercised from the Ministry of Justice), and delineates several prevention mechanisms against human trafficking, involving an education strategy implemented by the Ministry of Education, and a communications strategy implemented by the Ministry of Communication. The Regulation Against Trafficking also specifies some procedures for advertising campaigns, which must be based on the principles and values of the Law Against Trafficking and must maintain the confidentiality of the victims of, and witnesses to, human trafficking acts. Communications media not meeting these requirements face a sanction of: (1) 5,000-15,000 UFVs the first time; (2) 15,000-25,000 UFVs the second time; (3) an increase by one third with respect to the previous sanction, for the third and any subsequent times. The administrative procedure for the sanctions is as established in Law No. 2341, and the sanctioned fines are allocated by the Ministry of Communication for subsequent educational campaigns and messages emphasizing prevention measures against human trafficking. The Regulation Against Trafficking also directs the Ministry of Labor, Employment and Social Welfare to create a National Registry of Private Employment Agencies, and to impose internal operating regulations on private employment agencies to help prevent human trafficking and aid in the socio-economic reintegration of the trafficking victims. The Regulation Against Trafficking also sets up the National Observatory of Citizen Security, which is the official statistical reference body that is updated, on a monthly basis, with human trafficking data from the Bolivian Police, the Executive Branch, Public Ministry, Judicial Branch, autonomous territorial entities and other public or private institutions. The Regulation Against Trafficking also requires the Ministry of Government to provide security cameras and electronic surveillance at border points, and to provide annual reports of the strategies developed and progress made in detecting cases of human trafficking at borders. Finally, the Regulation Against Trafficking directs the Ministry of Foreign Affairs to promote international cooperation against human trafficking, and to promote the repatriation of trafficking victims. [↑](#footnote-ref-123)
124. Comprehensive Law Against Trafficking and Smuggling of Persons, Art. 7. [↑](#footnote-ref-124)
125. *Id.* at Art. 8. [↑](#footnote-ref-125)
126. *Id.* at Art. 15. [↑](#footnote-ref-126)
127. *Id.* at Art. 20. [↑](#footnote-ref-127)
128. *Id.* at Art. 21. [↑](#footnote-ref-128)
129. *Id.* at Art. 22. [↑](#footnote-ref-129)
130. Comprehensive Law Against Trafficking and Smuggling of Persons, Art. 23. [↑](#footnote-ref-130)
131. *Id.* at Art. 24. [↑](#footnote-ref-131)
132. *Id.* at Art. 25. [↑](#footnote-ref-132)
133. *Id.* at Art. 26. [↑](#footnote-ref-133)
134. *Id.* at Art. 27. [↑](#footnote-ref-134)
135. *Id.* at Art. 28. [↑](#footnote-ref-135)
136. Gessell Chambers are interview rooms with one-way screens that allow victims to offer testimony before a court in the absence of courtroom spectators. [↑](#footnote-ref-136)
137. Comprehensive Law Against Trafficking and Smuggling of Persons, Art. 29. [↑](#footnote-ref-137)
138. *Id.* at Art. 30. [↑](#footnote-ref-138)
139. *Id.* at Art. 31. [↑](#footnote-ref-139)
140. *Id.* at Art. 32. [↑](#footnote-ref-140)
141. *Id.* at Art. 33. [↑](#footnote-ref-141)
142. *Id.* at Art. 34. [↑](#footnote-ref-142)
143. Penal Code and Code of Penal Procedureat Title VIII, Ch. V, Article 281 *bis*, as modified by the Comprehensive Law Against Trafficking and Smuggling of Persons, Art. 34. [↑](#footnote-ref-143)
144. It is worth noting that the language addressing aggravating circumstances in Article 321*bis* clarifies that it covers death “including by suicide.” It is worth considering adding that language to this provision, as well. [↑](#footnote-ref-144)
145. Penal Code and Code of Penal Procedureat Title VIII, Ch. V, Article 281 *bis*, as modified by the Comprehensive Law Against Trafficking and Smuggling of Persons, Art. 34. [↑](#footnote-ref-145)
146. U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Article 3. [↑](#footnote-ref-146)
147. Id. [↑](#footnote-ref-147)
148. As modified by the Comprehensive Law Against Trafficking and Smuggling of Persons, Art. 34. [↑](#footnote-ref-148)
149. Id. [↑](#footnote-ref-149)
150. As modified by the Comprehensive Law Against Trafficking and Smuggling of Persons, Art. 35. [↑](#footnote-ref-150)
151. Id. [↑](#footnote-ref-151)
152. As modified by the Comprehensive Law Against Trafficking and Smuggling of Persons, Art. 40. [↑](#footnote-ref-152)
153. ILO Conventions and Recommendations on Child Labour [http://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm]. [↑](#footnote-ref-153)
154. ILO C029, *supra* note 77, at Arts. 1 and 2. [↑](#footnote-ref-154)
155. *Id.* at Art. 25. [↑](#footnote-ref-155)
156. “Recommendations” serve as non-binding guidelines and thus cannot be ratified or adopted. In contrast “Conventions” are legally binding international treaties that may be ratified by member states. [↑](#footnote-ref-156)
157. Children and Adolescent Code, Art. 129(I). [↑](#footnote-ref-157)
158. 2019 DOL Child Labor Report, *supra* note 86, at 3 (citing Article 81 of the Bolivian Constitution and Article 1, 8-9, and 11-14 of the Avelino Sinani-Elizardo Perez Education Law). [↑](#footnote-ref-158)
159. Art. 139(II) of the Children and Adolescent Code. [↑](#footnote-ref-159)
160. Comprehensive Law Against Trafficking and Smuggling of Persons, Title I, Art. 1 (emphasis added). [↑](#footnote-ref-160)
161. The Forced Labour Convention of 1930 (C029), Art. 2 (emphasis added). [↑](#footnote-ref-161)
162. *See* Penal Code and Code of Penal Procedure at Title VIII, Ch. V, Art. 281 *bis*, as amended by the Comprehensive Law Against Trafficking and Smuggling of Persons, Art. 34. [↑](#footnote-ref-162)
163. Id. [↑](#footnote-ref-163)
164. United Nations Revised Draft Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children, Ad Hoc Committee on the Elaboration of Convention against Transnational Organized Crime, ninth session, Vienna, 5-16 June 2000, United Nations document A/AC.254/4/Add.3/Rev.6 [https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/AC.254/4/Add.3/Rev.6&Lang=E] [hereinafter, “Early Palermo Protocol Draft”]. This definition was dropped in the final version of the Protocol. [↑](#footnote-ref-164)
165. UN Economic and Social Council, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Art. 1(a) (Sept. 7, 1956), [https://www.ohchr.org/en/professionalinterest/pages/supplementaryconventionabolitionofslavery.aspx] [hereinafter, “1956 Convention on the Abolition of Slavery”]. [↑](#footnote-ref-165)
166. ILO CL029, *supra* note 77, at Art. 2(1). [↑](#footnote-ref-166)
167. UNODC, *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, Module 13: Compensation for Victims of Trafficking in Persons (August 2009), [https://www.unodc.org/documents/human-trafficking/TIP\_module13\_Ebook.pdf]. [↑](#footnote-ref-167)
168. As noted previously, though recommended based on international standards, this would be difficult to achieve politically. Bolivia only recently passed legislation raising the minimum age to 14, which was opposed by many, including the influential UNATsBO (Union of Child Workers in Bolivia, or Union de Niños, Niñas y Adolescentes Trabajadores de Bolivia). [↑](#footnote-ref-168)