

1 April 2008

CESCR Committee
c/o Ms. Wan-Hea Lee,
Secretary of the Committee
Office of the United Nations High Commissioner for Human Rights
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Dear Committee Members:

This shadow letter is intended to complement the periodic report submitted by the State of Bolivia for your consideration during the 40th CESCR Committee session. Our *aim is to provide specific information about the situation of girls and women who are survivors of sexual violence and the way in which their human rights are violated.*

Ipas-Bolivia, an independent nongovernmental organization, has worked intensively with government initiatives to increase and implement the exercise of women's sexual and reproductive rights and to reduce maternal mortality due to the risks of unsafe abortions.

We would especially like to highlight the points below, giving special attention to the denial of access to legal abortions for survivors of sexual violence, which violates the obligation to observe their rights to health and life. We would like to suggest that you ask the State of Bolivia to respond to the following questions. Information on which the questions are based can be found in the subsequent text.

Questions for the State of Bolivia during the 40th CESCR session

We hope that the Committee will consider the following questions during their meeting to review the State of Bolivia's compliance with its obligations and that the questions will be included in your concluding observations.

- 1. How will the State ensure that comprehensive sexual and reproductive rights for women and men are respected in the new political constitution?**

- 2. How will the State deal with discrimination on the basis of sex, age and social background that is caused by the denial of legal abortion in many rape cases?**
- 3. How will the State deal with health problems in women and girls that are aggravated and threaten their lives during the lengthy periods spent in trying to access a legal abortion?**
- 4. What strategies will the State employ to decrease unsafe abortions, especially in the absence of comprehensive responses to the needs of youth, poor and rural communities?**
- 5. How does the Bolivian State intend to resolve the ethical dilemma confronting health-care providers in cases where legal abortion is delayed and denied? What protective mechanisms will be extended to health-care providers if they are charged for carrying out abortions without judicial authorization?**
- 6. How will the Bolivian State eliminate socioeconomic problems for many women who are denied legal abortions?**

We hope that the above information will be useful for your review of the State of Bolivia's compliance with the CESCRC Convention.

Very sincerely,
Eliana del Pozo, Director, Ipas Bolivia

BACKGROUND INFORMATION FOR THE QUESTIONS

Part I.

Article 1: All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The State of Bolivia is currently in the process of approving a **new constitution** in collaboration with civil society (the State Political Constitution project). The draft text of the Constitution thus far protects women's human rights, including sexual and reproductive rights (Art. 66). However, various entities within the country are attempting to limit these rights so as to prevent free access to modern methods of contraception and reforms of laws related to termination of pregnancy.¹

It is very important that the Bolivian State continues promoting the comprehensive sexual and reproductive rights of women and men. In this context, we would like to remind you that the CEDAW Committee, in January 2008, expressed its concern to the Bolivian Government about the difficulties that women have in obtaining access to legal abortion services. They stated: "The Committee urges the State party to adopt implementing regulations for existing laws on Bolivian women's right to therapeutic abortion. The Committee also urges the State party to afford women access to high-quality services for the treatment of complications resulting from unsafe abortions with a view to reducing maternal mortality."²

The first article of the CESCRC also guarantees equality between women and men and non discrimination on the basis of sex. In 2001, the CESCRC Committee expressed its concern about the situation of women's rights regarding reproductive health, especially in relation to the high maternal mortality rate attributed to illegal abortions and the lack of medical care during childbirth. That Committee urged the State Party to continue its efforts to combat violence against women, initiating a campaign with the aim to address negative traditional practices, prejudice, its effects and consequences. The Committee also asked the State Party to make available adequate human and financial resources to implement the National Plan on the Prevention, Punishment and Eradication of Violence against Women and to provide detailed information and up-to-date statistics about the phenomenon of violence against women in Bolivia, together with the results of measures taken to address this serious problem.

¹ Obispos de Bolivia. 13 de marzo de 2008. Para que el pueblo tenga vida. "Orientaciones pastorales sobre el proyecto de CPE". La Paz

² CEDAW Committee. 1 February 2008. *Concluding observations of the Committee on the Elimination of Discrimination against Women: Bolivia*

We must emphasize that a situation of *political instability has affected the allocation of sufficient resources* to implement the National Plan concerning violence against women, Law 1674 on Family and Domestic Violence and the implementation of standards and protocols for care related to sexual violence. This is especially the case for agencies such as the Family Care Brigades (Brigadas de Atención a la Familia, BPF), the Special Forces for Combating Crime (Fuerza Especial de Lucha Contra el Crimen, FELCC), the Comprehensive Municipal Legal Services (Servicios Legales Integrales Municipales, SLIMs), the Protectorate for Children and Adolescents (Defensoría de la Niñez y Adolescencia) and the District Attorney offices. This is an area to which the State must allocate more attention and resources to guarantee women's and girls' access to health-care services.

Part II

Article 9: The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

The universal health insurance provided by the Ministry of Health includes emergency contraception and care for women who present with hemorrhage during the first half of pregnancy. These treatments have increased in recent years but ***the government has not worked on a comprehensive strategy to reduce the problem of unwanted pregnancy and unsafe abortions.***

In response to the number of women dying from unsafe abortions, Ipas Bolivia, the government and health officials have mobilized to address the alarming maternal mortality rate. Postabortion complications are common, and the Bolivian government has included postabortion care (PAC) as a basic service within its Universal Health Insurance package. Though PAC is covered by this insurance plan and is a routine part of emergency obstetric services, many Bolivian women still delay going to the hospital after unsafe abortions due to anticipated maltreatment from health-care professionals.

The cases in which minor children need to terminate unwanted and too early pregnancies are of concern, particularly regarding the problem of delays caused by bureaucratic procedures required by the judicial sector. Social organizations are confronting this issue, but the State has made no public statements and has not facilitated easier processes. The State is working on educational prevention activities but this is insufficient.

Given that discrimination is prohibited on the basis of age, ***the denial of legal therapeutic abortions for girls who have suffered sexual assault constitutes a clear case of discrimination against adolescent women.*** This violates their rights to health and life since 15- to 19-year-old

adolescents have twice the probability of dying due to pregnancy-related complications than do women aged 20–24 years; for adolescents younger than 15 years, the risk is four times greater.³

In its General Comment 4 (2003) about the Convention on the Rights of the Child, which the Bolivian State has also ratified, the Committee on the Rights of the Child noted that: “Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs. States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices, and to support adolescent parents. Young mothers, especially where support is lacking, may be prone to depression and anxiety, compromising their ability to care for their child. The Committee urges States parties (a) to develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law...” (Paragraph 31).

The Bolivian State has acknowledged the problem of unwanted pregnancy among adolescents, promising to reduce the rate by 20% and stating in its periodic report that: “Adolescent pregnancy [15.7% of pregnancies] and maternity are associated with poverty and are accompanied by undernourishment and risks during pregnancy and childbirth.” Nevertheless, *girls still have problems obtaining access to legal abortion after rape, as shown in the case described in the appendix. Delays in legal procedures put their health in danger from too early pregnancies.*

Justice is delayed by the District Attorney offices, by the ways in which rape cases are characterized and by the sentences or judgments made. The staff know the existing standards and legal frameworks but do not observe these; public servants do not oppose violations of human rights but rather tend to negotiate and seek compromises in cases.

Article 12: 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

It is important to acknowledge that the right to health implies enjoyment of the highest possible level of mental and physical health, which is recognized in many international treaties and by the World Health Organization (WHO), which conceptualizes the right to health as “a state of complete physical, mental and social well-being and not merely the absence of disease or

³ National Center for Health Statistic Births: Final Data for 2002, National Vital Statistic Reports 12/17/2003. The National Campaign to Prevent Teen Pregnancy. Teen Pregnancy, So What? Updated 2/04, accessed 5/11/04

infirmity.” In General Recommendation 24, the CEDAW Committee stated that: “When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion.”

The violation of a female sexual violence survivor’s psychological and emotional health should not be aggravated because the State obliges her to carry to term a pregnancy against her will.

On the contrary, the State should provide her with medical, psychological and legal care to cope with the resulting injuries. Bolivia officially permits abortion when pregnancy results from sexual violence, when the woman’s health or life are at risk and in cases of kidnapping that are not followed by marriage.

Despite this, ***Bolivia’s maternal mortality rate is among the highest in Latin America and one third of all maternal deaths are attributed to unsafe abortions.*** The percentage of maternal deaths caused by unsafe abortion is estimated to be 27–35%. ***To date, there have only been 6 legal abortions in the country!***

In addition, there is an ethical component related to the denial of legal abortion. Women’s decisions to have a legal abortion are authorized by judges, but a considerable number of physicians do not respect the decision, claiming “conscientious objection.” In these cases, the State should guarantee immediate access to the services of other health-care providers, but no corresponding standards are being implemented.

The denial of legal abortion after rape violates the rights to equality and to be free from discrimination based on sex and socioeconomic status, because it ignores the differential consequences of a pregnancy, not only between men and women but also among women, that is, those who have greater or lesser access to information and resources. The denial of abortion services also constitutes discrimination based on sex because men are not exposed to the denial of legal medical services or to criminal penalties for using services, while women are denied the option of having a legal abortion to preserve their health and life and suffer punishment if they turn to an illegal abortion.

The quality of services for survivors of sexual violence is horrible. As many as 64.74% of the BPFs carry out their work in improvised or inadequate spaces within police stations. They offer neither privacy nor confidentiality as they must attend to various cases within one space. The BPFs do not have resources needed to follow up cases quickly as they have logistical limitations related to travel, communication, computer equipment and other necessary infrastructure.

The BPF staff have exhausting working hours. They must attend members of the public in shifts of 24 consecutive hours and then must prepare their reports the following day so that their supervisors can carry out follow-up. If they wish to refer a case to the District Attorney or a forensic physician, they must stay with the case until this is accomplished, sometimes having to stay awake 42 hours, only thereafter to have to once again resume their duties.

Regarding police stations, there are high rates of turnover among personnel. Staff are often rotated and this leads to improvisation in service provision. They are not trained in the subject matter or in the provision of comprehensive care and registration instruments before they resume their duties.

The Protectorate for Children and Adolescents offers legal, social and psychological assistance to victims of sexual violence, trying to work in a coordinated manner with the BPF and FELCC. However, since the staff doesn't work on Saturdays, Sundays and holidays, team work remains questionable; moreover, such possibilities are also not available in all districts.

The lack of forensic physicians is one of the most representative problems. They are overburdened with work and they also are unavailable on weekends and holidays. Nevertheless, trained health-care workers are not permitted to submit documentation validating violence cases that is necessary, for example, to obtain a legal abortion. Care is totally centralized and the costs of special examinations are very high taking into consideration the fact that our population comprises many people of low economic means.

Conclusion

We hope that the Committee will consider the above-mentioned questions in your meeting to review the State of Bolivia's report. We also hope that you will include the questions in the follow-up report to our national committee that is entrusted with monitoring governmental compliance with the Convention.

Appendix: illustrative case

Mr. Guillermo Chura presented a case of sexual assault suffered by his 10-year-old daughter, Araceli; she had possibly been raped by her first cousin, Daniel, a boy of 15 years. On the 5th of June 2006, the girl presented with strong stomach pains, dizziness, nausea and vomiting; she had her first medical examination on 10 June and they were informed that she had parasites. The pains continued so she visited the Hospital of Quillacollo, where the diagnosis was "microbial flora." The illness continued and she was examined at the "El Carmen" Clinic, where they diagnosed a 9-week pregnancy.

Mr. Chura went to the Protectorate for Children and Adolescents with Araceli; there he gave an informative statement to Mr. Adolfo Arispe Rojas, the person responsible for the Protectorate in Quillacollo. On 28 June, armed with medical information, Mr. Chura formalized the case before the District Attorney in this jurisdiction, requesting a legal abortion for his daughter.

A psychological examination suggested that Araceli needed ongoing psychological care, and an intervention by medical specialists regarding the pregnancy in order to preserve the girl's psychological and physical integrity. Up to that point, the process appeared to correspond to the recommended procedures for dealing with sexual violence cases. It was after the case presentation and the request for a legal abortion that the difficulties in complying with the law arose. The rape case became public knowledge; the media spread the news and organizations strengthened inter-institutional coordination in order to help the minor and they strengthened their awareness-raising and information campaigns about the issue of sexual violence. The Catholic Church stated that it was going to defend the life of the fetus.

Araceli already was 70 days pregnant. Thirteen days after becoming aware of the case, the judge for children's affairs, Sonia Ardaya, excused herself from dealing with it. The case was sent to Quillacollo with the argument that the rape occurred in this province so that it should be heard by the penal court judge sitting at that time, Fernando Aguilar; he was on vacation. Everyone awaited his return from vacation and her parents were very worried, not knowing what decision to make.

The director of the Protectorate for Children and Adolescents, Maria Álvarez, deplored Judge Ardaya's attitude, indicating that she was violating the girl's fundamental right to health: "Those who implement justice should guarantee people's rights, but in this the case the judge failed to perform her duty, which constitute a serious offence."

The Director of the Protectorate for Children and Adolescents of Quillacollo, Adolfo Arispe, stated: "It is a shame that there is no compliance with Law 2026, which establishes that there should be speed taken in this type of case. We are talking about a tragedy; the judge is supposed to watch over the girl's wellbeing, but she prefers to wash her hands of it." The Medical Society held a medical consultation to evaluate the pregnant girl's case, issuing a report with recommendations regarding the case. The document was delivered confidentially to the judiciary. Anibal Cruz, president of the Medical Society, explained that one of the professionals' concerns was that the girl had a childish uterus and could suffer a miscarriage at any time.

The president of the Bolivian Gynecological-Obstetric Society, Luis Zárate, demanded that the judge find in favor of the girl as required by Article 266 of the Penal Code. This demand by professionals was supported by a statement issued by a medical team formed by the Cochabamba Medical Society in response to a judicial order to evaluate the victim in a confidential manner as envisioned in Law 3131.

On 18 July, the sitting penal court judge of Quillacollo, Fernando Aguilar, refused to recognize the request to terminate the pregnancy of the 10-year-old girl who was a rape victim. He made official his declaration of incompetency in the case, justifying it by saying it was "because of the

subject matter” and the request was sent to another magistrate. Contrary to the first judge (Ardaya), he had given his response within three days as ordered by law.

The case was now in the hands of Judge Carlos Crespo, who was to give his judgment within the next few hours. The family waited a long time and the pregnancy advanced, with the girl’s health deteriorating. The parents finally decided to obtain the abortion using their own money; they went to La Paz, where the procedure was carried out.

Information obtained in the subsequent days indicated that the girl was recuperating and in good health; the girl and her family received support from an NGO who accompanied them throughout the whole process, offering legal assistance as well as medical and psychological help. After some months, Araceli’s case was followed up. She and her family were no longer living in Quillacollo; they disappeared from one day to the next and no longer sought psychological therapy. No one has any more information about them. Just before they decided to leave, they indicated their displeasure with the mass media, which had not ceased approaching them, asking them questions, photographing them and violating their rights to privacy and confidentiality.

Sexual and reproductive rights possibly implicated

- The rights to equality and freedom from all forms of discrimination: the girl was discriminated against because her access to a legal medical procedure that only women need was obstructed.
- The right to privacy and confidentiality: information about the case was made public, as shown by the declarations issued by the Catholic Church.
- The right to decide whether or not, and when, to have children: the wish of the girl and her parents to not carry the pregnancy to term was obstructed.
- The right to liberty and security of the person: the girl’s right to freely choose a medical procedure permitted by law was obstructed by the authorities in both the judicial and medical sectors.
- The rights to health care and health: the delays in carrying out the abortion put her health in danger.
- The right to be free from inhuman treatment: the repeated debates and related delays in carrying out the procedure possibly put the girl’s health at risk.