Health. Access. 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 109th session of the Human Rights Committee. Our aim is to provide information about Bolivia's violation of human rights that result from the State denying access to legal abortion in cases of rape or threats to health and life. Judicial authorization is required for legal abortion but is nearly always denied. The denial of legal abortion means that women must obtain needed abortions through illegal and unsafe channels. As a result women are reported to law enforcement authorities by doctors, relatives, partners or public prosecutors, are detained or arrested, all in violation of in violation of Bolivian women's right to effective remedy (Art. 2), to life (Art. 6), liberty and security (Art. 9), right to a fair trial (Art. 14), and the right to privacy (Art. 17). Unsafe abortions also contribute to high rates of maternal mortality and morbidity in the country. It should be noted that the denial of services because of the unwillingness of judges to authorize them is discriminatory; it disproportionately affects indigenous, poor and young women. The Plurinational Constitutional Court of Bolivia was asked to review the constitutionality of the penal codes regulating abortion in March 2012. To date the Court has delayed the decision.

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.

In addition to the issue of denial of legal abortion and the failure of the Court to rule on the constitutional challenge, we would especially like to highlight the points below, giving special attention to the need for the State to:

- Liberalize the country's restrictive laws;
- End the practice of the denial of judicial authorization for a legal abortion, and
- Ensure that women and girls who seek abortions are not arrested and detained in violation of their rights to life, non-discrimination (Art. 2) and liberty and security of person (Art. 9).

<u>Questions for the State of Bolivia during the 109th session of the Human Rights Committee:</u>

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 concluding observations.

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1. How will the State improve access to legal abortion under the Penal Code, which includes requirements for judicial authorization that are rarely fulfilled?[1]
2. How will the State end the enforcement of abortion laws that discriminatorily target poor and indigenous[2] women and girls resulting doctor's reporting abortion to law enforcement authorities, women's arrests (and high rates of maternal mortality and morbidity[3]?
3. What steps will the State take to end the excessively long preventative detention of women in cases of abortion?
4. How will the State end the discriminatory implementation of legal abortion in cases of rape and risk to health, which results in the denial of permissible services to mostly poor, young and indigenous women?
5. What strategies will the State employ to decrease high rates of unsafe abortions, especially in the absence of comprehensive responses to the needs of youth, poor and rural communities?
6. How will the State ensure that the Plurinational Constitutional Court responds in a timely manner to the constitutional challenge to the penal code, to address prohibitions on abortion?

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

Very sincerely,

Malena Morales, Director, Ipas Bolivia

Background information

It is very important that the Bolivian State continues promoting the comprehensive sexual and reproductive rights of women and men, as mandated in the Political Constitution of the State,[4]and by eliminating barriers to accessing permissible abortions. When Bolivia's abortion laws overseeing the access to legal abortions are not enforced, there is the violation of the rights to nondiscrimination and effective remedy (Art. 2), to life (Art. 6), to liberty and security (Art. 9), to a fair trial (Art. 14), and to privacy (Art. 17).

[1] An Ipas study on the enforcement of criminal abortion laws found that since 2006, in the two most populous cities of Bolivia, La Paz and Santa Cruz, only one legal abortion was ever approved. To date there have only been 6 legal abortions. http://www.ipas.org/~/media/Files/Ipas%20Publications/CRIMRPTE13.ashx?utm_source=resource&utm_medium=meta&utm_campaign=CRIMRPTE13

[2] http://www.ipas.org/~/media/Files/Ipas%20Publications/IpasBoliviaIndigenas.ashx

[3] http://ipas.org/en/Resources/Ipas%20Publications/Las-cifras-hablan--El-aborto-es-un-problema-de-salud-publica.aspx

[4] Article 66: Women and men are guaranteed the exercise of their sexual right and their reproductive rights.

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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. Barriers to permissible abortions drive women to access abortions illegally and unsafely, result in the arrests and incarceration of women and lead to high rates of maternal mortality and morbidity.[5] 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%.

Rape victims who seek legal abortions must first report the rape to the police authorities and then obtain authorization from a judge.[6] Authorization is rarely given—judges claim "conscientious objection" as a reason for denying access.[7] To date, there have only been 6 legal abortions in the country. Because the current abortion law is not implemented, in particular because authorization is a barrier and there are no standards for implementation, the law violates the right to an effective remedy (Art. 2) and privacy (Art. 17). It should also be noted that the Committee Against Torture, in their Concluding Observations to Bolivia this year expressed concerned of the use of conscientious objection by judges.[8]

Because of the non-implementation of permissible abortion laws, the State contributes to the death and injury of women who seek to end a pregnancy, a violation of their right to non-discrimination (Art. 2) and life (Art. 6).

The denial of legal abortion after rape violates the rights to equality and to be free from discrimination based on sex and socioeconomic status under Art. 2 of the treaty because it ignores the differential consequences of a pregnancy, not only between men and women

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[5] http://ipas.org/en/Resources/Ipas%20Publications/Las-cifras-hablan--El-aborto-es-un-problema-de-salud-publica.aspx

[6] Article 266: (Non-punishable abortion) When the abortion is the result of rape, abduction for sexual purposes not followed by marriage or incest, no criminal sanctions will be applied always and only if the victim initiates criminal actions…abortion should only be practiced by a doctor, with a woman's consent and judicial authorization.

[7] An Ipas study on the enforcement of criminal abortion laws found that since 2006, in the two most populous cities of Bolivia, La Paz and Santa Cruz, only one legal abortion was ever approved. http://ipas.org/en/Resources/Ipas%20Publications/When-abortion-is-a-crime--The-threat-to-vulnerable-women-in-Latin-America.aspx

[8] Paragraph 23 states: The Committee takes note of the explicit recognition of sexual and reproductive rights accorded in article 66 of the Constitution and of article 20.I.7 of Act No. 348, which sets forth the State party's obligation to "respect the decisions taken by women victims of violence in exercising their sexual rights and their reproductive rights in accordance with the laws and regulations in force". *However, the Committee notes with concern that, under article 266 (permissible abortions) of the Criminal Code, rape victims who decide to interrupt their pregnancy must obtain authorization from a judge in order to do so. Information made available to the Committee regarding the use of the right to conscientious objection by the judiciary indicates that this requirement constitutes an insurmountable obstacle in many cases, and women in this situation are therefore forced to undergo illegal abortions, with all the health risks that this entails (arts. 2 and 16).* The State party should ensure that rape victims who voluntarily decide to interrupt their pregnancy have access to safe abortions. To this end, the State party should do away with any unnecessary obstacle in that regard. The Committee refers the State party to the recommendations made to it by the Committee on the Elimination of Discrimination against Women (CEDAW/C/BOL/CO/4, paras. 42 and 43). The Committee against Torture urges the State party to evaluate what effects the current highly restrictive laws on abortion have on women's health.

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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 enforcement of criminal abortion laws in Bolivia is alarming. An Ipas Bolivia study found that it was almost always poor and indigenous women who are reported to the police; a review of records from the public prosecutor's office, from 2008-2012 found that investigations of illegal abortions were initiated in 775 cases. Reports were generally filed by a health-care provider, a relative, a partner or the public prosecutor's office. In some cases, the Ombudsman for Children and Adolescents filed a police report on behalf of the fetus. Abortion cases languish for months at a time. Often it will take years for a case to be archived. Once a case is archived it can be reactivated if new evidence is found and presented. While waiting for their cases to go forward women are in a legal limbo, uncertain about what will happen and how long it will take.

Articles 263 to 269 of the Penal Code criminalize abortion in Bolivia; penalties are differentiated based on the action, actor, and in some cases, the motivation. For example, punishment can be reduced for a woman or a provider if an abortion is performed to "save a woman's honor." Punishments range from prison terms of one to six years.

The case of Helena

As noted above, poor and indigenous women are the most likely to die because they can't get a permissible abortion; this is a violation of the right to non-discrimination and the right to life. It is also poor and indigenous rape victims who go to prison, which violates their right to non-discrimination, security of person and the right to equality before courts and tribunals to a fair trial.

The case of Helena[9] illustrates how these rights violations take place and how it affects an individual woman.

Twenty-eight-year-old Helena is an indigenous Guaraní Indian. She lives in extreme poverty with her young daughter in the city of Santa Cruz. In January 2012, she was pregnant as a result of rape. She neither reported the rape nor asked for judicial authorization: She said she was afraid the police wouldn't believe her if she reported the rape and she was unaware that she could have a legal abortion. She did not know she could go to jail for having an abortion. In her twenty-third week of pregnancy she took

[9] Not her real name.

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misoprostol, suffered severe complications and went to the Percy Boland Maternity Hospital for care. She delivered the fetus at the hospital, was handcuffed and then apprehended while still in the hospital. Helena was in police custody, guarded by two police officers, for the duration of her 10-day hospital stay while being investigated by the police's homicide unit. She was then reported for the crime of abortion to the public prosecutor's office by the Ombudsman for Children and Adolescents.

During the investigation it was determined that a friend had purchased the pills for Helena from a pharmacy. Consequently the police raided several pharmacies and closed them down for selling misoprostol without a prescription. No one was arrested. On February 3, 2012, Helena was formally charged and placed in preventive pre-trail detention in Palmasola jail in Santa Cruz. Helena's public defender immediately appealed the preventative detention order but after a lengthy delay the appeal was denied by the First Supreme Departmental Court of Santa Cruz on April 16, 2012. Helena remained in prison for eight months until her case concluded in October 2012. She was jailed in poor conditions and despite not having been given a formal prison sentence, was made to share her space with people convicted for a variety of crimes.

On June 6, 2012, Helena requested a hearing in order to plead guilty to the crime of abortion so she could expedite her case and return to her daughter. Helena's mother took care of her daughter while she was in prison. Because of the stigma around abortion, Helena never told her family what happened and explained her absence by saying she was working in Argentina. Helena's hearing request was rescheduled three times before taking place in October. Her public defender never showed up to represent her. She was sentenced to two years of prison. However, Bolivian legislation permits the option to serve the sentence outside of prison if a judicial pardon is requested. Helena made and was granted the pardon. Eight months after her initial charge, on October 17, 2012, following various administrative complications in Palmasola prison, Helena was finally freed.

In Helena's case the State violated her rights to non-discrimination (Art. 2), to life (Art. 6), and to liberty and security of person (Art. 9).

There is currently an opportunity for the Bolivian State to prevent further violations of this nature. The Plurinational Constitutional Court was presented with a constitutional challenge by Congresswoman Patricia Mancilla in March 2012. The challenge asks the court to find 13 articles of the 1972 Penal Codes in violation of Bolivia's 2009 Constitution. These 13 articles are related to women's human rights, including Articles 263, 266 and 269, that deal specifically with the criminalization of abortion.

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The Court has not responded to the constitutional challenge and its delay affects the life and health of Bolivian women and girls, who continue getting abortions under unsafe and illegal conditions while the Court deliberates. The Court must issue a decision and it is our expectation that they will take into consideration recommendations from the Human Rights Committee regarding the State's compliance with the rights to nondiscrimination and effective remedy (Art. 2), to life (Art. 6), to liberty and security (Art. 9), to a fair trial (Art. 14), and to privacy (Art. 17), At a minimum the Court must eliminate the judicial authorization requirement for access to a legal abortion. It must also liberalize the country's restrictive laws and ensure that women and girls who seek abortions are not arrested and detained.