



Salud. Acceso. Derechos.

Calle 22 de Calacoto No. 7710 esq. Av. José Gabino Villanueva - San Miguel | Casilla 6673
Telf./Fax: (591) (2) 211 6760 | La Paz, Bolivia
ipasbolivia@ipas.org | www.ipas.org

Members of the CEDAW Committee
Office of the United Nations High Commissioner for Human Rights
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland
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Ref: Ipas Bolivia Submission to the Committee on the Elimination of Discrimination against Women (CEDAW) for the adoption of list of issues prior to reporting for the 61st Pre-Sessional Working Group

Dear Committee Members:

Ipas¹ is an organization that works around the world to increase women's ability to exercise their sexual and reproductive rights.

We are writing to provide questions to be asked of the Bolivian State regarding their compliance with international human rights under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). We are concerned that the State of Bolivia has not adequately protected women's human right to health, established in Article 12, and the right to equality and non-discrimination established in Article 16(1)(e).

This letter focuses on two major areas where Bolivian women's rights may be violated under CEDAW, this includes: violations to the right to health and confidentiality in healthcare settings when women seeking post abortion care are reported to the police by their healthcare providers and persistent barriers to access to legal abortion for sexual violence victims when providers refuse to offer abortion care based on moral grounds and without making referrals.

1. Human rights and abortion care under CEDAW

¹ www.ipas.org Ipas has an office in Bolivia.

The CEDAW Committee in its concluding observations, in line with other treaty-monitoring bodies, has linked the negative consequences of restrictive abortion laws to violations of women’s human rights and considers restrictive abortion laws threats to women’s right to health and life. In its concluding observations, CEDAW draws a direct link between the criminalization of abortion and the use of unsafe clandestine abortion services, which put women’s health and lives at risk.

Article 16(1)(e) of CEDAW requires that States Parties “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.”

The CEDAW Committee’s General Recommendation No. 24, establishes that states are required “to provide access to abortion in cases where the life or health of the woman is threatened and in cases of rape, incest, or fetal impairment.” General Comment No. 24 further adds that health services must be delivered in a way that guarantees women’s confidentiality: “[i]t is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.”²

Under CEDAW, the denial of safe abortions is a threat to a woman’s right to life and health. In the case *L.C. v. Peru*, the CEDAW Committee concluded that where a state party has legalized therapeutic abortion, it must also provide a regulatory framework that allows women seeking abortion to effectively realize their rights.”³

2. Background: Women’s reproductive health and human rights in Bolivia

² Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 24: Article 12 of the Convention (women and health), (20th Sess., 1999).

³ *L.C. v. Peru*, CEDAW Committee, Communication No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 8-10 (2011)

Bolivia's maternal mortality rate is one of the highest in the region, in certain rural areas the rate is as high as 310 per 100,000 live births.⁴ Unsafe abortion is the third cause of maternal mortality in Bolivia, accounting for 9.1% of maternal deaths.⁵ The Bolivian Ministry of Health recognizes that "Bolivia is one of the few countries where the probability of dying from causes related to maternity continues to be highly unacceptable."⁶

Seventy four percent of all pregnancies in Bolivia are unplanned.⁷ Of these, 15% to 35% are the result of involuntary sexual intercourse (rape, incest, or rape of a minor), failure to use a method of contraception correctly, or not using contraception at all.⁸

Sexual violence is endemic in Bolivia; between 2012 and 2013 there were 14,000 reported cases of sexual violence. Of these, 67% were perpetrated by family members.

Failure to use a contraceptive is linked to insufficient access to information on methods of contraception, sexual and reproductive health education and the unavailability of contraceptives in health centers.⁹

Following Bolivia's 2013 review, the Human Rights Committee expressed concern about reports showing high maternal death rates from unsafe abortion. They were equally concerned "that an alarming number of criminal investigations of women suspected of having had illegal abortions are being

⁴ ENDSA 2008, http://www.unicef.org/bolivia/children_1538.htm;

⁵ Encuesta Post censal de Mortalidad Materna. La Paz:MSD;2003

⁶ Comisión Interamericana de Derechos Humanos (CIDH), Acceso a servicios de salud maternal desde una perspectiva de derechos humanos (Access to maternal health services from a human rights perspective), paragraph 13 (2010).

⁷ Encuesta Nacional de Demografía Y Salud 2008.

⁸ Ipas Bolivia. La Cifras Hablan: El aborto es un problema de salud pública. Ipas (2011) accessible at <http://www.ipas.org/en/Resources/Ipas%20Publications/Las-cifras-hablan--El-aborto-es-un-problema-de-salud-publica.aspx>.

⁹ Consorcio Latinoamericano contra el Aborto Inseguro. Las Cifras Hablan: El aborto es un problema de salud pública (2011).

conducted.” The Human Rights Committee recommended Bolivia refrain from prosecuting women for illegal abortions and lift legal requirements for court authorization for abortions.¹⁰

CEDAW Committee’s 2008 concluding observations on Bolivia stated that “the lack of a gender perspective in the delivery of health services to women of child-bearing age” and “the difficulties in obtaining a legal abortion—both therapeutic and ethical—owing, inter alia, to the lack of implementing regulations for the laws in force,” leads “many women to seek illegal and unsafe abortions.” The Committee called on the Bolivian government to “integrate a gender perspective into its national health policy in line with general recommendation 24 and improve access to health services to the most vulnerable groups of women, in particular rural and indigenous women” and “to adopt regulations to implement existing laws on Bolivian women’s right to therapeutic abortion.”¹¹

3. Violations to women’s right to health (Art. 12) and confidentiality due to police reporting

The State of Bolivia does not protect the confidentiality of women seeking treatment for complications of unsafe abortion (post-abortion care). Women are prosecuted for abortion when providers report women suspected for abortion to the police during or after providing post-abortion care in public health services.

Ipas and national partners conducted legal research in Bolivia, Brazil, and Argentina on the impact of criminal laws on abortion. The project analyzed data and cases looking specifically at how the justice system and the police enforce the criminal law. Our findings documented cases of health-care providers reporting women suspected of having an induced abortion to law enforcement authorities. In some instances, women were subsequently imprisoned. The findings also show that the enforcement of the criminal laws in these three countries is discriminatorily applied and that in Bolivia it has a detrimental

¹⁰ Human Rights Committee. Concluding observations on the third periodic report of the Plurinational State of Bolivia, CCPR/C/BOL/CO/3 (2013).

¹¹ CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Bolivia U.N. Doc. CEDAW/C/BOL/CO/4, para 42-43 (2008).

and disproportionate effect on the most vulnerable and marginalized women and adolescents. Research findings show that 775 women in Bolivia were reported to the police from 2008-2012.¹²

Because of fear of arrest and prosecution, women with complications from abortion will often not seek health services; this in turn means that maternal mortality and morbidity due to unsafe abortion is under-reported and puts women's health and life at risk.

The Bolivian government must ensure that adequate, effective procedures are in place to give all women of reproductive age access to abortion where permitted by law, and to post abortion care without discrimination and fear of intimidation and prosecution.

The Bolivian government must protect the right to confidentiality of women seeking post abortion care. They must do so by developing and implementing standards and guidelines to guide healthcare providers on the need to preserve patient confidentiality and safeguard medical records. Moreover, in the interest of women's health and safety, guidelines must protect women from arrest and police investigation when they are receiving care in health facilities for abortion.

According to CEDAW Committee, "lack of respect for confidentiality ... may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence".¹³

The CEDAW Committee also recommends that States report on all measures taken to ensure that quality health services are accessible and acceptable for women, defining acceptable to include that services guarantee confidentiality and are sensitive to a woman's needs and perspectives.¹⁴

¹² Ipas. When abortion is a crime. Ipas (2013) accessible at www.ipas.org.

¹³ Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 24: Article 12 of the Convention (women and health), (20th Sess., 1999).

¹⁴ CEDAW General Recommendation 24 on Women's Health, par. 22

4. Persistent barriers to abortion care for women and adolescents' victims of sexual violence

In March 2012 a Bolivian parliamentarian presented an “abstract action of unconstitutionality” before the Bolivian Constitutional Court. The petition challenged the constitutionality of several penal code provisions, which did not comply with the Bolivian Constitution and with international human rights standards protecting women’s reproductive rights.¹⁵

In response, on February 5, 2014 the Constitutional Court removed from the penal codes the judicial authorization requirement for an abortion, and in cases of rape or incest, the requirement to file a criminal complaint. The Court also reaffirmed the constitutionality of abortion in cases of risk to the health or the risk to life of a woman, this, in accordance with Bolivia’s legal obligations established in ratified international human rights treaties.¹⁶ The Court concluded that requiring a victim of rape or incest to obtain judicial authorization for a legal abortion constitutes a violation of a woman’s right to “physical, psychological and sexual integrity;” freedom from torture, and cruel, inhuman or degrading treatment; physical health; dignity; free development of personality; and autonomy (enshrined under Articles 15, 18, and 22 of the Constitution).

However, following the Court’s decision, sexual violence survivors with unwanted pregnancies resulting from rape or incest must still report their rapes to the public prosecutor’s office and law enforcement authorities in order to access a legal abortion. This situation present significant barriers to legal abortion

¹⁵ The petitioner argued that Articles 263 (criminalization of abortion), 264 (criminalization of abortion followed by injury or death of the woman), 265 (criminalization of abortion performed to “salvage the honor of the woman”), 266 (exceptions to the criminalization of abortion), and 269 (criminalization of the regular provision of abortion services) of the Penal Code violated the following articles of Bolivia’s Constitution: Arts. 8.II (principles on which the State is based), 14.I (right to equal protection before the law) and II (freedom from discrimination), 15.I (rights to life and personal integrity), II (freedom from violence) and III (State duty to prevent, eliminate and punish violence), 35.I (right to health), 66 (sexual and reproductive rights) and 109.I (direct applicability and equal enjoyment of rights).

¹⁶ Regarding the Article 266 (exceptions to the criminalization of abortion), the Tribunal’s decision declared its constitutionality establishing that woman’s consent is required for the termination of the pregnancy and that the procedure must be performed by a physician in order to guarantee the life of the woman in such cases.

when, for example, state agents dismiss their complaints or don't trust their report of the violations suffered.

Before the February Court decision, access to legal abortion in cases of rape in Bolivia was highly restricted due to providers' refusal to provide abortion care. Since the Court's decision, sexual violence victims' access to abortion care continues to be limited due to lack of implementation by the Bolivian government, especially regarding adolescents' victims of sexual violence.

The Bolivian State must take urgent measures to protect the physical and mental health of girls and women survivors of sexual violence and ensure they receive abortion care as permitted by law. The Bolivian government must also ensure effective implementation of the Constitutional Court's February 2014 decision by developing standards and guidelines.

In order to avoid situations where women's access to abortion care is denied, the Bolivian government must take preventive measures such as providing training on women's sexual and reproductive rights to law enforcement authorities, public prosecutors and health care providers across the country. This is necessary to ensure full implementation of the Court's decision and compliance with international human rights obligations and human rights standards, as expressed in CEDAW's last set of recommendations to Bolivia in 2013.

The State should establish monitoring and oversight procedures to hold health providers and law enforcement and public prosecutors and other governmental authorities accountable to their obligations. It must also create effective accountability mechanisms to ensure the State's compliance with human rights standards and principles that guarantee women's access to legal abortion in cases of sexual violence and other legal indications already established by law.

Recommended questions:

1. What measures is the Bolivian State taking to protect women's right to confidentiality in health care against police reporting by health providers during or after treatment of complications due to unsafe abortion?
2. What measures is the Bolivian State putting in place to protect women's right to equality and non-discrimination and ensure abortion services for the most vulnerable and marginalized women, especially, poor, indigenous and rural women and girls?
3. What measures is the Bolivian State taking to eliminate existing barriers and ensure that sexual violence victims have access to safe and legal abortion care?
4. What measures is the State taking to ensure adolescents' victims of sexual violence access to legal abortion, especially when there is conflict with their parents about the decision to terminate unwanted pregnancies?
5. What measures is the Bolivian State taking to establish monitoring, accountability and oversight procedures to guarantee states agents compliance with international human rights obligations and women's access to legal abortion in cases of sexual violence and other legal indications already established by national law?
6. What measures is the Bolivian State taking to ensure that conscientious objection does not become an impediment to accessing abortion?

Sincerely,



Malena Morales, Director

Ipas Bolivia