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Rights of the Child in Bolivia

*Report on the implementation of the
Convention on the Rights of the Child
by Bolivia*

Report prepared by the
for the Committee on the Rights of the Child
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I. INTRODUCTION

The situation of human rights in Bolivia, and in particular of children's rights, must be considered in relation to the political, economic and social context of the country.

Poverty constitute the biggest problem facing Bolivia today. It does the greatest damage by disintegrating homes. Children are not acknowledged in the family, they suffer from emotional neglect, violence and interfamily sexual abuse.¹ A strategy to reduce poverty² has been established by the State with the participation of the civil society until the year 2015. Concerning children and adolescents, the strategy plans to increase the number of teachers, social workers and health specialists in order to develop projects aimed at improving children's and women conditions. Yet, about two-thirds of the population still live in poverty. The great majority of the poor are under 18. In 2001 the total population of Bolivia was 8.5 million³. Children under the age of 18 are calculated at 3.7 million and children under the age of 5 at 1.2 million⁴. *"Of the total population of the country, it is estimated that about two million children and adolescents are at risk, living out their childhood in poverty and marginalisation"*.⁵

In Bolivia, there is an important ethnic and cultural diversity: 37 linguistic groups and 10 linguistic families⁶. According to the 2001 Population and Housing Census, 709,817 persons over 15 years of age have identified their cultural allegiance and identity in the following ways: 195,561 identify themselves as Quechua; 155,167 as Aymara; 9,584 as Guaraní; 16,012 as Chiquitano; 5,603 as Mojeño; 10,430 as other and 31,7460 do not identify themselves with any of these⁷. Differences depend on regions, rural and urban areas and ethnic origins. Processes of exclusion are common especially in rural areas and marginal zones and among indigenous people. In those groups, children and young people are particularly vulnerable.

The infant mortality rate has dropped in the past years thanks to the government's policy of expanding the Basic Health Insurance to provide all services to pregnant women, to new mothers up to six months after childbirth and to children up to five years of age⁸. However, in rural areas it still remains high. Malnutrition of children under three years of age still persists. According to UNICEF, approximately 800,000 children under 18 are working.⁹ Some children live in institutions, such as prisons, orphanages, etc., where their basic rights are not respected. There are also over 2,500 children living on the street of major cities (Cochabamba,

¹ See *Bolivia Country Report*, p.17 [CRC/C/125/Add.2](#)

² *Estrategia Boliviana de Reducción de la Pobreza* (EBRP). The aim of the strategy is to reduce poverty and promote human development, with particular emphasis on the population that can rely on very few means. It includes better access to markets, to basic public services, better social protection and security and the promotion of the participation and integration of the population, in a context of development that takes into account the rational use of natural resources.

See: <http://www.ebrp.gov.bo>

³ See *Bolivia Data Profile* of The World Bank, available at: www.worldbank.org

⁴ According to Ecpat's statistics, available at: www.ecpat.com

⁵ See *Bolivia Country Report*, p.16 [CRC/C/125/Add.2](#)

⁶ See *Programa de la Naciones Unidas para el Desarrollo*, available at: <http://www.pnud.bo/Perfil/Index.html>

⁷ See *Bolivia Country Report*, p.16, [CRC/C/125/Add.2](#)

⁸ UNICEF, *Bolivia at a glance*. See www.unicef.org/infobycountry/bolivia.html

⁹ *Ibid.*

La Paz, Santa Cruz, etc.). Domestic violence, especially the abuse and mistreatment of children, is a growing concern¹⁰.

OMCT welcomes the third report submitted by Bolivia to the Committee on the Rights of the Child (*thereafter* the Committee) in accordance with article 44 (1) b of the Convention on the Rights of the Child (CRC). OMCT's alternative report to the Committee covers the provisions of the CRC which fall under the mandate of OMCT, namely the right to life, the right to be protected from torture and other cruel, inhuman, or degrading treatment or punishment, the rights of children in conflict with the law, and the right to be protected from any form of violence and discrimination.

II. INTERNATIONAL STANDARDS

Bolivia ratified the CRC on 26 June 1990. It is one of the first countries to have ratified the Convention on the Rights of the Child. This fact shows that there is political will, at least theoretically, to protect children.

At the international level, Bolivia is party to most of the principal international human rights treaties. It has ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 22 September 1970 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 12 April 1999, which entered into force at the national level on 11 May 1999. It has also ratified the Convention on the Elimination of All Forms of Discrimination against Women, on 8 June 1990 and the Hague Convention of 1996 on parental responsibility and protection of children in 2001.

However, Bolivia has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts. It has signed, but not ratified, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Bolivia ratified the Convention 138 (Minimum Age Convention) of International Labour Organization on 11 June 1997. But it has not ratified the Convention 182 of the on Worst Forms of Child Labour of 1999.

At the regional level, Bolivia is party to the American Convention on Human Rights ("Pact of San José", Costa Rica), ratified on 20 June 1979. It has signed but not ratified the Inter-American Convention to prevent and punish torture on 9 December 1985. OMCT strongly suggests that the government ratify it.

III. DEFINITION OF THE CHILD

Article 2 of the Code of Childhood and Adolescence¹¹ states that every human being from his/her birth to the age of 12 is considered a child and every human being between 12 and 18

¹⁰ Ibid.

¹¹ Código del Niño, Niña y Adolescente, 27 October 1999.

is considered an adolescent¹². OMCT also notes with satisfaction that article 4 of the Civil Code has been modified in the year 2000, establishing that the majority is attained at the age of 18.¹³ These provisions are thus in full conformity with article 1 of CRC for which "*a child means every human being below the age of eighteen years (...)*".

Article 126 of the Code of Childhood and Adolescence sets the minimum age for employment at 14. However, recent research shows that there is a great number of children under the age of 14 who work regularly¹⁴ (see chapter 7.3).

IV. DISCRIMINATION

4.1 Discrimination against girls

Article 53 of the Family Code¹⁵ establishes that a minor cannot marry without parental consent. In addition, according to article 44 of the Family Code, men can marry at 16, while women can do so at 14¹⁶ and a judge may grant exemption from the age requirement if there are serious and justified grounds for doing so.¹⁷ Hence, despite the recommendation made in 1998 by the Committee¹⁸, minimum legal ages for access to marriage are still not in full compliance with the CRC, which exposes children to abuses and early pregnancy related problems.

OMCT also believes that article 44 of the Family Code is discriminatory, since it sets different ages for access to marriage for boys and girls, which implies that girls stop their education or employment earlier than boys if they can be married at a lower age. Therefore it suggests to increase to the age of 18 the minimum legal age for marriage for both boys and girls.

With the implementation of the Educational Reform¹⁹ in the past years, great efforts have been made to reduce inequality between boys and girls as far as education is concerned. However, in some regions, in particular in rural areas, girls are still discriminated in access to primary education. In many rural communities, preference is still given to boys in terms of allowing them to attend school. The government should therefore make further efforts to guarantee girls' access to education in rural areas.

¹² Código del Niño, Niña y Adolescente, art. 2 : "Se considera niño o niña a todo ser humano desde su concepción hasta cumplir los doce años y adolescentes desde los doce a los dieciocho años de edad cumplidos".

¹³ Ley N. 2089 5 May 2000, art. 4: "La mayoría de edad se adquiere a los dieciocho años cumplidos".

¹⁴ International Labour Organization, "Bolivia, Trabajo Infantil en la Caña de Azúcar: Una Evaluación Rápida", May 2002.

¹⁵ Código de Familia, art. 53: "El menor de edad no puede casarse sin el asentimiento de su padre y de su madre(...)."

¹⁶ Código de Familia, 4 April 1988, art. 44: "El varón antes de los dieciseis años cumplidos y la mujer antes de los catorce años cumplidos, no pueden contraer matrimonio".

¹⁷ Código de Familia, art. 44: "El juez puede conceder dispensa de edad por causas graves y justificadas".

¹⁸ Concluding observations of the Committee on the Rights of the Child: Bolivia 26/10/98, CRC/C/15/Add.95.

¹⁹ *Reforma educativa de Bolivia*. It is a programme of the State supported by the World Bank, aimed at offering better quality and equality in primary education. The implementation of this project began in 1996.

4.2 Discrimination against indigenous people

OMCT is concerned about discrimination against indigenous peoples, including children. In educational systems to which indigenous children have access, traditional and cultural values of indigenous populations are not taken into account. This contributes to the fact that illiteracy rates among indigenous populations are very high. Indigenous populations have less access to basic education than the rest of the population. A UN report²⁰ shows that instruction levels of indigenous people are equivalent to three degrees less than non-indigenous people.

In the area near Cochabamba (called "Trópico de Cochabamba") indigenous people are permanently subject to severe human rights violations committed by police and military forces, as a result of activities related to cocaine eradication. Men, women and children suffer detentions and illegal persecutions, as well as physical and psychological violence.²¹ Back in 2001, OMCT was informed about the violations of the rights of the Chiquitano indigenous people of Santa Cruz de la Sierra over the territory of Monte Verde.²² It was reported that individuals hired by an oil company that had been trying to acquire land in the territory of Monte Verde for many years, had entered the territory and cleared around 300 ha of forest. As a result indigenous organisations had reinstalled check points in order to prevent the entry of private individuals into the indigenous territory of Monte Verde and the destruction of the forests. Indigenous people received death threats from those individuals. Moreover, the legal representative of the indigenous people, who was responsible for the attribution of title deeds regarding the territory of Monte Verde, was attacked by stock farmers.

OMCT expresses its concern about the non-respect of the economic, social and cultural rights and the fundamental freedoms of indigenous peoples and urges the government to guarantee a better implementation of the International Covenant on Economic, Social and Cultural Rights as well as ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

V. PROTECTION FROM TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

OMCT regrets that the government's report to the Committee does not address the problem of torture. The report provides no information on *de facto* torture or ill-treatment affecting children and *the jure* protection from such practices. Therefore, OMCT believes that the Committee should be provided with further information thereupon.

5.1 Bolivia's legal framework

Torture is explicitly prohibited by article 12 of the Constitution²³. Ill-treatment, applied specifically to children, is defined by article 108 of the Code of Childhood and Adolescence,

²⁰ ONU Report. *Poblaciones indígenas: un desafío para la comunidad internacional*, October 2002. Available at: www.un.org/spanish/hr/pobla.htm.

²¹ *Dignidad y Juegos de Poder en el Trópico de Cochabamba*, CASDEL and DNI (Publication of Terre des Hommes, Germany), Cochabamba, December 2002, p.7.

²² See OMCT Appeal *Bolivia : Violence and Denial of the Rights of the Chiquitano Indigenous People over the Territory of Monte Verde*, 24 September 2001, Case BOL 240901. ESCR

²³ Constitución política del Estado (1995), art. 12: "Queda prohibida toda especie de torturas, coacciones, exacciones o cualquier forma de violencia física o moral, bajo pena de destitución

which constitutes the most important instrument for the protection of children and young people in Bolivia. Article 108 provides that any act of violence committed by parents, state officials, third parties and/or institutions against children and adolescents constitutes ill-treatment.²⁴

The Penal Code provides that any person part of a criminal organization that permanently perpetrates crimes, such as genocide, abduction of children and disabled, deprivation of liberty, torture, etc. must be sentenced to one to three years imprisonment.²⁵ It also states that the sentence must be increased of one third when the victims are minors or when the act of torture is committed by a state official in charge of the prevention, investigation and judgment of the crimes perpetrated.²⁶

But, as pointed out by the Committee against Torture²⁷, the Penal Code does not clearly define the crime of torture. In fact it does not cover some of the situations included in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, the penalty prescribed (one to three years imprisonment) is not consistent with the seriousness of the crime. OMCT, reiterating the recommendations made by the Committee against Torture, strongly suggest that Bolivia introduce in the criminal legislation a clear definition of torture as set forth in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to make torture a crime and stipulate penalties commensurate with its seriousness.

5.2 Practice

On several occasions over the past years, violent repression of social protests, including allegations of torture or cruel, inhuman or degrading treatment and punishment, have been reported in Bolivia.

A considerable increase in psychological violence as a result of the anti-drugs policies in the area near Cochabamba ("Trópico de Cochabamba") was reported by several NGOs²⁸. According to this information, the coca eradication programme "Plan Dignidad", undertaken by the government, did not contribute to substitute the coca economy with other products that allow poor farmers to live adequately. This plan increased the violence and the systematic violations of the rights of farmers living in that region. In the year 2000, important roads were

inmediata y sin perjuicio de las sanciones a que se harán pasibles quienes las aplicaren, ordenaren, instigaren o consintieren".

²⁴ Código del Niño, Niña y Adolescente, art. 108: " Constituye maltrato todo acto de violencia ejercido por padres, responsables, terceros y/o instituciones, mediante abuso, acción, omisión o supresión, en forma habitual u ocasional, que atente contra los derechos reconocidos a niños, niñas y adolescentes por este Código y otras leyes; violencia que les ocasione daños o perjuicios en su salud física, mental o emocional".

²⁵ Código penal, art. 132 bis, par.1: "El que formare parte de una asociación de tres o más personas organizada de manera permanente, bajo reglas de disciplina o control, destinada a cometer los siguientes delitos: genocidio, (...), sustracción de un menor o incapaz, privación de libertad, vejaciones y torturas, secuestro, (...), o se aproveche de estructuras comerciales o de negocios, para cometer tales delitos, será sancionado con reclusión de uno a tres años".

²⁶ Código penal, art. 132 bis, par.3: "La pena se aumentará en un tercio cuando la organización utilice a menores de edad o incapaces para cometer los delitos a que se refiere este artículo, y cuando el miembro de la organización sea un funcionario público encargado de prevenir, investigar o juzgar la comisión de delitos".

²⁷ *Concluding observations of the Committee against Torture: Bolivia*, 10/05/2001, A/56/44, par. 89-98.

²⁸ *Dignidad y Juegos de Poder en el Trópico de Cochabamba*, CASDEL and DNI (Publication of Terre des Hommes, Germany), Cochabamba, December 2002, p.21-22-24-27-42.

blocked in the “Trópico de Cochabamba” as a result of compromises found by the government in relation to issues such as alternative development, coca eradication and human rights. There were a great number of human damages: 7 people died, 1 member of the street police force disappeared, 78 people were injured with guns, tear-gas and beatings, 44 people were detained arbitrarily. 16 people reportedly underwent physical and psychological torture, inhuman and degrading treatments. The responsibility of those acts was attributed to members of the security forces. There was allegedly a lack of investigations about complaints of torture and other ill-treatment by police and military forces in charge of the implementation of the law. The indiscriminate use of tear-gases produced irreversible damages to a great number of people. Some cases of forced disappearances were also reported in Chimoré.

In January 2003, OMCT reported dramatic incidents that took place in the Chapare region, where the police forces and the army reportedly used disproportionate and excessive force to curb demonstrations and road blocks led by persons from different sectors of society - including retired people, coca growers, farmers and students²⁹. As a result, four persons died and arbitrary arrests and detentions, as well as forms of cruel, inhuman and degrading treatment were reported. Though indirectly, such acts affected children as well.

OMCT urges the government to:

- implement effective procedures for internal monitoring and disciplining of the behaviour of public officials, including in cases of repression of social protests;
- enforce appropriate sanctions for public officials who are found to have made excessive use of force and/or to be responsible of acts of torture, or cruel, inhumane or degrading treatment and punishment,
- ensure that victims obtain redress and have an enforceable right to fair and adequate compensation.

VI. PROTECTION FROM OTHER FORMS OF VIOLENCE

"Indexes for child abuse and violence against children are high in Bolivia. Unfortunately, a culture of respect for children does not exist and in certain areas of the country children are not considered 'persons' until they are over three years old".³⁰

6.1 Violence in the family

Article 19 of the CRC requires children's protection "(...) from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

Violence in the family is a serious problem in Bolivia, as the culture of "machismo" is widely spread in the country. Young women are often beaten by their husbands and there is no legal protection for them. Women are mainly subject to physical, sexual and psychological abuse. Physical violence, comprising battery, homicide, attempted homicide and murder, represents

²⁹ See OMCT Appeal *Bolivia: excessive and disproportionate use of force against social protests*, 17 January 2003, Case BOL 170103. ESCR

³⁰ UNICEF, *Bolivia at a glance*. See http://www.unicef.org/infobycountry/bolivia_1871.html

53,6% of domestic violence; psychological violence, produced by the lack of economic assistance, adultery, bigamy, etc. represents 40,2% of domestic violence; the remaining 6,2% of domestic violence cases is represented by sexual violence, including rape, sexual abuse and incest.³¹

As a response to the high rate of domestic violence, in 1995 the Bolivian government promulgated the "Law against violence within the family or domestic violence".³² However, according to information received³³, the provisions of this law are *de facto* rarely implemented. Law enforcement officials, members of the judiciary and health care workers entrusted to apply the law are frequently unaware of or do not comply with its provisions. Women themselves are often unaware of the existence of this law and can not therefore invoke its provisions.³⁴

In addition, cases of domestic violence are often not reported. Reasons why women in Bolivia do not pursue complaints of domestic violence may include pressure from the family or the aggressor, and lack of confidence in law enforcement personnel and the judiciary.³⁵ Just one out of ten cases of domestic violence reported to the judges end up with a penal sanction against the aggressors. Major factors hindering the imposition of a sanction include the victim abandon or the reconciliation with her aggressor.³⁶

There is a lack of information in Bolivia on how violence against women in the homes affect children, as well as a lack of information on domestic violence against children themselves. The government also recognises that its policies, including against the use of corporal punishment, are still very limited³⁷.

OMCT would therefore encourage the government to undertake in-depth research on the nature and incidence of violence against children in the home and to develop a comprehensive prevention, intervention and rehabilitation strategy, accordingly.

6.2 Sexual abuse and exploitation

The CRC provides that "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials".

In that respect, OMCT is particularly concerned by article 317 of the Bolivian Penal Code. This article provides that there shall be no punishment in the cases of rape, sexual abuse or kidnapping when the perpetrators marry their victims, with free consent, before the execution

³¹ OMCT, 10 reports/year 2001, *Violence against Women*, 2002, p.42.

³² Ley contra la violencia en la familia o doméstica, Ley no.1674, 15 de diciembre de 1995.

³³ Information received from Centro de Información y Desarrollo de la Mujer (CIDEM).

³⁴ OMCT, 10 reports/year 2001, *Violence against Women*, 2002, p.44.

³⁵ Ibid.

³⁶ *Violencia por razones de sexo*, Base de Datos Sobre Derechos de la Mujer, Comisión Andina de Juristas (CAJ). <http://www.cajpe.org.pe>

³⁷ See *Bolivia Country Report*, p.13-14 [CRC/C/125/Add.2](http://www.crc.org/doc/default.aspx?docid/125/Add.2)

of the judgment³⁸. Since the minimum legal age for marriage is currently 14 in article 44 of the Family Code, there are serious grounds to fear that sexually abused girls be forced to marry their rapist in order to preserve their family's "honour"³⁹.

Commercial sexual exploitation is also an area of concern. In Bolivia, the average age of entry into prostitution is 16. Most of the prostituted youth are between 17 and 20. Young children tend to enter prostitution because of experiences of abuse or violence; older children are forced to prostitute themselves because of economic pressures.⁴⁰

According to ECPAT, "Most child prostitution takes place in Bolivia's populated urban centres. Many of the children involved in the biggest cities in the country (La Paz, Cochabamba and Santa Cruz) do not come from these cities originally - the children move around between the cities to avoid being identified in their hometown. Prostitution in general is becoming more visible in Bolivian cities because of the proliferation of brothels, generally inhabited by adult prostitutes. These adult prostitutes confirm the recent increase in demand for, and availability of, prostituted children.

Most prostituted children come from the lower social classes and from broken families. Only 12.6% of prostituted children have any education, leaving them with few opportunities should they try to leave and perpetuating low self-esteem. As a result, many remain in the sex trade despite wanting to exit. Approximately one third of girls and adolescents in prostitution have between one and five children, mostly under the age of 5.

There are different types of child prostitution, varying with the economic power of the client and the age of the child. Upper-class clients tend to seek adolescents between ages 16 and 20. Reportedly these children come from eastern Bolivia and from outside of the country. In some cases the sexual contact takes place at the client's house. This type of prostitution is organised by closed networks, and is subject to very few controls. Adolescents from all parts of the country are exploited in local bars or pubs, mainly for middle-class clients. Street prostitution involves women of all ages who typically enter the trade when they are between the ages of 12 and 15 years. Finally, there is a form of "hidden" prostitution, which can involve children as young as 8 years, often in exchange for drugs or some kind of treat or toy. During the day, they stay in the street often working as street vendors, domestic servants or waitresses. At night they go to dance clubs or sell alcohol in the street. Clients of this type of prostitution are generally adults or adolescents with little money.

Bolivian health regulations require prostitutes to have regular health check-ups, but more than one third do not show up for their appointments. Most of the prostitutes, especially children, do not realise that the health problems they experience are probably due to sexually transmitted diseases like syphilis or gonorrhoea. There is apparently little concern among prostituted children of contracting HIV or AIDS; reportedly, a client can pay more to have unprotected sex. The biggest fear among prostituted children and adolescent is pregnancy, since this means that their income will be lost for a period of time".⁴¹

³⁸ Código penal, art. 317 "No habrá lugar a sanción, cuando los reos, en los casos respectivos, no teniendo impedimento alguno, contrajeren matrimonio con las ofendidas, antes de la sentencia que cause ejecutoria".

³⁹ See also OMCT 10 reports/year 2001, *Violence against Women*, 2002, p. 45.

⁴⁰ ECPAT International. *Bolivia - Perfil de la explotación sexual comercial de la niñez*.

Available at: www.ecpat.net

⁴¹ Ibid.

OMCT would therefore urge the government of Bolivia to undertake the following:

- urgently amend article 317 of the Penal Code providing that there shall be no punishment in the cases of rape, sexual abuse or kidnapping when the perpetrators marry their victims, with free consent, before the execution of the judgment
- ratify the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography
- collect reliable and complete data on sexual violence against children in Bolivia in order to set up a comprehensive policy aimed at fully implementing the requirement of article 34 of the CRC;
- adopt and implement a criminal policy which seeks to investigate and punish those responsible for sexual violence against children, including service providers, customers and intermediaries in child prostitution, child trafficking and child pornography;
- adopt preventive measures, through education, training, information and other forms of awareness raising, health services and monitoring mechanisms;
- supply information on concrete measures aimed at providing assistance and protection to child victims, and in particular sexually exploited children;
- provide for recovery and reintegration of child victims through, *inter alia*, social, medical, psychological and other support, effective actions to prevent or remove social stigmatisation and legal criminalisation, and the promotion of alternative means of livelihood.

6.3 Child labour and exploitation

In addition to article 19 of the CRC already mentioned, which protects children against any form of violence, article 32 paragraph 1 specifically recognizes “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”. For this purpose, art. 32 par. 2 requires States Parties to “take legislative, administrative, social and educational measures to ensure the implementation of the present article (...)”.

In Bolivia "*unacceptable forms of exploitation of children at work exist and persist, but they are particularly difficult to research due to their hidden, sometimes illegal or even criminal nature.*"⁴²

Although the Code of Childhood and Adolescence provides that the minimum age for admission to employment is 14 years old⁴³, a great number of children enter into the workforce at a very early age.

In the cane-growing regions of Santa Cruz and Tarija, the sugarcane harvest (*zafra*), mobilizes a great number of workers and their families every year from May to October. These families migrate temporarily in an attempt to alleviate their extreme poverty. Investigations made by ILO, through the International Programme on the Elimination of Child Labour (IPEC)⁴⁴, show that the Santa Cruz *zafra* mobilizes over 30,000 persons, nearly 7,000 of whom are children and adolescents under the age of 18. The Tarija *zafra* mobilizes 5,500 individuals, including

⁴² Frans Röselaers, Director of the International Programme on the Elimination of Child Labour (IPEC), International Labour Office, Geneva 2001.

⁴³ Código del Niño, Niña y Adolescente, art.126.

⁴⁴ ILO, International Programme on the Elimination of Child Labour (IPEC), *Bolivia, Child Labour in Sugarcane: A Rapid Assessment*, Guillermo Dávalos, May 2002, Geneva.

2,860 young persons under the age of 18. Overall, this productive activity involves nearly 10,000 children and adolescents. The employment of children in cane-growing activities constitutes a violation of current legal provisions, which not only establish 14 years as the minimum working age⁴⁵, but also prohibit children from working in the sugarcane harvest.⁴⁶ Both national and international legislation expressly prohibit child labour in sugarcane harvesting. Yet, according to ILO, because the State does not implement specific policies to deal with the problem, in practice, there is a complete failure to comply with current legal standards.⁴⁷

“Both in Tarija and Santa Cruz the youngest age of children and adolescents directly involved in harvesting work is nine years old. (...) Boys, girls and adolescents, together with the adult females, attend to stacking, peeling and, to a lesser extent, cutting cane. They are thus considered harvesters' helpers (cuartas). In most cases, employment contracts are verbal and are established by the contractor with the adult male harvester. Children and adolescents usually do not enter into any type of contract and therefore do not receive social benefits. (...) The vast majority of children and adolescents are not remunerated directly, since they are considered "helpers". They are subject to psychological mistreatment because they are under pressure to finish work assigned to them and because they fear not to reach established production quotas. (...).

In Tarija, the average percentage of children and adolescents who do not attend school is 90 per cent. In Santa Cruz, 55 per cent of boys and 33 per cent of girls are excluded from the right to education. Access to school for children living and working in the sugarcane harvest is also difficult because of the great distances between the harvesters' camps and the schools.

Children and adolescents who work in the sugarcane harvest encounter health problems linked to their living and working conditions. In general they live in overcrowded encampments without access to basic services, such as drinking water and solid waste management systems. (...) Children work for long hours (12 hours per day), they are exposed to inclement weather and to the risk of illnesses and accidents. Their diet is deficient in calories, proteins and minerals, which render them highly vulnerable to infectious diseases and to respiratory and gastrointestinal disorders.”⁴⁸

Another traditional labour carried out by poor Bolivian girls is domestic labour, which they start when they are as young as 7 years old.⁴⁹ In 1999 girls working in Bolivian homes were estimated at 114,000. Almost all of those girls are indigenous people from rural areas and they do not speak Castilian when they arrive in the city. Generally, those girls do not go to school, they work every day during long hours (49 hours per week on average) and are subject to ill-treatment, discrimination and sexual exploitation.⁵⁰

⁴⁵ Código del Niño, Niña y Adolescente, art.134 (Trabajos peligrosos e insalubres): "Son trabajos peligrosos, insalubres:

....

16. . El trabajo en actividades de recolección de algodón, castaña y zafrá de caña."

⁴⁶ Código del Niño, Niña y Adolescente, art.126.

⁴⁷ ILO, International Programme on the Elimination of Child Labour (IPEC), *Bolivia, Child Labour in Sugarcane: A Rapid Assessment*, Guillermo Dávalos, May 2002, Geneva, p.vii.

⁴⁸ *Ibid.* p iii-iv

⁴⁹ Ceaser, M. *Bolivia: ¿Criada o esclava?* In Noticias Aliadas, 28 June 1999.

⁵⁰ See *Diagnóstico sobre la situación de niñas, niños y adolescentes en 21 países de América Latina* Save the Children Sweden, p.49, available at: <http://209.45.121.167/pdf/24e.pdf>

A great number of Bolivian children also work in mines. They begin their occupation when they are 8. They work for 10-12 hours per day and have to deal with high temperatures and heavy loads, they are in contact with toxic and dangerous substances such as nitrates for explosives, mercury and toxic gases.⁵¹

Another activity carried out by children in Bolivia is gold search in the river, which is called "barranquilla". North of La Paz, children spend hours in the water in search of gold among stones and earth. They begin this activity when they are 5 years old and learn it as a game when they accompany their mothers. This is one of the reasons for which the labour of children in the "barranquilla" and in the mine is not seen as a real job and the risks to which children are exposed are not given consideration.⁵²

In the last years, child trafficking for labour exploitation has been a major subject in Bolivia. Some reports show that Bolivian children and adolescents between 8 and 19 have been carried by Bolivian adults to illegal textile workshops in Argentina and kept under slavery conditions.⁵³ Children are attracted with lies and then they are forced to work in the textile workshops in inhuman conditions (only a meal per day, 5-hour sleep per night, 25 children in a dormitory with a seize of 4m x 4m, they are often beaten and insulted). Moreover, as they find themselves in an illegal situation, they depend on their kidnappers.

OMCT welcomes the efforts undertaken by the government to address the situation of working children, but it remains deeply preoccupied, in particular by child sugarcane harvesters, child miners and domestic girls. OMCT would recommend the government of Bolivia to:

- ratify and implement ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
- take immediate measures to guarantee the physical and psychological integrity of all child workers in Bolivia, including proper investigation of cases of violence against children as well as the adoption of enforcement measures, including penal sanctions, ensuring the accountability of perpetrators.
- develop a reliable monitoring and assistance system which would be available to all children victims of exploitation and slavery.
- guarantee to children from the age of 14 the right to adequate contracting and salaries (as allowed by Art.2.4. of the ILO 138 Minimum Age Convention) with full protection from any form of heavy, unhealthy or exploitative labour until 18.

6.4 Children living in prisons with their parents

In Bolivian's prisons more than 1000 children under the age of 5 live permanently with their parents and almost half of them leave the prison only to attend classes⁵⁴. They live under crowded conditions and deprived of their most basic rights.⁵⁵ In 1999 a campaign⁵⁶ to take

⁵¹ See <http://www.almeria-solidaria.com/page92.html>.

⁵² Chacón, M. (2002) *Trabajo infantil: Pequeños buscadores de oro bolivianos*. Available at: <http://www.attacmadrid.org/d/2/020701194028.php> and <http://www.almeria-solidaria.com/page92.html>

⁵³ Boletín N° 09-2000. *Cuarenta niños bolivianos rescatados de la explotación laboral en Argentina*. 3 July 2000. Bolivia Press (CEDIB). Available at: www.cedib.org

⁵⁴ See *Diagnóstico sobre la situación de niñas, niños y adolescentes en 21 países de América Latina* Save the Children Sweden, p.25, available at: <http://209.45.121.167/pdf/24e.pdf>

⁵⁵ See *Bolivia Country Report*, p.17

children away from prisons was launched, but had no significant results. In fact, the government did not respond with the necessary infrastructure to welcome those children. As a result, mothers and fathers living in prison prefer to keep the children with them rather than allow them to end up in the street as "niños de la calle".

The murder of an eight-year-old girl was reported in 1998.⁵⁷ She was living in the prison of San Pedro⁵⁸ with her parents and was throttled and raped to death by a prisoner. The little girl arrived in prison with her mother, who had taken advantage of a special permit for Christmas, which allowed members of the family to spend some time with the prisoners. The little girl began to wander around the prison and the murderer attracted her to his cell with lies. This case showed the dangers encountered by children living in prison with their parents.

OMCT thus recommends the government of Bolivia to develop alternatives to imprisonment for parents of infants and school-age children, in particular mothers.

OMCT further recommends the government to fully guarantee the rights of children, whose parents are held in detention, with particular attention to those living in prisons with their parents.

6.5 Child soldiers

According to the Constitution, all Bolivians have a fundamental duty to undertake military service as provided for by national law.⁵⁹ The minimum age for military service is 18 and the period of service is one year.⁶⁰

However, according to the NGO Coalition to Stop the Use of Child Soldiers, 40% of armed forces are constituted by soldiers under the age of 18, half of which may be under 16.⁶¹ Poor adolescents are reported to be especially targeted for conscription.

OMCT thus urges the government of Bolivia to ratify the Optional Protocol to the CRC on the involvement of children in armed conflicts and to effectively implement it.

VII. CHILDREN IN CONFLICT WITH THE LAW

7.1 Age of criminal responsibility and jurisdiction

⁵⁶ "No encarceles mi niñez". It constitutes a program of the Bolivian government aimed at preventing that children grow up in prisons. It was planned to take children away from prisons, where they were living with their parents, and give them a safe place to live.

⁵⁷ See Niñez y violencia: *Castigo corporal, maltrato y abuso sexual infantil*. Save the Children - Sweden, p.30. Available at: <http://209.45.121.167/publicaciones-00/publicacion-19/scs-pub-es-diagnostico.pdf>

⁵⁸ The prison of San Pedro lies in La Paz. It constitutes a community of almost 230 prisoners, who live together no matter what the importance of the crime is.

⁵⁹ Constitución política del Estado (1995), art. 213: "Todo boliviano está obligado a prestar servicio militar de acuerdo a ley".

⁶⁰ Decreto Ley No. 13907 of 27 August 1976.

⁶¹ Coalition to stop the use of Child Soldiers. See: www.child-soldiers.org

Bolivia's legal framework for children in conflict with the law is the Code of Childhood and Adolescence. This Code establishes that the State guarantees access to justice, in the same conditions, to all children and adolescents⁶² and that every child and adolescent has the right to free assistance from the Children's Ombudsman Office (Defensoría de la Niñez y Adolescencia) or a defence lawyer.⁶³ Article 222 establishes that social responsibility is applicable to adolescents aged between 12 and 16, if they commit an act classified as an offence in the Penal Code.⁶⁴ Exemption of civil responsibility is given to children under the age of 12. Particular measures of protection are applicable to children [i.e. under 12] who infringe the law and there cannot be a deprivation of liberty under any circumstances.⁶⁵ Special protection is applicable to children aged between 16 and 21: they are subject to the ordinary adult legislation, but they will have special legal protection.⁶⁶ In practice, this appears to mean that children are held responsible for penal offences from the age of 12 and can be judged as adults from the age of 16.

OMCT would urge the Bolivian government to clarify the nature and consequences of “social responsibility” as defined in the Code of Childhood and Adolescence and extend its application up to the age of 18.

OMCT urge the government to develop a specific set of responses to each type of penal offences when committed by children (from 12 to 18), excluding deprivation of liberty for all minor offences and non-violent crimes and proposing child-specific mediation and rehabilitation processes for grave crimes.

7.2 Grounds of arrest and conditions of detention

Article 231 of the Code of Childhood and Adolescence provides that the deprivation of liberty of adolescents is an exceptional measure that can be applied only when it is absolutely necessary to establish the truth, to allow the procedure of process and the application of the law.⁶⁷ Article 233 establishes that pre-trial detention of children and adolescents constitutes a provisional measure taken by the Judge of Childhood and Adolescence when he receives the accusation and when there is the risk that the child or the adolescent evades justice, destroys the proof or when there is some risk for third parties. Pre-trial detention cannot be applied for

⁶² Código del Niño, Niña y Adolescente, art. 213: "El Estado garantiza a todo niño, niña y adolescente el acceso, en igualdad de condiciones, a la justicia en todas las instancias".

⁶³ Código del Niño, Niña y Adolescente, art. 216: "Se prestará la asistencia gratuita e integral a todo niño, niña o adolescente que lo precise, por medio de la Defensoría de la Niñez y Adolescencia o abogado de oficio".

⁶⁴ Código del Niño, Niña y Adolescente, art. 222: "La responsabilidad social se aplicará a los adolescentes comprendidos desde los doce años hasta los dieciséis años, al momento de la comisión de un hecho tipificado como delito en el Código Penal o leyes penales especiales (...)".

⁶⁵ Código del Niño, Niña y Adolescente, art.223, par.1, 2: ""Las niñas y niños que no hubieren cumplido los doce años de edad, están exentos de responsabilidad civil, (...) al niño o niña que infrinja la Ley Penal, previa investigación, debe aplicarse las medidas de protección previstas en el presente Código. Por ningún motivo se dispondrá medida privativa de libertad".

⁶⁶ Código del Niño, Niña y Adolescente, art. 225: "Los mayores de dieciséis años y menores de veintiún años serán sometidos a la legislación ordinaria, pero contarán con la protección que se refieren las normas del presente título".

⁶⁷ Código del Niño, Niña y Adolescente, art. 231: "La libertad del adolescente y todos los derechos y garantías que le son reconocidos por la Constitución Política del Estado, por este Código y otros Instrumentos Internacionales, sólo podrán ser restringidos con carácter excepcional, cuando sean absolutamente indispensables para la averiguación de la verdad, el desarrollo del proceso y la aplicación de la Ley".

more than 45 days and the Judge should take into account the possibility of substituting it with a more favourable measure.⁶⁸

However, in practice, the length of pre-trial detention is reportedly not respected, while conditions of detention are clearly contrary to article 40 of the CRC and the United Nations Rules for the Protection of Juveniles Deprived of the Liberty. In May 2001, the UN Committee Against Torture concluded its session on Bolivia by stating that “information [...] regarding the inhuman conditions under which prisoners are held in the facilities known as *carceletas* in the Chapare area, Santa Cruz, Cochabamba and other cities in which, in addition to the illegal nature of the so-called 'legal deposit' imprisonment which does not exist in domestic law, detainees are held in subhuman conditions for indeterminate periods, sometimes lasting several months, and where juvenile and adult detainees are held together, as are prisoners awaiting trial and those already serving sentences [emphasis added]. In addition, the disciplinary confinement in punishment cells of the kind known as *el bote* (the can) is, in the Committee's view, tantamount to torture”.⁶⁹

OMCT strongly recommends the Committee to:

- request further information on the administration of juvenile justice in general, notably on the degree of specialisation of the system and on the actual implementation of existing legal provisions to ensure that the deprivation of liberty is a last resort for all children in conformity with article 37(b) of the CRC;
- request information regarding the training activities developed for professionals involved in the system of juvenile justice, on the provisions of the CRC and other relevant international instruments in the field of juvenile justice, including the "Beijing Rules", the "Riyadh Guidelines" and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
- request disaggregated data on children in conflict with the law, including age, gender and ethnic/indigenous background
- request an up-date on the situation of juveniles in detention as described by CAT in May 2001 and on measures taken by the government to address this situation.
- ensure that child detainees are kept separately from adults, unless it is in their best interests not to do so;

⁶⁸ Código del Niño, Niña y Adolescente, art. 233 par.1 (Detención preventiva): "Medida excepcional que puede ser determinada por el Juez de la Niñez y Adolescencia como una medida cautelar, a partir del momento en que recibe la acusación y cuando se presenten cualesquiera de las siguientes circunstancias:

1. Que el delito tenga prevista pena privativa de libertad, cuyo máximo legal sea de cinco años o más;
2. Exista el riesgo razonable de que el adolescente evada la acción de la justicia;
3. Exista peligro de destrucción u obstaculización de la prueba; y
4. Exista peligro para terceros".

par.2: "En ningún caso se podrá imponer esta medida por más de cuarenta y cinco días, en todos los casos el Juez deberá analizar si es posible sustituir la detención preventiva por otra medida más favorable".

⁶⁹ *Concluding observations of the Committee against Torture: Bolivia*, 10/05/2001, A/56/44, par. 89-98.

- ensure that living conditions in all police stations and child institutions be in conformity with article 37 of the CRC and the UN Rules for the Protection of Juveniles Deprived of their Liberty, in particular by resolving overcrowding problems, poor hygiene, lack of food and restrictions on family visits;
- guarantee that the duration of deprivation of liberty - either in detention facilities or in child institutions - be clearly determined, communicated to the child and monitored, so as to ensure that it be used only for the shortest appropriate period of time in conformity with article 37b of the CRC;
- provide for adequate alternative measures to detention and pre-trial detention, so as to stop keeping children in conflict with the law incarcerated.

IV. CONCLUSIONS AND RECOMMENDATIONS

The International Secretariat of OMCT is profoundly concerned with some aspects of the situation of children in Bolivia and believes that a number of safeguards, both legal and practical, must be further implemented in order to fully guarantee the rights of children enshrined in the CRC.

Regarding discrimination, OMCT recommends that the Committee on the Rights of the Child urge the Bolivian Government to:

- amend articles 44 and 53 of the Family Code so as to increase the minimum legal age for marriage to 18 for both boys and girls;
- make further efforts to guarantee girls' access to education in rural areas;
- guarantee the protection of the rights of indigenous people, notably by better implementing of the International Covenant on Economic, Social and Cultural Rights as well as ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Regarding torture and other cruel, inhuman or degrading treatment or punishment of children, OMCT recommends that the Committee on the Rights of the Child urge the Bolivian Government to:

- ratify the Inter-American Convention to prevent and punish torture;
- introduce in the criminal legislation a clear definition of torture as set forth in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to make torture a crime and stipulate penalties commensurate with its seriousness.
- implement effective procedures for internal monitoring and disciplining of the behaviour of public officials, including in cases of repression of social protests;
- enforce appropriate sanctions for public officials who are found to have made excessive use of force and/or to be responsible of acts of torture, or cruel, inhumane or degrading treatment and punishment;
- ensure that victims obtain redress and have an enforceable right to fair and adequate compensation.

Regarding violence in the family, OMCT recommends that the Committee on the Rights of the Child urge the Bolivian Government to:

- undertake in-depth research on the nature and incidence of violence against children in the home;

- develop a comprehensive prevention, intervention and rehabilitation strategy to fight all forms of domestic violence.

Regarding sexual abuse and exploitation of children, OMCT recommends that the Committee on the Rights of the Child urge the Bolivian Government to:

- ratify the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography;
- urgently amend article 317 of the Penal Code which currently provides that there shall be no punishment in the cases of rape, sexual abuse or kidnapping when the perpetrators marry their victims, with free consent, before the execution of the judgment;
- collect reliable and complete data on sexual violence against children in Bolivia in order to set up a comprehensive policy aimed at fully implementing the requirement of article 34 of the CRC;
- adopt and implement a criminal policy which seeks to investigate and punish those responsible for sexual violence against children, including service providers, customers and intermediaries in child prostitution, child trafficking and child pornography;
- adopt preventive measures, through education, training, information and other forms of awareness raising, health services and monitoring mechanisms;
- supply information on concrete measures aimed at providing assistance and protection to child victims, and in particular sexually exploited children;
- provide for recovery and reintegration of child victims through, *inter alia*, social, medical, psychological and other support, effective actions to prevent or remove social stigmatisation and legal criminalisation, and the promotion of alternative means of livelihood.

Regarding child labour and exploitation, OMCT recommends that the Committee on the Rights of the Child urge the Bolivian Government to:

- ratify and implement ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- take immediate measures to guarantee the physical and psychological integrity of all child workers in Bolivia, including proper investigation of cases of violence against children as well as the adoption of enforcement measures, including penal sanctions, ensuring the accountability of perpetrators;
- develop a reliable monitoring and assistance system which would be available to all children victims of exploitation and slavery;

- guarantee to children from the age of 14 the right to adequate contracting and salaries (as allowed by Art.2.4. of the ILO 138 Minimum Age Convention) with full protection from any form of heavy, unhealthy or exploitative labour until 18.

Regarding children living in prisons, OMCT recommends that the Committee on the Rights of the Child urge the Bolivian Government to:

- develop alternatives to imprisonment for parents of infants and school-age children, in particular mothers.
- fully guarantee the rights of children whose parents are held in detention, with particular attention to those living in prison with their parents.

Regarding child soldiers, OMCT recommends that the Committee on the Rights of the Child urge the Bolivian Government to:

- ratify the Optional Protocol to the CRC on the involvement of children in armed conflicts and effectively implement it.

Regarding the administration of juvenile justice, OMCT recommends that the Committee on the Rights of the Child urge the Bolivian Government to:

- clarify the nature and consequences of “social responsibility” as defined in the Code of Childhood and Adolescence and extend its application up to the age of 18.
- develop a specific set of responses to each type of penal offences when committed by children (from 12 to 18), excluding deprivation of liberty for all minor offences and non-violent crimes and proposing child-specific mediation and rehabilitation processes for grave crimes.
- provide further information on the administration of juvenile justice in general, notably on the degree of specialisation of the system and on the actual implementation of existing legal provisions to ensure that the deprivation of liberty is a last resort for all children in conformity with article 37(b) of the CRC;
- provide information regarding the training activities developed for professionals involved in the system of juvenile justice, on the provisions of the CRC and other relevant international instruments in the field of juvenile justice, including the "Beijing Rules", the "Riyadh Guidelines" and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
- provide disaggregated data on children in conflict with the law, including age, gender and ethnic/indigenous background
- request an up-date on the situation of juveniles in detention as described by CAT in May 2001 and on measures taken by the government to address this situation.

- ensure that child detainees are kept separately from adults, unless it is in their best interests not to do so;
- ensure that living conditions in all police stations and child institutions be in conformity with article 37 of the CRC and the UN Rules for the Protection of Juveniles Deprived of their Liberty, in particular by resolving overcrowding problems, poor hygiene, lack of food and restrictions on family visits;
- guarantee that the duration of deprivation of liberty - either in detention facilities or in child institutions - be clearly determined, communicated to the child and monitored, so as to ensure that it be used only for the shortest appropriate period of time in conformity with article 37b of the CRC;
- provide for adequate alternative measures to detention and pre-trial detention, so as to stop keeping children in conflict with the law incarcerated.