

THE FALLACIES OF "LEGAL" ABORTION IN BOLIVIA

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Legislative framework

We begin this article by clearly and expressly stating that legal abortion does not exist in Bolivia. Article 263 *et seq.* of the Penal Code² establishes penalties of liberty deprivation for whoever causes the death of a fetus in the womb or her premature expulsion. But the mentioned code foresees abortion impunity.

Code of Criminal Procedure (CPP)

ARTICLE 266.- ABORTION IMPUNITY

When abortion has been the consequence of a crime of rape, abduction not followed by marriage, statutory rape or incest, no sanction will be applied, provided that the criminal action has been initiated.

Nor will it be punishable if the abortion was performed to avoid danger to the life or health of the mother and if this danger could not be avoided by other means.

In both cases, the abortion must be performed by a doctor with the consent of the woman.

When any of the cases provided for in this article occur, abortion impunity happens with prior judicial authorization so that the woman and doctors involved are not punished for said act.

The Political Constitution of the Plurinational State (CPE) protects the life of all Bolivians and thus also establishes these protections in its related laws; in other words, all people are protected under the law in their different stages of life.

CPE Article 14.

I. Every human being has personhood and legal capacity under the laws and enjoys the rights recognized by this Constitution, without any distinction whatsoever.

II. The State prohibits and sanctions all forms of discrimination based on sex, color, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious beliefs, ideology, political or philosophical affiliation, marital status, economic situation or social condition, occupation, level of education, disability, pregnancy, or any other statuses that intend or result in undermining the recognition, enjoyment or exercise, of equal conditions, of the rights of every person.

CPE Article 15.

I. Everyone has the right to life and physical, psychological, and sexual integrity. No one will be tortured, nor will they suffer cruel, inhuman, degrading, or humiliating treatment. There is no death penalty.

From reading these constitutional articles, a paradox arises. In Bolivia, there is no death penalty, not even in the case of rapists. However, when pregnancy occurs as a result of rape, in some way, the penal code does sentence the unborn baby to death. In other words, the penal code is not in line with the fundamental principles safeguarded in the Basic Text. Since one may kill an innocent person when she is the result of rape, a severe discrimination case arises against the unborn baby because of how she was conceived.

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² Text of the Penal Code available at: https://www.oas.org/juridico/spanish/gapeco_sp_docs_bol1.pdf

In Bolivia, every child is considered a person under the law. Therefore, according to its constitutional basis, the State has the primary obligation to protect children and adolescents, as established in articles 60 and 61. However, the unborn child is unprotected, not for lack of regulations, but because her rights are violated.

CPE Article 60.

It is the duty of the State, society, and the family to guarantee the priority of the best interests of girls, boys, and adolescents, which includes the preeminence of their rights, the primacy of receiving protection and relief in any circumstance, the priority in the care by public and private services, and access to a prompt and timely administration of justice with the assistance of specialized personnel.

Article 61

1. All forms of violence against girls, boys, and adolescents, both in the family and in society, are prohibited and punished.

Let me write in capital letters what Law 548 of the Boys / Girls and Adolescents Code³ explicitly indicates, BOLIVIAN HUMAN BEINGS ARE SUBJECT TO RIGHTS BEGINNING AT CONCEPTION.

ARTICLE 5. (SUBJECT OF RIGHTS).

Human beings up to eighteen (18) years of age are persons with rights under this code, according to the following stages of development:

- 1. Childhood, from conception to twelve (12) years of age.*

It is clear how the legislative framework of Bolivia has serious contradictions in its text.

Constitutional ruling 0206/14 threaten the lives of the innocent.

Because of the Constitutional Court's 0206/14 ruling, in which the legal action requested the Court to declare the abortion penal code articles unconstitutional, the Court no longer speaks of cases of abortion impunity. Still, it is called Legal Interruption of the Pregnancy (ILE). In other words, with a new interpretation of the Penal Code, the issue is presented as a human right of women.⁴

The most relevant thing about this ruling is, first of all, that it establishes an incremental value to human life concerning the development of the embryo, and states that *"the protection of life is gradual and increases from the primary fertilization of the ovum and sperm called the egg or zygote until birth; that is to say, the closer it gets to a cell, its legal protection decreases but in no way does it disappear and to the extent that it develops and resembles a human being, legal protection gradually increases"*⁵. The Court's decision establishes a discrimination parameter in relation to age. Thus, it is contrary to explicit constitutional principles. This discrimination is based on a young unborn child's dissimilarity with a postnatal human being, as if the unborn child's early development modifies his essence as a human life.

Secondly, the ruling eliminates the requirement of initiating a criminal action to access abortion impunity, thus skipping procedural requirements designed to protect the embryo's legally protected right to life. It establishes that: *"In this regard, it is also clearly demonstrated that the validity and effectiveness of this regulatory provision under the Supreme Law, must be interpreted in the sense that the presentation of a complaint will not be required, nor the existence of indictment and formal accusation, let alone a judgment [to obtain abortion impunity]. For the woman to access an abortion,*

³Boy / Girl and Adolescents Code. Full text available at: http://www.coordinadoradelamujer.org.bo/observatorio/archivos/marco/l548_389.pdf

⁴See the position of the Ombudsman's Office: <https://www.defensoria.gob.bo/uploads/files/situacion-de-la-interrupcion-legal-del-embarazo-como-derecho-humano-de-las-mujeres.pdf>

⁵ Constitutional Court ruling 0206/14. Full text available at: http://www.coordinadoradelamujer.org.bo/observatorio/archivos/marco/sentencia206_439.pdf

*her declaration saying that the pregnancy results from a crime will be enough. Thus, the abortion health professional will have express proof to justify the abortion procedure.*⁶ With this ruling, the unborn child's right to life is waived. This Penal Code interpretation arises from the idea that the continuation of a pregnancy resulting from rape is a torturous practice towards women. It, however, ignores a broad spectrum of good practices that seek to protect the psychological integrity of women by helping them to carry out that pregnancy, and in turn unborn human life.⁷

NGOs in action

This Constitutional Judgment has allowed the spread of this indiscriminately dreadful practice since there are abortion clinics in Bolivia and NGOs that promote sexual and reproductive health rights, which is nothing other than the camouflaged promotion of free abortions.

- IPAS Bolivia
Such is the case of IPAS Bolivia⁸, whose policies are that "Women and girls cannot determine their future without laws and policies that support the full exercise of their Sexual and Reproductive Rights (DSDR). Thus, [they provide] technical legal advice with a gender and generational approach within the framework of human rights to different public entities of the State, in the design and execution of public policies and regulations that protect their DSDR." They also affirm: "Forcing to continue with an unwanted pregnancy is also violence. It is a breach of Constitutional ruling 0206/2014". Since 2014 with the promulgation of Constitutional ruling (SC) 206/2014, until June 2020, IPAS Bolivia has carried out 412 cases of the misnamed Legal Interruptions of Pregnancy (ILE); they indicate that they attended 63,782 women with incomplete abortions and legal interruptions of pregnancy through appropriate technology recommended by the WHO, such as Manual Uterine Aspiration (MVA) and Medication Abortions (AM); data provided by the same organization⁹ contradicts the Political Constitution of the State, the Code of Criminal Procedure, the Code for Boys, Girls and Adolescents, related laws, and international treaties.

IPAS Bolivia states that the ruling applies to all women who wish to have an abortion, even for girls and adolescents who are still under the guardianship of their parents or guardians, violating the parents' right to custody of their children¹⁰. It also argues that denying access to abortion would be against the right to health as if pregnancy was a disease.

- Marie Stopes Clinic
The Marie Stopes clinic, whose mission is: "children by choice, not by chance" and its vision: "A world where every birth is desired," also does the same with its network of seven Clinics, six Mobile Units, and six Youth Clinics in the departments of Santa Cruz, Sucre, La Paz, Cochabamba, and Tarija, by offering sexual and reproductive health services. Although they are not explicit on their page regarding abortion, it is easy to deduce it¹¹.

⁶ Ibid.

⁷ In this regard, the Court says: It is considered that the phrase "provided that the criminal action has been initiated" of the first paragraph of art. 266 of the CP, as well as the phrase "judicial authorization in your case" contained in the last paragraph of the aforementioned article, are incompatible provisions with the rights to physical, psychological, and sexual integrity, not to be tortured, or suffer cruel, inhumane, degrading or humiliating treatment, to physical health and dignity in its part of the free development of the identity and autonomy of women, enshrined in arts. 15, 18, and 22 of the CPE. A pregnancy per se, always, and when it is the product of a free decision, is not a threat to women's rights to health. Neither is it an infirmity nor a threat to personal integrity or cruel, inhumane, or degrading treatment.

⁸ <https://www.ipasbolivia.org/>

⁹ <https://www.ipasbolivia.org/nuestro-aporte>

¹⁰ <https://clacaidigital.info/bitstream/handle/123456789/582/Triptico%20sentencia%200206.pdf?sequence=5&isAllowed=y#:~:text=Con%20la%20Sentencia%200206%2F2014,con%20relaci%C3%20B3n%20al%20abortion%20impense.&Text=The%20Court%20Constitucional%20has%20established,to%20get%20a%20abortion%20legal>

¹¹ <https://www.mariestopes.org.bo/nuestros-servicios/>

- CIES
Another network of sexual and reproductive health services is CIES [Center for Investigation, Education, and Services], which has been operating in Bolivia since 1987 and has at the NATIONAL LEVEL: eight REGIONALS – La Paz, Oruro, Potosí, Tarija, Sucre, Santa Cruz, Cochabamba, and the Umosas; six CLINICS – La Paz, Oruro, Potosi, Tarija, Sucre, Santa Cruz; eight POLICONSULTORIOS AND HEALTH CENTERS – Cochabamba, in La Paz (Villa Fátima, Tumusla, Boqueron, Chasquipampa, Terminal de Buses), in Tarija (Mercado Campesino), in Santa Cruz (La Ramada); MOBILE HEALTH UNITS CHACO (Camiri). CIES is linked to the International Planned Parenthood Federation (IPPF)¹², the largest network of abortion clinics in America and the Caribbean.

There is no more talk of the three grounds for abortion impunity. However, it is undeniable that Bolivia, without having legalized abortion, has opened itself to a masked massacre of human beings with the support of the aforementioned Constitutional Judgment. Said ruling destroys a legal asset and violates the preeminent fundamental human right, the right to life from conception.

This ruling, and the practices that it indirectly allows, confirmed the fallacies presented by the abortionists' position. They address abortion as if it were an interruption, not the killing of an innocent. The imaginary collective intends to establish that abortion improves the quality of women's lives and strengthens their rights and freedom when what occurs is a criminal practice and the violation of the first fundamental human right, life. An attempt is made to promote abortion as a woman's right over her body when what she carries in her womb is not an appendix or a tumor but a new life. They argue that legal abortion is safe when the only certainty is that it ends with the life of a human being.

The practice of abortion has become so licentious that it is almost promoted as a contraceptive method. It is not this, because it does not take away motherhood, but instead makes a woman the mother of a dead child. And we cannot ignore the economic aspect of these practices. It is financed by foreign anti-life organizations or by the State with the taxes of the citizens.

Born alive babies

Despite all the regulations expressed, there are legal loopholes by not establishing the time limit to proceed to the "ILE" in cases of rape. As a result, girls and adolescents are forced, mainly by their parents, to perform an abortion through induced labor or cesarean section, causing the baby's premature birth. In some cases, the babies have survived, but others have not.

One example is baby Victoria, who survived an ILE in June 2019 in Santa Cruz at 26 weeks of gestation¹³. Making conscientious objections, none of the doctors on duty at the Percy Boland Women's Hospital wanted to carry out the abortion due to the late gestational period. Finally, the induced labor was carried out, and the baby was born alive with good vital signs. The doctors immediately attended her and following the medical discharge, she spent one year in a childcare center where an aunt adopted her.

In June 2021, another abortion under a court order occurred in Sucre for a 14-year-old adolescent who had been raped. The baby was born alive and received immediate medical attention at a pregnancy of 30 weeks of gestation. This case would be the third ILE practiced in Chuquisaca in a month, and the second involving a minor from the same municipality of the Luis Calvo province¹⁴.

¹² <https://www.ippfwhr.org/es/country/bolivia/>

¹³ <https://es.aleteia.org/2019/06/09/que-podemos-hacer-por-victoria-la-bebe-que-nacio-viva-tras-aborto-legal/>

¹⁴ https://correodelsur.com/seguridad/20210516_interrumpen-el-embarazo-de-una-adolescente-y-el-bebe-nace-con-vida.html#:~:text=Interrumpen%20el%20embarazo%20de%20una%20adolescente%20y%20the%20baby%20C3%20

Another alarming case with the ILE practice happened in the City of El Alto, La Paz, in August 2018 with a 12-year-old girl at eight months of gestation. Although the Children's Ombudsman believes that the mother did not abort the baby and he should be still alive, the baby's whereabouts are unknown¹⁵.

Conclusion

Many interpret the Constitutional ruling 0206/2014 as if abortion were legal in Bolivia, to the extent that the argument is presented, and some government sectors defend it, as a woman's right¹⁶. NGOs and abortion clinics openly promote it without any restraint nor respect for Bolivian pro-life legislation. The voices of organizations in favor of life, of the Platform for Life and the Family that has been a bulwark of the pro-life movement for many years, are heard less and less despite their constant struggle to defend life from conception to natural death.

The defense of life is not a question of morality, it is a question of humanity and social justice; therefore, civil society must safeguard the rights of the most defenseless.

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¹⁵ https://www.youtube.com/watch?v=OH9iNYHw_U

¹⁶ <https://www.youtube.com/watch?v=dGvV3goRgcY>