

**Submission by the United Nations High Commissioner for Refugees**

**For the Office of the High Commissioner for Human Rights' Compilation Report –**

**Universal Periodic Review:**

**PLURINATIONAL STATE OF BOLIVIA**

**I. BACKGROUND INFORMATION**

Bolivia has been a State Party to the *1951 Convention relating to the Status of Refugees and its 1967 Protocol* since 1982. Bolivia acceded to the *1954 Convention relating to the Status of Stateless Persons (the 1954 Convention)* and the *1961 Convention on the Reduction of Statelessness (the 1961 Convention)* in 1983. Bolivia has also ratified the most relevant international instruments on human rights, such as the *Inter-American Convention on Human Rights* and the *UN Convention against Torture*. In addition, Bolivia applies the regional broader refugee definition in accordance with the *Cartagena Declaration on Refugees (1984)*.

The domestic legal framework dealing with refugees is set out in the *2012 Law on the Protection of Refugee Persons (Ley de Protección a Personas Refugiadas) N° 251*, which enshrines important provisions, ranging from those related to the refugee status determination (RSD) procedure to those referring to the search for durable solutions, such as local integration and access to fundamental rights (documentation, employment, health care and education). Moreover, *Law N° 251* establishes a National Refugee Commission (CONARE), which is in charge of adjudicating asylum claims and finding durable solutions for refugees. The refugee legal framework is complemented by *Immigration Law N° 370* that incorporates safeguards regarding the protection of asylum-seekers and the prevention of *refoulement* at borders.

According to UNHCR's statistical data as at December 2013 a total of 748 refugees and 6 asylum-seekers were living in Bolivia. The great majority of them originate from Peru and Colombia. Approximately 42 per cent are refugee and asylum-seeking women. Special attention must be paid to the situation of persons of Colombian origin in need of international protection, who transit the Bolivian territory en route to countries further south (mainly Chile). UNHCR has reinforced its monitoring activities at border areas in light of reports about discriminatory practices and abuses by border control agents and smuggling networks against Colombians.

UNHCR supports the work of the National Refugee Commission (CONARE) providing technical advice, regular training and capacity building support to ensure the implementation of fair and efficient RSD procedures. The Office has reinforced its actions addressed to prevent sexual and gender based violence (SGBV) against the refugee population.

## II. ACHIEVEMENTS AND BEST PRACTICES

### 1. *Pledges made during the December 2011 Ministerial Event*

Bolivia made several pledges during the Ministerial Intergovernmental Event on Refugees and Stateless Persons held in Geneva in December 2011,<sup>1</sup> committing itself to strengthen national refugee legislation, to continue providing refugees and asylum-seekers access to services in the same conditions as Bolivian citizens, to implement the 2010 National Law against racism and all forms of discrimination, to strengthen the coordination of policies for the protection of refugees and stateless persons and to continue promoting the values of solidarity, respect, tolerance and multiculturalism in the context of the protection of refugees, IDPs and stateless persons.

### 2. *The Law on The Protection of Refugees N° 251 and its Regulatory Decree N° 1440*

The *Refugee Law N° 251* adopted in 2012 and its Regulatory Decree are in line with international refugee law standards. The national refugee legislation contains important protection safeguards, including the *non-refoulement* principle, the exemption from sanctions for illegal entry into the country, confidentiality, family reunification and non-discrimination. The wider refugee definition (*Cartagena Declaration*) is also foreseen in the law and serves as a basis for recognition of refugee status of persons who do not fulfill the criteria of the *1951 Convention*, but nevertheless find themselves in need of international protection. *Law N° 251* establishes a National Refugee Commission (CONARE), which is in charge of adjudicating the asylum claims in the first instance of the RSD Procedure and finding durable solutions for refugees. The Technical Secretariat of CONARE is the body responsible for processing refugee claims, conducting first analysis of eligibility and issuing technical recommendations to the Refugee Commission. An inter-ministerial Appeal Committee reviews CONARE's first instance decisions.

### 3. *The inclusion of safeguards for refugee protection in Migration Law N° 370*

*Migration Law N° 370* adopted in May 2013 reinforces the refugee protection legal framework through the incorporation of relevant safeguards for refugees and asylum-seekers, such as the exclusion of asylum-seekers from the application of the impediments for the entrance and stay of foreigners in the national territory, and the exclusion of refugees from the application of other sanctions prescribed in the Law. In addition, the new immigration legislation recognizes the right of asylum-seekers and refugees to obtain a migratory legal residence in the country in accordance with the *Refugee Law N° 251*, and their access to fundamental human rights. The standard of treatment of every foreigner (including refugees and asylum-seekers) is the one recognized to nationals, without any kind of discrimination. In addition, *Law N° 370* provides that persons in need of international protection, who do not fall under the refugee definition, may obtain legal residence on humanitarian grounds. The Law includes an article tackling the possible situation and migratory admission to Bolivia of persons displaced across international border as a consequence of the effects of climate change.

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<sup>1</sup> UN High Commissioner for Refugees, Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011, October 2012, available at: <http://www.unhcr.org/refworld/docid/50aca6112.html>

#### **4. The development of a State policy/strategy for the local integration of refugees**

Despite the political commitment of countries of the region, including Bolivia, the difficult socioeconomic context in most of the Latin-American countries represents a serious obstacle to the successful local integration of refugees. The provision of humanitarian assistance to new asylum-seekers and the development of programs for the local integration of refugees remain a main challenge for UNHCR, civil society and Governments. The process of local integration is primarily supported through the efforts of UNHCR and its local implementing partner agency (*Pastoral de Movilidad Humana - PMH*). During 2013, CONARE and UNHCR's implementing partner agency conducted a thorough review of the local integration capacities for the refugee population and agreed on a plan of action to reinforce the access of refugees to social programs and public policies. UNHCR highlights the importance of the involvement of the Bolivian authorities to support and ensure the sustainable integration of refugees and their effective access to socioeconomic rights. Refugees should benefit from specific assistance and care programs and/or be included in existing ones.

### **III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS**

#### **Issue 1: Protection safeguards in border regions**

Bolivia is a transit country in particular for Afro-Colombians from the Department of Valle del Cauca, who are in need of international protection. A migrant shelter run by a religious congregation in Pisiga has registered more than 1,500 persons in the first three trimesters of 2013, 50% of the Colombians in transit were women.

Whereas the legal framework contains adequate safeguards for the protection of persons in need of international protection, UNHCR is concerned about reports regarding the treatment of persons of concern, principally Colombians, including allegations from reliable sources of financial extortion or sexual assault by smuggling networks, allegations of requests for irregular payments or sexual favours by border control and security agents. Women rejected at the Southern border when trying to enter Chile, are reportedly at risk of SGBV by smuggling and trafficking networks. Moreover, in a completely isolated area, at 3,800 meters above sea level, where temperatures can drop to minus 18 Celsius degrees during the night, and with no money, women rejected at the Chilean border may have no alternative than to resort to prostitution with truck drivers to survive in the hostile environment.

Moreover, the Committee against Torture recommended that Bolivia “*adopt adequate measures to ensure that no person can be expelled, returned or extradited to another State where there are substantial grounds for believing that that person would face a personal and foreseeable risk of being subjected to torture. In particular, the State party should give clear instructions to its immigration officials and other law enforcement officers, expand the curriculum of its mandatory training courses on asylum and the protection of refugees, and ensure that CONARE takes prompt action, in accordance with its terms of reference, to ensure that the principle of non-refoulement is upheld*”.<sup>2</sup>

#### **Recommendation:**

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<sup>2</sup> Concluding observations of the Committee against Torture: Bolivia, 14/06/2013, CAT/C/BOL/CO/2, par. 17.

- Adopt measures to prevent abuses against persons in need of international protection in border areas, including prevention of SGBV.

## **Issue 2: Age and gender-sensitive RSD procedures**

In spite of the enactment of *Refugee Law N° 251*, Bolivia has not yet adopted all the necessary internal regulations to facilitate their effective implementation.

RSD procedures should incorporate child-sensitive elements; special attention should be given to unaccompanied and separated children (UASC). The refugee legislation provides that UASC are entitled to legal assistance and care arrangements by child-protection institutions. However, no special mechanisms have been put in place to ensure the implementation of these provisions. Bolivia deals with cases of UASC on an ad hoc basis. The introduction of child-friendly RSD procedures and coordination mechanisms would ensure the appropriate referral of these children to the national child protection system and their adequate legal representation during RSD procedures. UNHCR's Guidelines on child asylum claims offer substantive and procedural guidance on conducting RSD in a child-sensitive manner.<sup>3</sup> In this regard, the Committee on the Rights of the Child, in its 52<sup>nd</sup> session, recommended that Bolivia “*take measures to ensure that asylum claims submitted by children are analyzed under a refugee status determination procedure that takes into consideration the specific needs and rights of child asylum-seekers in accordance with international refugee and human rights law, and take into account the UNHCR Guidelines on determining the best interests of the child.*”<sup>4</sup>

There is also a need to apply a more gender-sensitive approach in the RSD procedures to ensure that asylum claims submitted by women are examined in a manner that responds to their specific protection needs. CONARE should be encouraged to ensure that procedural safeguards are observed when interviewing female asylum-seekers and adjudicating their claims. Standard Operating Procedures for Prevention and Response to SGBV and for cases of unaccompanied or separated children with international protection needs also still have to be developed.

As indicated in UNHCR's Guidelines on gender-related persecution, “*persons raising gender-related refugee claims, and survivors of torture or trauma in particular, require a supportive environment where they can be reassured of the confidentiality of their claim. Some claimants, because of the shame they feel over what has happened to them, or due to trauma, may be reluctant to identify the true extent of the persecution suffered or feared. They may continue to fear persons in authority, or they may fear rejection and/or reprisals from their family and/or community.*”<sup>5</sup> The guidelines set out a number of measures to ensure

<sup>3</sup> UN High Commissioner for Refugees, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.

<sup>4</sup> Concluding observations of the Committee on the Rights of the Child: Bolivia, 16/10/2009, CAT/C/BOL/CO/4, 52<sup>nd</sup> Session, par. 72.

<sup>5</sup> UN High Commissioner for Refugees, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, available at: <http://www.unhcr.org/refworld/docid/3d36f1c64.html> and

UN High Commissioner for Refugees, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention*

that gender-related claims, of women in particular, are properly considered in the RSD process, *inter alia*, ensuring individual interviews of female claimants and access to a female interviewer and interpreter.

### **Recommendations:**

- Incorporate child-sensitive elements into the RSD procedure;
- Assign female officers and interpreters to women and girl asylum-seekers; and
- Ensure that the RSD procedure promptly identifies women and girls at risk and that their specific protection needs are addressed in a systematic manner.

### **Issue 3: Sexual and Gender-based violence**

The Bolivian asylum authorities should prepare a comprehensive plan of action on identification, prevention of, and response to SGBV affected refugees, asylum-seekers and stateless persons. A protection dialogue with refugee women residing in La Paz organized by UNHCR and its local implementing partner agency in November revealed that refugee women were unaware of their rights and the available mechanisms to prevent and seek assistance in case of subjection to SGBV. A considerable number of female refugees and asylum-seekers stated that they have suffered SGBV in the past and lacked adequate information to ensure their right to a life free of gender based violence. The discussion and activities conducted with refugee women enabled identification of serious risks of SGBV affecting the refugee population, ranging from situations of domestic violence to situations of institutional violence in health care services, as well as employment discrimination, sexual harassment and mistreatment in their places of employment. The prevention of and response to SGBV must be an essential component of CONARE's protection and durable solution strategy. The Committee against Torture, in its 50<sup>th</sup> session, indicated that it was "*concerned by reports regarding the persistence of gender violence in the State party, particularly domestic and sexual violence, which in many cases goes unreported.*"<sup>6</sup> The Committee recommended that Bolivia adopt effective measures to assist victims to prepare and file complaints, ensure that victims receive effective protection by guaranteeing their access to shelters and health-care services, and strengthen efforts to raise awareness and educate public officials who work directly with victims and the general public about gender violence.<sup>7</sup>

Bolivian Border agents and immigration authorities are considered to generally lack training on gender sensitization as well as awareness of the possibility of persecution based on sexual orientation and/or gender identity.

### **Recommendations:**

- Establish and implement Standard Operating Procedures for Prevention and Response to SGBV;
- Ensure that a SGBV strategy is adopted and implemented;
- Adopt guidelines on gender-based persecution and/or persecution based on sexual orientation and/or gender identity for first instance asylum officials;

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and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, HCR/GIP/12/01, available at: <http://www.refworld.org/docid/50348afc2.html>

<sup>6</sup> Concluding observations of the Committee against Torture: Bolivia, 14/06/2013, CAT/C/BOL/CO/2, par. 15-16.

<sup>7</sup> *Id.*

- Carry out awareness raising campaigns on SGBV targeting both populations at risks and stakeholders; and
- Ensure that an adequate response is provided to each SGBV case reported, which involves measures to assist victims to prepare and file complaints.

#### **Issue 4: Human trafficking**

Bolivia continues to be a source and destination country for human trafficking and smuggling. Refugees and asylum-seekers are particularly at risk of falling victim to trafficking or smuggling due to the vulnerable and volatile situations they often face. The social situation of asylum-seekers and refugees and the absence of special programs to facilitate their local integration in the country make refugees, particularly refugee women, especially vulnerable to human trafficking for sexual exploitation. For example, women refugees and asylum-seekers who participated in assessment exercises revealed that they had been offered work in prostitution. However, no special provisions have been adopted to prevent refugees, asylum-seekers, and other persons of concern to UNHCR from being trafficked.

Trafficking and smuggling of people of Haitian, African and Asian origin remain a matter of concern in Bolivia. The Government should take into account the fact that victims or potential victims of human trafficking who are at risk of persecution, if returned to their countries of origin, may qualify as refugees within the meaning of the *1951 Convention*. UNHCR's Guidelines on victims of trafficking provide guidance on the adjudication of asylum applications submitted by victims or potential victims of trafficking. There is a need to increase efforts to prevent human trafficking and establish and implement effective identification and referral mechanisms for persons in mixed migratory flows, who may be in need of international protection. This includes presumed or actual victims of trafficking who may have a well-founded fear of persecution in their country of origin or, due to the situation they have experienced, cannot return to their country of origin because their lives or physical integrity would be at risk. In particular, Bolivia should adopt proper measures, including the development of standard operating procedures, to facilitate their prompt identification and referral to the asylum system, when appropriate. Moreover, RSD procedures should be improved to ensure that asylum claims from victims of trafficking are fairly and appropriately examined, in line with international standards. Additionally, specialized programs and policies to protect and support victims who cannot return to their countries of origin should be adopted.

UNHCR recalls the Concluding Observations of the Committee against Torture that Bolivia should “*establish effective mechanisms for the identification of asylum-seekers, stateless persons and other individuals in need of international protection and for their referral to CONARE and other authorized institutions. The State party should take particular care to ensure that people are not wrongfully turned back at the border and that victims of trafficking and other persons in need of international protection are identified, especially in the context of mixed migration flows*”.<sup>8</sup>

#### **Recommendations:**

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<sup>8</sup> Concluding observations of the Committee against Torture: Bolivia, 14/06/2013, CAT/C/BOL/CO/2, par. 17(b).

- Develop a standard operating procedure for the identification of victims of trafficking and those who may be in need of international protection;
- Establish a referral mechanism for victims of trafficking to enable them to apply for asylum, whenever appropriate;
- Improve the quality of the RSD procedure so that victims of trafficking can be recognized as refugees in appropriate circumstances; and
- Adopt measures to ensure that refugees, asylum-seekers, and other persons of concern to UNHCR do not fall victim to human trafficking.

### **Issue 5: Legal framework for the protection of stateless persons**

Establishing a statelessness status determination procedure is the most efficient means for States party to the *1954 Convention* to identify the beneficiaries of the Convention with the view to providing them with appropriate protection.

Supreme Decree 1440, regulatory application of *Refugee Law N° 251*, provides the National Refugee Commission (CONARE) with the authority to determine the status of stateless persons until a legal mechanism is in place. Provisionally, CONARE must follow the same procedure established for asylum-seekers. As a result of this provision, stateless persons can now apply to get recognition of their status. However, Bolivia should adopt and implement a formal statelessness status determination procedure to ensure the protection of stateless persons who are not refugees, regulate their access to documentation/residence permits and essential rights, and prevent them from being discriminated. Despite the fact that the stateless status can be determined under the RSD procedure, no legal provisions has been included in the *Migration Law N° 370* regulating the legal situation of a stateless population regarding their legal residence in the country, access to personal documentation and fundamental rights such as education, health care and employment. UNHCR considers it important to recall the Concluding Observations of the Committee against Torture that Bolivia should “*establish regulations to govern the procedures used to determine whether or not a person is stateless and the procedures relating to the determination of migrant status, documentation and the protection of such persons in order to ensure that the State party is fulfilling the international commitments assumed under the Convention relating to the Status of Stateless Persons (1954)*”<sup>9</sup>.

#### **Recommendations:**

- Adopt and implement a statelessness determination procedure to ensure the protection of stateless persons who are not refugees; and
- Implement legislation that codifies the protections guaranteed in the *1954 Convention* in national legislation.

### **Issue 6: Preventing Statelessness**

Bolivia is a State Party to the *1961 Convention* and has incorporated its main standards on the prevention of statelessness at birth in its national legislation.

According to the Constitution (2009), “*persons who are born in the territory of Bolivia are Bolivians by birth (...); persons born abroad of a Bolivian mother or father are Bolivians by*

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<sup>9</sup> Concluding observations of the Committee against Torture: Bolivia, 14/06/2013, CAT/C/BOL/CO/2, par. 17(a).

*birth*”. However, the acquisition of the Bolivian nationality at birth of the children born abroad to Bolivian parents has been restricted under the relevant regulations. Article 58.II of *Law N° 370* (2003) (Immigration Law) currently requires that children born abroad to a Bolivian parent who have not been registered at the Bolivian Consulates before the age of eighteen (18), must initiate the procedure for the acquisition of the Bolivian nationality in the territory of Bolivia.<sup>10</sup> As a result, *Law N° 370* appears to restrict the constitutional right to automatically acquire the Bolivian nationality at birth and may affect the compliance of the State with its obligations to prevent statelessness at birth.<sup>11</sup>

**Recommendations:**

- Amend *Law N° 370* to bring it in line with international standards on prevention and reduction of statelessness; and
- Ensure the automatic acquisition of the Bolivian nationality to the children born abroad to Bolivian parents.

**Human Rights Liaison Unit  
Division of International Protection  
UNHCR  
March 2014**

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<sup>10</sup> Article 58 (Registration of People Born Abroad). I. People born abroad to Bolivian mother or father may be registered and obtain your birth certificate at the consular offices of the Plurinational State of Bolivia abroad, before eighteen (18) years of age. II. People born abroad to Bolivian mother or father who has not been registered before turning eighteen (18) years old in the respective Consulates abroad, must pursue in the country, the procedure or proceeding to obtain the Bolivian nationality, for being born to Bolivian mother or father, pursuant to the legal provisions of the Political and legislation in force [unofficial translation].

<sup>11</sup> Article 4.1 of the 1961 Convention establishes that a Contracting State shall grant its nationality to a person, not born in its territory, who would otherwise be stateless, if the nationality of one of his parents at the time of the person’s birth was that of that State.



## ANNEX

### Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

#### - Universal Periodic Review:

### BOLIVIA

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Bolivia.

#### I. Treaty Bodies

##### Committee against Torture

CAT/C/BOL/CO/2, 50<sup>th</sup> Session

14 June 2013

6. The Committee welcomes the amendments made in the State party's legislation, in particular:

(c) The promulgation of Comprehensive Act No. 348 of 27 February 2013, which provides guarantees for women's right to a life free of violence;

(d) The promulgation of Comprehensive Anti-Trafficking in Persons Act No. 263 of 31 July 2012;

(e) The promulgation of Refugee Protection Act No. 251 of 20 June 2012 and its implementing regulations, which were approved by Supreme Decree No. 1440 of 19 December 2012, and Migration Act No. 370 of 8 May 2013;

##### **Violence against women**

15. While taking note of recent advances in the development of laws and regulations, the Committee is concerned by reports regarding the persistence of gender violence in the State party, particularly domestic and sexual violence, which in many cases goes unreported. The Committee regrets that, while information has been provided concerning numerous acts of gender violence, including cases of femicide, the State party has not furnished the requested statistics on the number of complaints filed, convictions handed down or penalties imposed during the reporting period or on the prevalence of such violence in respect of indigenous and Afro-Bolivian women (arts. 1, 2, 4, 12, 13 and 16).

##### **The Committee urges the State party to:**

**(a) Investigate, prosecute and punish the persons who commit such acts;**

**(b) Adopt effective measures to assist victims to prepare and file complaints;**

**(c) Ensure that victims receive effective protection by guaranteeing their access to shelters and health-care services;**

**(d) Expedite the creation of special investigative courts to deal with cases of gender violence, as provided for in Comprehensive Act No. 348;**

**(e) Strengthen efforts to raise awareness and educate public officials who work directly with victims and the general public about gender violence;**

**(f) Provide detailed information on the incidents of violence against women that have occurred during the reporting period, including disaggregated data on the number of complaints, investigations, trials, sentences and measures instituted to provide victims with redress.**

#### **Child abuse and sexual violence against children**

16. The Committee has received reports on the severity of the problem of child abuse and sexual violence against minors existing in Bolivian educational institutions. Although it notes that the delegation has said that such incidents are isolated cases, the Committee is concerned by the fact that official statistics that could be used to evaluate the situation in this respect have not been made available. The Committee also regrets that so little information was provided by the delegation on the obstacles that hinder victims and their families from gaining access to justice. The Committee will be closely following the progress of the petition submitted to the Inter-American Commission on Human Rights concerning the case of the girl child Patricia Flores (arts. 2 and 16).

**The Committee urges the State party to take steps to prevent the sexual abuse of children in its schools, to mount an appropriate response to cases of such abuse and, in particular, to:**

- (a) Urge all the relevant authorities to investigate such abuses and to bring the suspected perpetrators to trial;**
- (b) Set up effective complaints mechanisms and mechanisms for the provision of comprehensive assistance to victims and their families that will afford them protection, access to justice and redress of the harm suffered;**
- (c) Ensure that victims have access to specialized health-care services in the areas of family planning and the prevention and diagnosis of sexually transmitted diseases;**
- (d) Develop ongoing awareness-raising and training programmes that focus on this problem for teachers and other civil servants involved in victim protection;**
- (e) Compile a broader range of data on this issue. The State party should ensure that the persons suspected of having murdered the child Patricia Flores are brought to trial and, if found guilty, punished appropriately. It should also make certain that her family members receive full and effective redress.**

#### **Refugees, non-refoulement**

17. The Committee is aware of the efforts made by the State party to establish an appropriate legal and institutional framework for protecting refugees and asylum seekers present in the country. However, it notes that, prior to the entry into force of Act No. 251 in 2012, in some cases the State party engaged in practices that were at odds with the principle of non-refoulement. The Committee also observes that the transitional provision of Supreme Decree No. 1440 establishes that applications from stateless persons are, on a provisional basis, to be processed by the National Commission for Refugees (CONARE) (arts. 2 and 3).

**The Committee reiterates its earlier recommendation (para. 97 (i)) to the effect that the State party should adopt adequate measures to ensure that no person can be expelled, returned or extradited to another State where there are substantial grounds for believing that that person would face a personal and foreseeable risk of being subjected to torture. In particular, the State party should give clear instructions to its immigration officials and other law enforcement officers, expand the curriculum of its mandatory training courses on asylum and the protection of refugees, and ensure that CONARE takes prompt action, in accordance with its terms of reference, to ensure that the principle of non-refoulement is upheld. The State party should also:**

(a) Establish regulations to govern the procedures used to determine whether or not a person is stateless and the procedures relating to the determination of migrant status, documentation and the protection of such persons in order to ensure that the State party is fulfilling the international commitments assumed under the Convention relating to the Status of Stateless Persons (1954). The State party should also grant its nationality, in accordance with its national laws and subject to the criteria set forth in the Convention on the Reduction of Statelessness (1961), to persons who were not born on Bolivian territory but who would otherwise be stateless. The State may request technical advisory services, as needed, from the Office of the United Nations High Commissioner for Refugees (UNHCR) in this connection;

(b) Establish effective mechanisms for the identification of asylum seekers, stateless persons and other individuals in need of international protection and for their referral to CONARE and other authorized institutions. The State party should take particular care to ensure that people are not wrongfully turned back at the border and that victims of trafficking and other persons in need of international protection are identified, especially in the context of mixed migration flows.

### **Committee on the Protection of the Rights of All Migrant Workers**

CMW/C/BOL/CO/2, 18<sup>th</sup> Session

15 May 2013

#### **B. Positive aspects**

8. The Committee welcomes as a positive step the adoption of the following instruments:

(a) Act No. 251 on the protection of refugees (2012);

9. The Committee appreciates the State party's efforts to combat trafficking in persons, especially its efforts in coordination with neighbouring countries to eradicate the practice. It takes note with interest of the adoption of Comprehensive Act No. 263 on human trafficking and smuggling, and of the establishment of the Plurinational Council on Human Trafficking and Smuggling.

#### **C. Principal subjects of concern, suggestions and recommendations**

##### *Training in and dissemination of the Convention*

20. The Committee reiterates its concern that no measures have been taken to disseminate information and promote the Convention among all the relevant stakeholders, in particular local government bodies and civil society organizations (CMW/C/BOL/CO/1, para. 19).

21. **The Committee reiterates its previous recommendations (CMW/C/BOL/CO/1, para. 20) that the State party should:**

(a) **Intensify training for all officials working in the area of migration, in particular police and border personnel, as well as officials at the local level and in consulates dealing with migrant workers;**

(b) **Take the necessary steps to ensure access by migrant workers to information and guidance on their rights under the Convention;**

(c) **Continue to work with civil society organizations in order to disseminate information and to promote the Convention.**

##### *Non-discrimination*

22. The Committee takes note with interest of the Act on the Elimination of Racism and All Forms of Discrimination and the related National Committee and National Action Plan for 2012–2015, but regrets that these do not treat migrant workers and members of their families as a group at risk of discrimination. Moreover, the Committee remains concerned that law enforcement personnel in the State party continue to discriminate against certain groups of migrant workers, especially in border areas, and refugees.

**23. The Committee reiterates its previous recommendation that the State party should ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7. It also urges the State party to take immediate and effective measures to combat prejudice and social stigmatization, including by training the public servants concerned, educating the general public and running awareness campaigns.**

*Right to an effective remedy*

24. The Committee expresses its deep concern about the persistence of various factors that impede access to justice, such as systematic delays and corruption. It is also concerned about the State party's explanation that the courts have not recorded any cases of administrative or legal remedies, even though the right of migrant workers whose rights have been violated to an effective remedy is guaranteed by law, including the new Constitution. The Committee notes the lack of information on how to assert this right to a remedy before the competent authorities.

**25. The Committee reminds the State party that the mere absence of complaints and legal action by migrant workers whose rights have been violated may be largely an indication of the absence of specific legislation on the subject, ignorance of the available legal remedies or an unwillingness on the part of the authorities to prosecute. The Committee reiterates its previous recommendation that the State party should inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them and that it should process their complaints as efficiently as possible. It also recommends that the State party should ensure that migrant workers and members of their families, including those in an irregular situation, have the same opportunities as nationals of the State party to file complaints and to obtain effective redress from the courts when their rights under the Convention have been violated (CMW/C/BOL/CO/1, para. 24).**

**3. Human rights of all migrant workers and members of their families (arts. 8–35)**

28. The Committee notes with concern that, notwithstanding the information provided by the State party, it is still not clear whether migrant workers subject to an expulsion order are entitled to appeal against the expulsion order within the time limits set out in Supreme Decree No. 24423 (1996) and in conformity with the provisions of the Convention.

**29. The Committee reiterates its recommendation that the State party should ensure that migrant workers and members of their families can only be expelled from the territory of the State party pursuant to a decision taken by the competent authority in conformity with the law, and that the right to appeal against this decision is respected, and also that the decision is suspended until the review has been completed (CMW/C/BOL/CO/1, para. 30).**

44. The Committee takes note of the State party's efforts to deal with human trafficking but expresses concern at the lack of data on the scale of the phenomenon in the State party and,

especially, on the number of cases in vulnerable groups such as women and children. It also reiterates its deep concern about the limitations of the policy on prevention, protection and assistance for the victims of trafficking (CMW/C/BOL/CO/1, para. 42).

**45. The Committee recommends that the State party should draw up and implement a national strategy to combat trafficking in persons, and particularly trafficking in women and children, which includes the following measures:**

- (a) Systematically collecting disaggregated data on human trafficking;**
- (b) Ensuring compliance with Comprehensive Act No. 263 on human trafficking and smuggling and allocating sufficient financial and human resources to the Plurinational Council on Human Trafficking and Smuggling to make sure that the Act is implemented;**
- (c) Stepping up its campaigns to stop human trafficking, especially in border areas where the highest numbers of trafficking victims are recorded;**
- (d) Affording protection and assistance to all victims of human trafficking, particularly by providing shelters and implementing projects to help the victims of trafficking to rebuild their lives;**
- (e) Reinforcing training for police officers, law enforcement officers, judges, prosecutors, labour inspectors, teachers, health workers and the staff of the State party's embassies and consulates, and distributing more widely the Single Protocol for Special Assistance to the Victims of Trafficking and Smuggling.**

### **Committee on the Elimination of Racial Discrimination**

CERD/C/BOL/CO/17-20, 78<sup>th</sup> Session

8 April 2011

#### **B. Positive aspects**

7. The Committee welcomes the new Constitution of 2009, which is the result of a process that embraced historically excluded sectors of the population. It notes that the Constitution upholds a wide range of human rights that reinforce the application of the Convention, such as:

- (g) The right to request and receive asylum or refuge on grounds of political or ideological persecution, and the principle of non-refoulement to a country where the life, integrity, security or freedom of the person concerned is at risk.

#### **C. Concerns and recommendations**

21. The Committee is concerned at reports of discrimination and hostility against migrants in the State party and the particular vulnerability of asylum-seekers, unaccompanied foreign children and trafficked women. The Committee is also concerned about asylum-seekers' lack of identity documents, cases of arbitrary refoulement of refugees and the lack of national legislation consistent with international standards of protection of refugees (art. 5).

**The Committee encourages the State party to develop legislation establishing the rights of refugees and providing that identity documents are to be issued free of charge and to furnish appropriate ongoing training for public officials, including border agents, to ensure that they do not make use of procedures that violate human rights. The Committee recommends that the State party continue to cooperate with the Office of the United Nations High Commissioner for Refugees and urges it to ensure that no refugees are forcibly returned to a country where there are substantial grounds for believing that they may suffer serious human rights violations. The Committee calls on**

**the State party to step up its efforts to develop and implement educational campaigns to change the public's perceptions and attitudes so as to combat racial discrimination in all sectors of society.**

### **Committee on the Rights of the Child**

CRC/C/BOL/CO/4, 52<sup>nd</sup> Session

16 October 2009

#### **Birth registration**

34. The Committee welcomes that article 97 of the Child Code establishes that all children should be inscribed in the civil register, and that the first birth certificate is free. The Committee is however concerned that not all children are registered, especially those in rural areas and from indigenous communities.

**35. The Committee recommends that the State party continue to take all necessary measures to ensure registration of all children, especially in rural areas, and that it take steps to identify all children who have not been registered or obtained an identity document. The Committee further recommends that the State party implement a specific strategy for the indigenous communities based on respect for their cultures and taking into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.**

#### **Asylum-seeking and refugee children**

71. While welcoming the establishment of the National Refugee Commission and the strengthening of the refugee status determination procedure, the Committee reiterates its concern at the lack of specific procedures for providing special care and assistance to unaccompanied and separated children.

**72. The Committee recommends that the State party take measures to ensure that asylum claims submitted by children are analyzed under a refugee status determination procedure that takes into consideration the specific needs and rights of child asylum-seekers in accordance with international refugee and human rights law, and take into account the UNHCR Guidelines on determining the best interests of the child. In this regard, the Committee draws attention to its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.**

#### **Sale, trafficking and abduction**

79. The Committee welcomes the adoption of Act No. 3325 from 2006 on trafficking in persons, the integral law project designed to facilitate criminal prosecutions and promote the prevention, protection and assistance to victims, and the establishment of the inter-ministerial commission for a national strategy against trafficking 2006-2010, but is concerned that the integral law project does not take into account the Optional Protocol on the sale of children, child prostitution and child pornography, and that the State party continues to be a source and destination country for victims of trafficking, particularly of people of African and Asian origins. The Committee is further concerned at the information of a high number of children registered by the Police as disappeared persons.

**80. The Committee recommends that the State party:**

**(a) Approve and promulgate the new integral law on the sale of children, sexual exploitation and trafficking, and ensure that it takes into account the Optional Protocol on the sale of children, child prostitution and child pornography;**

- (b) **Elaborate a national plan of action for prevention, social reintegration of the victims and prosecution of the perpetrators;**
- (c) **Adopt measures to prevent refugees and asylum-seekers, including children, from falling victim to trafficking, and create a mechanism to promptly identify victims of trafficking and ensure the referral of those who might have protection needs to the asylum procedure;**
- (d) **Ratify the 1980 Hague Convention on the Civil Aspects of International Child Abduction.**

**Committee on Elimination of Discrimination against Women**

CEDAW/C/BOL/CO/4, 40<sup>th</sup> Session

8 April 2008

7. The Committee is concerned at the disparity between the de jure and de facto situation regarding the legal protection of women and gender equality. While the Committee welcomes the legislative reforms carried out and the bills currently before Parliament designed to improve the status of women in Bolivia, it is concerned that discriminatory provisions still remain in the State party's criminal and civil law. In this regard, special reference is made to article 317 of the Penal Code which provides that there shall be no punishment in cases of rape and other abuses when perpetrators marry their victims, and to article 130 of the Family Code on the grounds for divorce.

**8. The Committee urges the State party to take the necessary measures to ensure the full implementation of existing legislation on gender equality. The Committee urges the State party to streamline procedures for review of the compatibility of those laws with the Convention, to repeal without delay all legislation that discriminates against women, including discriminatory provisions in its criminal and civil law and to ensure the enforcement of laws prohibiting discrimination against women.**

14. The Committee is particularly concerned that the Afro-Bolivian community is socially invisible and marginalized due to the fact that it is not recognized in the national statistics, which hinders their access to basic social services and makes, in particular, Afro-Bolivian women suffer from the intersections of race- and gender-based forms of discrimination.

**15. The Committee urges the State party to take the necessary steps to enable men and women in the Afro-Bolivian community to have access to all basic social services, through their inclusion in the national statistics, to address the specific vulnerability of Afro-Bolivian women and reports on measures taken in this respect in its next report.**

18. While noting the State Party's efforts, the Committee is concerned that there is still a considerable number of women, particularly indigenous women in rural areas, older women and women with disabilities, who do not have identity documents and can therefore have neither access to public institutions nor to the relevant social services and benefits.

**19. The Committee calls on the State party to continue to expedite and facilitate the process of registration of women, particularly indigenous women in rural areas, older women and women with disabilities, and issue birth certificates and the relevant identity documents. The Committee urges the State party to establish concrete goals and timetables for this process and provide information on the progress achieved in its next report.**

20. Despite the existence of awareness-raising programmes, the Committee is concerned at the persistence of traditional stereotypes relating to the roles and responsibilities of women and men within the family, in the education system and in society in general, which reinforce their sense of inferiority and affect their status in all areas of life and throughout their life cycle. The Committee is concerned that the most recent educational reform has not dealt with these subjects in depth.

**21. The Committee recommends the development of policies and implementation of programmes for women and men in both the rural and urban areas aimed at eliminating stereotypes associated with traditional roles within the family and manifested in the education system, employment, politics and society in general. It also recommends that the media be encouraged to project positive images of women and of the equal status, roles and responsibilities of women and men in the private and public spheres.**

24. While the Committee takes note of various legislative and political initiatives to reduce violence against women, including domestic and sexual violence, it remains gravely concerned about the extent, intensity and prevalence of such violence in the State party, which borders on femicide, and about the lack of statistical data thereon. The Committee is particularly concerned about the shortcomings of Law No. 1674 on Family and Domestic Violence and Law No. 2033 on the Protection of Victims of Crimes against Sexual Freedom, in particular the priority given to reconciliation and family integrity, as well as about the fact that judicial personnel persuade women victims not to claim their rights before the judicial system.

**25. The Committee calls upon the State party to ensure that existing legislation to combat violence against women and girls, especially domestic and sexual violence, is appropriately formulated and enforced, and give priority attention to the design and implementation of a comprehensive strategy to combat and eradicate all forms of violence against women, in conformity with general recommendation 19, to prevent violence, punish offenders and provide services for victims. Such a strategy should also include awareness-raising measures and sensitization of, in particular, the judiciary, law enforcement officers and prosecutors, as well as teachers, health-care and social workers and the media. The Committee encourages the State party to provide statistical data on the incidence of domestic violence, and information on steps taken to deal with the problem, progress achieved and remaining obstacles in its next periodic report.**

26. While noting the State party's recent initiatives to address the problem of trafficking in, and the sexual exploitation of, women and girls, including Act No. 3325 on Trafficking in Persons and Related Offences, the Committee remains concerned about the persistence of trafficking in the State party and the insufficient information on its causes and extent in the country, and the absence of adequate measures to combat the trafficking in, and sexual exploitation of, women and girls at the national and regional levels.

**27. The Committee urges the State party to promulgate and fully implement its legislation on trafficking and sexual exploitation of human beings, as well as national plans of action and other measures to combat all forms of trafficking, and sexual exploitation of women. The Committee encourages the State party to promote, as far as possible, regional agreements on this issue in the Southern Common Market area. It also recommends that the State party tackle the root cause of trafficking and sexual exploitation by stepping up its efforts to improve the economic situation of women and thereby eliminate their vulnerability to exploitation and trafficking, and that it adopt**



**measures for the rehabilitation and social integration of women and girl victims of trafficking and sexual exploitation as well as effective penalties for those who commit such crimes.**

36. The Committee notes with concern the lack of a general employment policy to address women in the informal sector, in particular women in the agriculture and domestic work who are excluded from all social protection and benefits. The Committee is also concerned at the lack of data on women's work in formal and informal sectors of the economy.

**37. The Committee recommends the adoption of a gender-sensitive employment policy to address women in the informal sector, in particular women in the agriculture and domestic work. The Committee further recommends the systematic collection of data disaggregated by sex, age, rural and urban area and ethnicity with respect to women in the formal and informal sectors of the economy.**

38. The Committee notes with particular concern the high vulnerability of girls in child labour and the specific threats girls with and without families experience on the street. The Committee also notes the weaknesses in the design and allocation of financial resources to the National Plan for the Progressive Elimination of the Worst Forms of Child Labour (2000-2010), including its focus on girls, which impedes the establishment of mechanisms to monitor and follow up its gender-sensitive impact.

**39. The Committee requests the State party to address the issue of child labour in general, and the vulnerable situation of girls in particular, and to rectify the weaknesses in the design and allocation of financial resources to the National Plan for the Progressive Elimination of the Worst Forms of Child Labour (2000-2010) and align its policies and legislation with the obligations it assumed under International Labour Organization Convention No. 138 concerning the Minimum Age for Admission to Employment (14 years) and Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.**

46. The Committee regrets the report's lack of statistical data disaggregated by sex, age, rural and urban area and ethnicity, which makes it difficult to accurately assess the real situation of women in most of the areas covered by the Convention. The Committee notes with concern that the paucity of disaggregated data may also impede the State party's own efforts to design and implement specific policies and programmes, and to evaluate their effectiveness in terms of implementing the Convention.

**47. The Committee urges the State party to strengthen, without delay, its current system of data collection in all areas covered by the Convention in order to be able to accurately assess the real situation of women and adequately monitor evolving trends. The Committee urges the State party to use quantifiable indicators to evaluate the impact of the measures adopted and the progress achieved in the attainment of de facto equality between women and men. It encourages the State party to use these data and indicators in formulating laws, policies and programmes for the effective implementation of the Convention. The Committee requests the State party, in its next periodic report, to include such data, disaggregated by urban and rural area and by ethnicity, and to indicate the effects of the measures taken and the results obtained in terms of the practical realization of de facto equality between women and men.**

**Committee on Economic, Social, and Cultural Rights**

#### **D. Principal areas of concern**

14. The Committee is concerned that the majority of its recommendations from 2001 in connection with Bolivia's initial report were not followed up and that the State party has not addressed more effectively the following areas of concern, which remain valid: their families with a decent standard of living;

(c) The high incidence of children in the State party subjected to physical and mental abuse;

(d) The persistence of the exploitation of children in employment, especially indigenous children, particularly through the use of "*criaditos*";

(g) The limited access of vulnerable and marginalized groups, particularly indigenous peoples, to education and the high rate of illiteracy among the adult population. The Committee notes with concern that this situation mainly affects girls and women;

(h) The widespread housing shortage, the incidence of forced evictions of farmers and indigenous populations to make way for mining and timber concessions, especially in the Chaco region, and the lack of effective measures to provide social housing for low-income, vulnerable and marginalized groups.

15. While noting the efforts made by the State party since 2006, the Committee continues to be concerned at the marginalization of indigenous peoples in the country and the discrimination that they suffer, particularly with regard to the right to education, to adequate housing, to food and to health services.

16. The Committee continues to be concerned at the de facto inequality that exists between men and women in Bolivia, as reflected in women's illiteracy, access to work and unequal pay for equal work, and difficulty in gaining access to housing and land ownership. The Committee also notes with concern that the State's social, economic and cultural plans and programmes do not reflect a fundamental gender perspective.

19. The Committee notes with concern the persistence of infant malnutrition and the fact that the right to food is not guaranteed to vulnerable groups in the State party. The Committee also notes with concern the large quantity of arable land devoted to the production of biofuels, a situation which affects the availability of food for human consumption and leads to price increases.

20. The Committee takes note of the Family and Domestic Violence Act (Act No. 1674); however, it is concerned at the fact that domestic violence has not been made a punishable criminal offence in the State party, despite the high incidence of such violence, and at the lack of protection available to the victims of this type of violence.

21. The Committee is concerned that despite the efforts made by the State party since 2006 in the area of health, such as the inclusion of traditional medicine in the National Health Plan, vulnerable and marginalized groups continue to have very limited access to health services.

#### **E. Suggestions and recommendations**

26. The Committee recommends that the State party should adopt rights-based indicators and benchmarks to monitor the progressive realization of the rights recognized in the Covenant

and that to this end it should establish a database that is updated and disaggregated, especially by region and by vulnerable group.

27. The Committee urges the State party to address the specific areas of concern that it identified in connection with its initial report (E/C.12/1/Add.60) and reiterates that the State party should implement the suggestions and recommendations made by the Committee at that time, in particular:

(c) The Committee recommends that the State party should conduct a study to determine the number and situation of children in Bolivia who are subjected to physical and mental ill-treatment, and that, based on the findings of this study, it should take the necessary legislative and practical child protection measures;

(d) The Committee encourages the State party to redouble its efforts to eliminate child labour, especially in domestic service, taking all appropriate legislative and practical measures to compensate families that stop receiving income from child labour. The Committee also calls upon the State party to carry out inspections in workplaces and to take the necessary steps to prevent the exploitation of child workers and punish those responsible;

28. The Committee recommends that the State party should continue its efforts to guarantee respect for and the equality of all the rights recognized in the Covenant in respect of indigenous people, especially the right to education, to adequate housing, to food and to health services.

29. The Committee requests the State party to ensure the equality of men and women in all spheres of life, in particular by taking effective measures and providing funds to combat discrimination in the education of girls and young women, in access to employment and equal working conditions for men and women, including equal wages, and in access to housing and land ownership. The Committee recommends that the State party should incorporate a fundamental gender perspective in all its public policies.

33. The Committee calls upon the State party to intensify its efforts to combat domestic violence by enacting specific legislation criminalizing it and providing training for law enforcement personnel and judges regarding the serious and criminal nature of domestic violence. Moreover, the Committee urges the State party to ensure the availability and accessibility of “crisis centres” where victims of domestic violence can find safe lodging and counselling.

## **II. Special Procedures**

### **Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen**

Addendum: Mission to Bolivia

Human Rights Council, 11<sup>th</sup> Session

A/HRC/11/11, 18<sup>th</sup> February 2009

#### **C. Racial discrimination**

**93. The Special Rapporteur recommends that the authorities should strengthen their policies to combat all forms of discrimination. As part of these policies, the Government might implement a national plan to combat racism, racial discrimination and**

**xenophobia, following the principles of the Durban Declaration and Programme of Action.**

**94. It is recommended that the Government should promote efforts to define racial discrimination as a punishable offence in Bolivia's domestic law, as well as adopt specific legislation to combat discrimination in all spheres.**

#### **D. Particularly vulnerable groups**

**98. The Special Rapporteur recommends that the Government should strengthen intersectoral efforts to support the Yuqui people and other peoples in a highly vulnerable situation, with a view to the development of coordinated and systematic action to safeguard the rights of these peoples, with particular emphasis on the areas of health and territorial protection.**