



# Convention on the Rights of the Child

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## Committee on the Rights of the Child Fifty-second session

### Summary record of the 1432nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 17 September 2009, at 10 a.m.

*Chairperson:* Ms. Lee

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*Fourth periodic report of the Plurinational State of Bolivia on the implementation of the Convention on the Rights of the Child*

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*The meeting was called to order at 10.10 a.m.*

**Consideration of reports of States parties** (item 4 of the agenda) (*continued*)

*Fourth periodic report of the Plurinational State of Bolivia on the implementation of the Convention on the Rights of the Child* (CRC/C/BOL/4); Core document (HRI/CORE/1/Add.54/Rev.2); List of issues (CRC/C/BOL/Q/4); Written replies by the State party to the list of issues (CRC/C/BOL/Q/4/Add.1)

1. *At the invitation of the Chairperson, the delegation of the Plurinational State of Bolivia took places at the Committee table.*

2. **Ms. Torrico Rojas** (Plurinational State of Bolivia) said that she was honoured to submit to the Committee a report that had been drafted in cooperation with various governmental institutions and civil society organizations at the national, department and local levels. She emphasized that significant changes were taking place in the Plurinational State of Bolivia, under the impetus given by the President, Evo Morales. In 2008, a “participatory” Constituent Assembly had undertaken the fundamental task of drafting the new Constitution of the country. The Constitution established not only civil and political rights, but also economic, social, cultural and environmental rights. While the previous Constitution had contained only 30 articles on fundamental rights and guarantees, the new one contained more than 120, which made it one of the most progressive in the world.

3. Article 58 of the Constitution recognized all children as holders of rights, including specific rights inherent in their development and their ethnic, sociocultural, sexual and generational identity; article 59 established the right of children to comprehensive development, their right to live in their family of origin or adoptive family, and non-discrimination between children; article 60 set out the duty of the State, of society and of the family to guarantee the primacy of the best interests of the child; and article 61 prohibited and criminalized all forms of violence against children in the family and in society, as well as the forced labour and exploitation of children. It was expressly provided in article 13 that human rights treaties and conventions took precedence over domestic law.

4. Bolivia had been the eighth country to ratify the Convention on the Rights of the Child; the Convention was now an integral part of its constitutional law. The Code for Children and Adolescents was the main relevant legal text. It also laid down the principles of non-discrimination and the best interests of children, and it recognized children as full legal persons. In that connection, the authorities had since 2006 been implementing the National Development Plan, which aimed to eradicate social inequalities at their source by establishing a new model for community social development. The plan had four components: a Bolivia of dignity (eradication of poverty and disparities through a fair distribution of income, wealth and opportunities); a democratic Bolivia (a participatory and community-oriented Plurinational State); a productive Bolivia (modification and diversification of production); and a sovereign Bolivia (self-determination and protection of natural resources and biodiversity).

5. The National Development Plan had spawned other plans and initiatives that were currently being implemented, such as the national Human Rights Plan of Action; the “Zero Malnutrition” programme; the law on the Universal Health Insurance scheme; the Community and Intercultural Family Health Programme; the Juana Azurduy grant and policies to eradicate extreme poverty, which were designed to fight infant and maternal mortality and chronic malnutrition in under-2-year-olds; the law aimed at promoting the practice of breastfeeding, thanks to which Bolivia could boast of a breastfeeding rate of 60 per cent at six months; the Juancito Pinto school voucher programme, aimed at reducing school dropout rates; and the literacy programme *Yo sí puedo* (“Yes I can”), following which, in 2008, UNESCO declared Bolivia officially free of illiteracy. Three supreme

decrees adopted in 2009 also deserved to be highlighted: Supreme Decree No. 0011, under which a person who denied parentage would assume the burden of proof; Supreme Decree No. 0132, which transferred the cancellation of birth certificates if more than one existed from the legal to the administrative sphere; and Supreme Decree No. 0012, under which mothers and fathers could not be dismissed or lose their position and no change could be made to their salary level during the first year after the birth of a child.

6. In conclusion, although some political figures were reluctant to see the new programmes put into effect, the Government in power was firmly committed to implementing such comprehensive measures, which concerned not only children and adolescents, but also the well-being of the family and the community as a whole, from an intergenerational perspective.

7. **Ms. Ortiz** (Rapporteur for the Plurinational State of Bolivia), after referring to the ethnic and geographical diversity of Bolivia, said that, for the first time in its history, the country had a president of Indian origin who was also a trade union leader and was committed to a fundamental reform of the country. The Committee had taken note with interest of the fourth periodic report of the State party and would like to know whether representatives from civil society, and children in particular, had been involved in the drafting process, because the drafting of reports was an opportunity for discussion and analysis. The Committee had also taken note of the written replies to the list of issues, but had found it difficult to determine what was already in place in the new structure of the Government following the changes made by the new Constitution, and what was only at the planning stage. There was also the issue of what had become of some institutions which had recently been established by the previous Government and which were still needed.

8. She therefore emphasized the importance of having a coordinating institution responsible for structuring actions taken in support of children at different levels, which, in order to have authority, must have a high-level status. She also emphasized the fundamental importance of dissemination, implementation and monitoring mechanisms. It appeared that the specialized institution established in the country had been seriously weakened in the previous few years by repeated changes, which explained the low profile of the issue of the rights of the child. For example, the national Human Rights Plan of Action did not apparently accord children their rightful place. In particular, she found it surprising that it was in chapter V of the plan, entitled “Rights of at-risk or vulnerable groups”, that the rights of the child appeared. The aim of the Convention was to promote the idea of children as holders of rights rather than to show concern only for children in crisis or vulnerable situations, as had been done traditionally. Similarly, it seemed that not all the rights enshrined in the Convention were highlighted in the economic and social development strategy of the National Plan for Comprehensive Community Development for Children and Adolescents 2009–2013.

9. She questioned whether the Office for Childhood and Adolescence, attached to the Vice-Ministry for Equality of Opportunities, which came under the Ministry of Justice, had sufficient authority and human and financial resources to implement a comprehensive system of promotion, protection, follow-up and participation in order to give full effect to the Convention, and asked for further information on that subject.

10. She also pointed out that the National Plan for Comprehensive Community Development for Children and Adolescents 2009–2013 did not cover all of the rights contained in the Convention, or all of the children in the country. To respond to all the problems or, preferably, to prevent them, Bolivia would need rights-based indicators, as recently recommended to it by the Committee on Economic, Social and Cultural Rights.

11. **Mr. Zermatten** (Rapporteur for the Plurinational State of Bolivia) said that the Committee congratulated the Plurinational State of Bolivia on having introduced provisions

concerning children into its new Constitution, and in particular the principle of the best interests of the child. He regretted, however, that the principle of children's participation and their right to be heard, both of which the Committee considered as fundamental, had not been taken into account.

12. He asked whether Bolivian judges could apply the provisions of the Convention directly, given that, as explained by the delegation in its opening statement, international instruments ratified by Bolivia took precedence over domestic law. Furthermore, despite the existence of the new Constitution, older texts, such as the 1999 Code for Children and Adolescents, were still in force. He asked the delegation to explain whether the State party had begun a legislative reform process in all areas relating to children with a view to harmonizing the Constitution and domestic laws, and whether the State party had identified the texts to be amended, along with a timetable for doing so.

13. Additionally, the coexistence of positive law and traditional community law posed some problems. The new Constitution gave priority to the community approach — article 192, paragraph II reinforced the authority of indigenous jurisdiction — but the number of professional judges was low. He asked how coordination between the two systems was arranged and whether the Government had plans to draw up a document clearly defining the competencies of the two forms of justice, bearing in mind that giving priority to the community approach raised issues about training community leaders in applying the Convention and respecting the rights of the child.

14. Noting that the State party had adopted a number of plans, including the National Development Plan, the National Plan for Comprehensive Community Development for Children and Adolescents 2009–2013, the Human Rights Plan of Action (2009–2013) and the National Plan for Equal Opportunities, as well as a Poverty Eradication Plan (2006–2010) and various sectoral plans, he asked whether there was a specific plan, or in other words an overall policy, for children.

15. In view of the State party's wish to strengthen the Office of the Ombudsman rather than create an office of ombudsman for children, he asked why the Bolivian authorities preferred generalization to specialization.

16. It appeared that collaboration with civil society was difficult. However, during the current period of reform, it would be useful to receive input from NGOs and to establish close collaboration with them.

17. Although Bolivia had established the principle of the best interests of the child in its Constitution, it should now include it in its various laws and, most importantly, implement it in practice in the courts and in administrative and legislative bodies. The Bolivian authorities should also apply, through the various courts, the general principle of the right of the child to be heard. The decentralization of the Children's Parliament at the departmental and municipal level should also be considered. Lastly, he asked for additional information on the new measures taken by the State party with regard to children, in the light of its new Constitution, its new policy and its new vision of children's rights.

18. **Mr. Gurán** said that, from the point of view of the Committee, strengthening national, regional, departmental and local mechanisms for social protection and creating a post of ombudsman for the rights of the child were not contradictory actions; in fact, they could be carried out in parallel. It was important to implement a mechanism to monitor respect for the rights of the child that covered the entire country.

19. He also asked for additional information on the specific activities of the 303 municipal Offices of the Ombudsman, which provided services and monitored their quality. He asked if there was an independent body that ensured that the services provided were of the same quality throughout the country.

20. **Mr. Kotrane**, emphasizing that Bolivia was a community State in which collective rights sometimes prevailed over individual rights, including those of the child, asked whether the child was considered a legal person in the new Constitution.

21. **Ms. Villarán de la Puente**, noting that the National Plan for Comprehensive Community Development for Children and Adolescents 2009–2013 provided for three levels of normative authority, namely the Constitution, domestic laws, and international instruments, asked what was the precise status of the Convention within the domestic legal system.

22. She asked whether the recommendation made by the Committee to the State party in January 2005 — that it should significantly increase the proportion of the budget allocated to the realization of children’s rights — had been implemented. She also wanted to know whether children had suffered any consequences following the decrease in the budget allocated to health.

23. Although the central Government accorded high importance to issues pertaining to children, some sources had indicated that such issues were not a high priority for regional and local authorities. She wondered how that contradiction was reflected in the resources allocated for children.

24. Recalling that, in 2008, the Committee on Economic, Social and Cultural Rights had recommended that Bolivia should adopt rights-based indicators and benchmarks, she asked whether the State budget took the rights of the child into consideration and whether individual budget programmes had been planned for areas such as education, food, health or birth registration.

25. Lastly, she asked about the impact of the economic crisis on education and health policies and whether the Bolivian Government would still be in a position to continue its social policy of distributing vouchers, particularly those for improving access to health care, increasing school attendance rates and combating malnutrition.

26. **Mr. Filali** asked what mechanism was in place to settle any conflicts that could arise between domestic law and the Convention. He also asked how coordination between central Government and the local authorities was organized and how the central Government ensured that the financial resources allocated specifically to local Offices of the Ombudsman, for example, were not used for other purposes by local authorities. In addition, he expressed his concern at the low rate of birth registration in rural areas.

27. **Mr. Citarella** asked whether the laws and plans that the State party was adopting were accepted in the areas of the country where customary law was still in force. He also asked why the State party used the term “girls, boys and adolescents” in its legislation and different plans and programmes, instead of the term “children”.

28. **Mr. Krappmann** regretted that the State party’s report did not provide any information on children who required special protection, such as indigenous children or children with disabilities, and asked whether the State party planned to collect data on different groups of children.

29. **Mr. Koomphaphant** asked whether the members of the National Council for Childhood and Adolescence, who were all representatives of public bodies, really had the necessary skills to carry out the duties of the Council, as laid down in its mandate. He also requested additional information on the relationship between the Council and the Commissions on Childhood and Adolescence.

30. **Ms. Aidoo** congratulated the State party on its efforts to make birth registration free and to ensure the registration of indigenous children and adolescents who were not yet registered in the civil registry. She enquired about the national birth registration rate and

that of remote areas in particular. She also asked about the size of the budget allocated to birth registration by the State party itself, which was supported in that area by the international community, in particular the United Nations Children's Fund (UNICEF).

31. **The Chairperson** asked whether the State party intended to raise the legal age for marriage for girls, in line with recommendations that the Committee had made several times. She requested more information on the premarital unions that preceded actual marriage in some regions and asked whether children below the age of 14 were involved in such unions.

32. She asked the delegation to explain whether the new Constitution categorized corporal punishment as a type of violence against children and whether it expressly prohibited it.

33. **Ms. Torrico Rojas** (Plurinational State of Bolivia) explained that her country was currently undergoing profound political changes and that it was difficult to apply the new legislative measures deriving from the entry into force of the new Constitution, as such changes had been met with resistance by members of the parliamentary opposition. General elections were scheduled for December 2009 and a redrafting of the Code for Children and Adolescents, which would be submitted to the new Plurinational Legislative Assembly for approval, was also planned. That legislative overhaul would take time because it aimed to create a fairer State that focused on social issues, in which poor people had the same rights as wealthier people. She explained that the Plurinational State of Bolivia had a somewhat ambiguous relationship with NGOs, which were trying to end child labour even though child workers themselves had set up their own organizations because it was important for them to work.

34. **Ms. Ureña** (Plurinational State of Bolivia) explained that she had followed the report drafting process very closely and that civil society had played an important role in it. She regretted that, owing to a lack of time, NGOs had not been fully involved in drafting the written replies to the list of issues.

35. **Mr. Morales** (Plurinational State of Bolivia) said that the new Political Constitution had not yet fully entered into force and that, although it had been abrogated, the former Constitution was still frequently used.

36. He explained that there was no hierarchical relationship between the indigenous justice system and the regular justice system. The new Constitution had abolished the monistic legal system, in which only the regular justice system — inherited from the process of colonization — could be used since, over the centuries, the original indigenous justice system had been relegated to second-class status. The new Constitution, in particular article 179, accorded the two systems an equal status and defined their respective areas of activity and competencies, while providing for cooperation between the authorities of the two systems.

37. With regard to the participation of children in matters that concerned them, he stated that article 241 of the Constitution provided that civil society could take part in the administration of public affairs, in the drafting of policies and in decisions relating to budget implementation. That therefore included organizations for the protection of children's interests. However, the Code for Children and Adolescents needed to be adapted in order to clarify aspects relating to the participation of children's groups.

38. With regard to the status of international instruments within the domestic legal system, article 13 of the Constitution clearly established that international human rights instruments ratified by the State party took precedence over domestic legislation, and that they were directly applicable.

39. **Mr. Zermatten** (Rapporteur for the Plurinational State of Bolivia) raised the issue of the practical implementation of the provisions of the Convention on the Rights of the Child, in particular the principles of the best interests of the child and respect for their opinions. He asked how indigenous leaders planned to give effect to those principles, bearing in mind the specific nature of indigenous rural justice.

40. **Mr. Morales** (Plurinational State of Bolivia) explained that both legal systems had to respect the rights and guarantees covered by the Convention. In the same way as the regular justice system had to adopt laws and decrees to implement the rights embodied in the Constitution, the indigenous justice system had to be strengthened to bring it into line with the Constitution.

41. The Ombudsman, whose functions were described in article 222 of the Constitution, was independent of the executive, legislature and judiciary. The role of the Ombudsman was to carry out investigations into violations of human rights, in particular violations of the rights of the child, but he or she was only authorized to make recommendations, not to prescribe sanctions.

42. Birth registration was completely free of charge, and all children received a birth certificate. Measures were being taken by the National Electoral Court, in cooperation with international bodies, to provide a free birth certificate to adults who were not registered in the civil registry. That process was currently being implemented in the departments of Oruro, Cochabamba and Santa Cruz, among others.

43. **Ms. Torrico Rojas** (Plurinational State of Bolivia) said that a new decree which had recently entered into force provided that, if a mother and her child did not have birth certificates or identity documents, they could go to a paediatric monitoring centre and be given such documents free of charge, which would then enable them to claim a grant under the Juana Azurduy programme. That new measure prevented mothers from being afraid of going to see a paediatrician, and therefore helped to reduce infant mortality and poverty. Despite the misgivings of the opposition, the State was committed to providing each Bolivian citizen with identity documents and an official birth certificate, in particular in remote areas.

44. **Mr. Morales** (Plurinational State of Bolivia) explained that the Plurinational Legislative Assembly, which would be elected in December 2009, would be required to examine several draft laws, including draft laws on the judicial system, and codes that were to be revised. For example, it was foreseen that the Family Code, which established the age of marriage at 14 for girls and 16 for boys, would be brought into line with the Convention on the Rights of the Child and other international conventions. Similarly, it would have to be brought into line with the Constitution which, in article 61, paragraph I, prohibited and penalized all forms of violence against children and adolescents in the family and in society.

45. **Ms. Marconi** (Plurinational State of Bolivia) described the organizational structure of the Ministry of Justice, which was responsible for the Vice-Ministry for Equality of Opportunities. The Ministry comprised three Directorates-General, including the Directorate-General on Children, Adolescents and the Elderly, which had a team responsible for children and ensured coordination with departmental social services, who in turn worked in coordination with municipal child protection services.

46. The Government collaborated with civil society and NGOs that offered technical and financial support to the work of the Vice-Ministry for Equality of Opportunities.

47. She emphasized that children were a critical concern of Government policy. A national plan for early childhood, childhood and adolescence was being drafted in cooperation with social actors, with the aim of improving the living conditions of children.

48. **Mr. Zermatten** (Rapporteur for the Plurinational State of Bolivia) regretted the lack of information on street children. He asked about the current situation, if there were statistics on that topic and if measures had been taken to help such children.

49. He noted that children aged between 16 and 18 who were found guilty of criminal offences were often sentenced to long periods of detention in conditions that did not conform to the provisions of the Convention on the Rights of the Child, for example, in the same facilities as adults. He asked whether the planned construction in the capital of a detention centre for adolescents aged between 16 and 20 was to be implemented in the near future and what provision there would be for adolescents detained in other regions.

50. **Ms. Ortiz** (Rapporteur for the Plurinational State of Bolivia) asked whether the team responsible for children in the Directorate-General on Children, Adolescents and the Elderly had the necessary human and financial resources to ensure the promotion and protection of the rights of the child throughout the country, and whether the Government planned to turn that body into a ministry so that it would have the authority and capacities necessary for its work.

51. She asked how departmental social services and municipal child protection services benefited from programmes developed at the national level and how they collaborated with prefectural and municipal authorities so as to offer appropriate services.

52. She asked if the Government planned to increase the number of judges for children and adolescents and provide training for them.

53. Lastly, she asked the delegation to explain how the health services worked with child protection services when, for example, they became aware of cases of ill-treatment, sexual abuse or sexual exploitation.

54. **Mr. Puras** commended the Government's ambitious goal of providing free health care up to the age of 21. He asked about the extent to which the resources allocated to health would be used in a rational and transparent way and about what was being done to reduce the high infant mortality rate, particularly in rural areas. He also requested additional information on the main aims of the Community and Intercultural Family Health Programme.

55. He asked how the State party intended to encourage multisectoral participation in implementing its child nutrition policy, and whether it planned to assess the effectiveness of programmes in that area. He also requested information on breastfeeding policies.

56. He asked if health-care personnel were trained in treating young people with the respect and confidentiality to which they were entitled under the Convention, in particular with regard to reproductive health and mental health. He asked whether policies to prevent alcohol and drug abuse, which was a serious problem among adolescents, had been implemented and whether adolescents had access to treatments or rehabilitation facilities.

57. He noted that the integration of children with disabilities into the school system was one of the objectives of the Government. He asked whether a system for identifying persons with disabilities had been put into place, whether the families concerned received any assistance, and whether there were any statistics on the number of children with disabilities placed in an institution and those living with their families. He wondered if any mechanisms were envisaged to monitor the situation of children in institutions and to protect their rights. In addition, he wished to know whether there were NGOs working in that area, at the national and regional level, and, if so, whether they were supported by the Government. Lastly, he asked the delegation to indicate whether the State party was planning to ratify the Convention on the Rights of Persons with Disabilities.

58. **Mr. Filali** asked whether the age of marriage, which was 14 for girls and 16 for boys, was enshrined in the two legal systems. He expressed concern at the situation of adolescents detained alongside adults and asked whether measures would be taken on their behalf before the December elections.

59. Lastly, he asked whether human rights and the rights of the child were included in school curricula, and whether the judiciary and police forces were trained in and aware of the rights of the child.

60. **Ms. Villarán de la Puente** asked whether measures had been taken to prevent, penalize and eliminate violence against children. Recalling that, during the consideration of the third periodic report in 2005, a member of the Bolivian delegation had stated that society was highly tolerant towards violence, she asked the delegation to provide information on the current situation, on whether the Family and Domestic Violence Act had been amended to cover psychological violence, and whether the perpetrators of acts of violence had been punished, including when they were police officers.

*The meeting rose at 1 p.m.*