

**PARAGUAY**  
**International Planned Parenthood Federation/Western Hemisphere Region**  
**Submission to the Universal Period Review**  
**24<sup>th</sup> Session (January 2016)**

International Planned Parenthood Federation/Western Hemisphere Region (IPPF/WHR) is a leader in the international movement to secure sexual and reproductive health care as a human right for all. We work in 39 countries in Latin America and the Caribbean, including Paraguay, provide more than 31 million services, and aim to improve the quality of life of individuals by campaigning for sexual and reproductive health and rights through advocacy and services, especially for poor and vulnerable people. IPPF/WHR makes this submission to express its grave concern regarding the denial of adequate health services to young girls who become pregnant as a result of sexual abuse in Paraguay.

**Executive Summary**

- I. Section I lays out information regarding the high rate of sexual abuse and adolescent and child pregnancy in Paraguay, as well as the heightened risks girls and adolescents face as a result of pregnancy without a fully formed reproductive system, including death.
- II. Section II portrays the case of a 10-year old rape victim who has been denied an abortion as an example of the human rights violations occurring in Paraguay, despite an exception in the penal code for abortions where the life or health are at risk.
- III. Section III highlights the violations of the rights to life, health, to be free from violence and discrimination and to be free from torture, cruel, inhuman and degrading treatment caused by the failure to include an exception for abortion in the case of rape in the Paraguayan penal code and the failure to make pregnancy termination accessible when pregnancy threatens the life or health of the pregnant woman.
- IV. Section IV urges Member States to make suggested recommendations to Paraguay during the 24<sup>th</sup> Session of the UPR to amend the penal law and to ensure access to abortion for all women and girls to whom pregnancy poses a risk to their physical or mental health, life or those who became pregnant as a result of rape or incest; to adequately train medical staff, police and judicial officials to investigate crimes of gender-based violence, including sexual and domestic violence and to appropriately respond to victims special needs; to develop official statistics that record gender-based violence; and to facilitate access to justice for victims and prosecution of the perpetrators.

**I. Sexual Abuse and Child and Adolescent Pregnancy in Paraguay**

1. Although up to 40% of women population in Latin America have been victims of sexual violence, 95% of abortions carried out are unsafe because of barriers that limit women's access to abortion, even in cases of rape or incest.<sup>1</sup> Two girls aged 10-14 give birth every day

in Paraguay, the majority of whom are victims of sexual abuse, which is rarely denounced or punished, and all of whom are legally unable to consent to sex.<sup>ii</sup> While the global adolescent birth rate has decreased globally, the birth rate of girls aged 10-14 in Paraguay has continued to rise each year since 2009,<sup>iii</sup> reaching 684 in 2014.<sup>iv</sup> One in four pregnant women in Paraguay is an adolescent.<sup>v</sup>

2. Women and girls in Paraguay are subject to high rates of sexual violence. According to the latest state information, 4.1% of women have been raped, 4.3% have been sexually abused, and 1.3% of women have experienced both rape and sexual abuse.<sup>vi</sup> Of those who were raped, 40.5% were age 15-19 and 16.6% were 10-14, and 4.7% were under age 10.<sup>vii</sup> For those who experienced sexual abuse, 18.6% were under age 10, 25.6% were 10-14, and 34% were 15-19.<sup>viii</sup> The state estimates that a minimum of 56,000 women were raped in 2008, but that the real number is likely much higher given the low rate of reporting.<sup>ix</sup> Women who became pregnant as result of those rapes are not legally permitted to access an abortion.
3. This is particularly concerning in the cases of children who become pregnant through rape. Childhood and adolescent pregnancy poses a great risk to the health and lives of young girls. In Paraguay, girls aged 10-14 face a risk of death five times higher than a woman whose body is biologically prepared for pregnancy, and adolescents 15-19 face twice the risk of death.<sup>x</sup> Because of this risk, adolescent and young girls make up almost one-fifth of all maternal deaths: 2.13%, are girls aged 10-14 and 15.6% are girls 15-19.<sup>xi</sup> Early pregnancy is not only dangerous for the mother. In Paraguay, infants born to mothers 15 to 19 years old are nearly 80% more likely to die during the first year of life than infants born to mothers 20 to 29 years old.<sup>xii</sup>
4. Despite the high rate of child and adolescent sexual abuse, pregnancy, and risk of maternal death to young girls, abortion remains inaccessible in Paraguay. As a result of the state's failure to provide safe abortion services, clandestine abortion accounts for almost one-third of the overall maternal mortality rate.<sup>xiii</sup> The Paraguayan Penal Code Article 109 permits termination of pregnancy in cases where it is necessary to avoid a serious risk to the life and health of the woman. Despite this law, abortion is essentially inaccessible, even in clear cases where the life of the pregnant woman is threatened. Furthermore, the law contains no exception for women who become pregnant as a result of rape, including the 684 girls last year, 28 of whom died as a result. These girls face a high risk to their life and health from pregnancy, and yet are unable to access an abortion which is permitted by law.

## **II. The Case of Mainumby**

5. The failure of the Paraguayan state to comply with the law, and the failure to contain an exception for pregnancies resulting from rape and incest within the penal code, results in violations of the human rights to life, to health, and to be free from torture, cruel, inhuman and degrading treatment, which the state of Paraguay is bound to respect, protect and fulfill as part of their obligations under the International Covenant on Civil and Political Rights (ICCPR),<sup>xiv</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>xv</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>xvi</sup> the Convention on the Rights of the Child (CRC)<sup>xvii</sup> and Convention against Torture (CAT).<sup>xviii</sup> The case of Mainumby, a pregnant 10-year old rape victim, is a

clear example of how human rights violations result from the state's failure to comply with the exceptions in the penal code and lack of an exception for rape.<sup>xix</sup>

6. On January 20, 2014, the mother of 9-year old Mainumby went to the Criminal State Attorney's Office to report the sexual abuse of the girl by her stepfather.<sup>xx</sup> Prosecutors took no action and dismissed the case in August 2014 without investigating the allegations with due diligence and provided no protective measures.<sup>xxi</sup> Four months after the state dismissed the claim without investigating it, her mother took the 10-year old to the hospital for stomach pain, vomiting and a swollen abdomen.<sup>xxii</sup> After misdiagnosing her for a possible tumor for three months, the hospital informed the mother on April 21<sup>st</sup>, 2015 that Mainumby was 21 weeks pregnant as result of rape by her stepfather that the state had failed to prevent.<sup>xxiii</sup>
7. The hospital stated that the pregnancy posed a high risk to her life and health because of her young age and the incomplete development of her uterus.<sup>xxiv</sup> In accordance with the law, the mother requested an interruption of the pregnancy on April 28<sup>th</sup> to protect her daughter's life and health.<sup>xxv</sup> A Medical Board composed of doctors, psychiatrist and psychologists who conducted a thorough examination of the girl issued an opinion on May 12<sup>th</sup> recommending the adoption of "the measures necessary for the wellbeing of the girl."<sup>xxvi</sup> According to the report, the 10-year old girl measured 1.30 meters, weighed 34kg and suffered from malnutrition and anemia.<sup>xxvii</sup> It stated that she had "a four times higher risk to like than an adult pregnancy," and that if the pregnancy were to continue she had a 1.6 times higher risk of postpartum hemorrhage, a 4 times higher risk of endometrial infection, and 1.6 times higher risk of eclampsia, infections, and systemic risks to her underdeveloped reproductive system.<sup>xxviii</sup> The Medical Board therefore recommended interruption of the pregnancy before any these risks materialized to avoid the re-victimization of the girl.<sup>xxix</sup>
8. Instead of complying with the recommendation of the medical experts to interrupt the pregnancy as permitted by law, the Paraguayan state imprisoned the mother, who is also a victim of domestic abuse, for failing to protect her daughter, and detained Mainumby in a hospital for young mothers, where she is only permitted to see family two hours per week.<sup>xxx</sup> The Inter-American Commission of Human Rights found the situation to prove an urgent and serious threat to the girl's life, health and personal safety and issued a precautionary measure on June 8<sup>th</sup>, requesting the Paraguayan state to protect the life and personal integrity of the child and ensure she has access to adequate medical treatment recommended by specialists within 72 hours.<sup>xxxi</sup> The State failed to comply with the request, and the child remains in imminent danger to her life and health in blatant violation of her human rights at the time of this submission.

### **III. Human Rights Violations**

#### **A. The Right to be Free from Discrimination and Gender-Based Violence**

9. The state's failure to duly investigate the report of sexual abuse of a child violated their obligations to guarantee the right to be free from discrimination and gender-based violence and to security of person under Article 2 of CEDAW,<sup>xxxii</sup> the right to security of person under Article 9 of the ICCPR,<sup>xxxiii</sup> and the right of children to be free from violence under Article

19 of the CRC.<sup>xxxiv</sup> It also explicitly violates the state obligation under CRC Art. 34,<sup>xxxv</sup> to “undertake to protect the child from all forms of sexual exploitation and sexual abuse.” Experts of the UN Working Group on the Issue of Discrimination against Women in Law and in Practice agree, and recently condemned the State for failing in its responsibility to act with due diligence and protect the child’s human rights.<sup>xxxvi</sup>

10. This is not an isolated or new problem. Data regarding violence against women is irregularly recorded, published and disaggregated. Numerous reports by civil society, UN Women, and even the Paraguayan Supreme Court have consistently found judicial officials insufficiently trained or sensitized to issues of violence against women and pervasive stereotypes and discrimination in handling such matters.<sup>xxxvii</sup> Almost half of all recommendations accepted as new or in progress by Paraguay in the first round at the UPR regarding improving the treatment and wellbeing of women and children.<sup>xxxviii</sup> Six of them, all of which Paraguay claimed were already in the process of implementation, specifically targeted the issue of sexual and gender-based violence against women and children. Yet, as evidenced by the case of Mainumby, this problem is not being adequately addressed by Paraguay, which continues to violate the human rights of girls and women to be free from gender-based violence and discrimination.

#### **B. The Right to Life, Health, and Freedom from Torture, Cruel, Inhuman & Degrading Treatment**

11. Forcing a 10-year old girl to carry a pregnancy that poses a severe risk to her life and health is violation of her right to life, contained in Article 6 of both the ICCPR<sup>xxxix</sup> and CRC,<sup>xl</sup> the right to health, contained in Articles 12 of CEDAW<sup>xli</sup> and the ICESCR, and Article 24 of the CRC.<sup>xlii</sup> The CAT recommended in their most recent review of Paraguay that, as recommended by the Human Rights Council, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights, the state consider providing for further exceptions to the general prohibition of abortion, especially in cases of therapeutic abortion and pregnancy resulting from rape or incest.<sup>xliii</sup> Just one month prior to the case of Mainumby, the Committee on Economic, Social and Cultural Rights again called on Paraguay to review and modify its abortion legislation to ensure its compatibility with other rights such as health and life.<sup>xliv</sup> So far, the state has not complied with any of these recommendations. In this case, the medical experts made clear that the child faced a quadruple risk of death if she continued to carry the pregnancy and a high risk of numerous medical problems, including permanent damage to her reproductive system. By refusing to comply with medical advice to protect the life and health of the child in disregard of the penal code, the Ministry of Health has violated the human rights to life and health by unnecessarily forcing the girl to a continued and growing threat of severe injuries and death. This is made even more serious a violation of human rights because of the young age of the victim.
12. This treatment amounts to torture under the definition of the CAT<sup>xlv</sup> and contained in Article 7 of the ICCPR,<sup>xlvi</sup> and Article 37 of the CRC,<sup>xlvii</sup> which Paraguay has ratified. Article 1 of the CAT states that “‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person...for any reason based on

discrimination of any kind...by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>xlviii</sup> The Human Rights Committee has held that forcing a woman to continue a pregnancy that presents a risk to her life and health violates her human rights to life and health.<sup>xlix</sup> The Committee on Civil and Political Rights stated in General Comment 28 that denial of access to safe abortion to women who have become pregnant as a result of rape constitutes a breach of Article 7.<sup>1</sup> Regardless, the Paraguayan Health Minister, Antonio Barrios, continues to inflict continuous physical and mental pain and suffering on a 10-year old rape victim due to gender-based discrimination, violating the girl’s right to be free from torture, cruel, inhuman or degrading treatment.

#### **IV. Recommendations**

The failure of the state to include an exception for abortion in cases of rape and to adequately implement the penal law regarding exceptions to life and health results in human rights violations for women and girls. Therefore, IPPF/WHR urges member states to consider making the following recommendations at the upcoming UPR of Paraguay:

- 1. Amend penal code Article 109 to remove legal and other barriers to guarantee access to abortion for all women and girls to whom pregnancy poses a risk to their life, health, defined by the World Health Organization as a state of complete physical, mental and social well-being,<sup>li</sup> or those who became pregnant as a result of rape or incest.**
- 2. Train medical staff, police and judicial officials to effectively and appropriately investigate crimes of gender-based violence, including sexual and domestic violence, and conduct sensitization training so they can effectively and appropriately respond to victims’ special needs.**
- 3. Develop official statistics that record cases of gender-based violence, including sexual and domestic violence, femicide, abuse, and sexual abuse, especially of children and adolescents, and to facilitate access to justice for victims and prosecution of the perpetrators.**

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<sup>i</sup> European Parliament Resolution on Paraguay: Legal Aspects Relating to Child Pregnancy, Resolution 2015/2733(RSP) (6/10/15) available at <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P8-RC-2015-0547&language=EN>.

<sup>ii</sup> Javier Rodriguez, “Las Niñas Madres,” PÁGINA SIETE (5/24/15), available at <http://www.paginasiete.bo/revmiradas/2015/5/24/ninas-madres-paraguay-57032.html>.

<sup>iii</sup> UNITED NATIONS POPULATION FUND (UNFPA), *Embarazos Adolescentes en Paraguay: Un Reto para el Logro del Desarrollo*, (last accessed 6/22/15) available at [http://www.unfpa.org.py/download/PARAGUAY\\_cartilla%20embarazo%20adolescente.pdf](http://www.unfpa.org.py/download/PARAGUAY_cartilla%20embarazo%20adolescente.pdf) [hereinafter UNFPA, *Embarazos Adolescentes en Paraguay*].

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- iv “10 Datos sobre la Salud de las Mujeres,” PARAGUAY.COM, (5/27/15), *available at* <http://www.paraguay.com/nacionales/10-datos-sobre-salud-de-las-mujeres-128589>.
- v Joparé Paraguay, *En Paraguay, 1 de Cada 4 Mujeres Embarazadas es Adolescente*, UNITED NATIONS POPULATION FUND (UNFPA) p.8 (2013) *available at* <http://www.unfpa.org.py/download/jopare53.pdf>
- vi *Encuesta Demográfica de Salud Sexual y Reproductiva 2008: Informe Final*, CENTRO PARAGUAYO DE ESTUDIOS DE POBLACIÓN (CEPEP), 321-22 (2009) (*available at* [http://www.cepep.org.py/archivos/ENDSSR2008\\_2.pdf](http://www.cepep.org.py/archivos/ENDSSR2008_2.pdf)).
- vii *Id.*
- viii *Id.*
- ix *Id.*
- x Javier Rodgriguez, “Las Ninas Madres,” *supra* n. 2; Joparé Paraguay, *supra* note 6 at 8.
- xi UNFPA, *Embarazos Adolescentes en Paraguay*, *supra* n.3.
- xii TM McDevitt, A. Adlakha & TB Fowler, et al. *Trends in Adolescent Fertility and Contraceptive Use in the Developing World*. [IPC/95-1]. Washington, DC: U.S. Bureau of the Census, 1996.
- xiii UNITED NATIONS POPULATION FUND (UNFPA), *Embarazos Adolescentes en Paraguay*, *supra* n. 3.
- xiv International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976 [*hereinafter* ICCPR].
- xv International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976 [*hereinafter* ICESCR].
- xvi Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 16, 1966, art. 1, G.A. Res. 34/180, U.N. GAOR, 39<sup>th</sup> Sess., Supp. No. 46 at 193, U.N. Doc. A/34/46, U.N.T.S. 13 (*entered into force* Sept. 3, 1981) [*hereinafter* CEDAW].
- xvii Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990 [*hereinafter* CRC].
- xviii Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987 [*hereinafter* CAT].
- xix COMSIÓN INTERAMERICANA DE DERECHOS HUMANOS, *Resolución 22/2015, Medidas Cautelares No. 178/15, Asunto Nina Mainumby Respecto de Paraguay* (6/8/2015), *available at* <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC178-15-ES.pdf>.
- xx *Id.*, para. 3(A).
- xxi *Id.*
- xxii *Id.*, para. 3(B)-3(C).
- xxiii *Id.*, para. 3(D).
- xxiv *Id.*, para. 3(D).
- xxv *Id.*, para 3(E).
- xxvi *Id.*, para 3(F).
- xxvii *Id.*
- xxviii *Id.*
- xxix *Id.*
- xxx *Id.*, para. 3(G).
- xxxi *Id.*, para 23-24.
- xxxii CEDAW, *supra* note 16, Article 2.
- xxxiii ICCPR, *supra* note 14, Article 9
- xxxiv CRC, *supra* note 17, Article 19.
- xxxv CRC, *supra* note 17, Article 34.
- xxxvi “Paraguay: UN Experts Deplore Governments Failure to Protect 10-year-old Rape Survivor,” OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS, (5/11/2015), *available at* <http://www.un.org/apps/news/story.asp?NewsID=50826#.VYM5ZfVhBc>.
- xxxvii COMITÉ DE AMÉRICA LATINA Y EL CARIBE PARA LA DEFENSA DE LOS DERECHOS DE LA MUJER (CLADEM), *Dossier sobre Violencia Domestica en América Latina y el Caribe*, p.114 (2004), *available at* <http://www.cepal.org/mujer/noticias/paginas/6/27456/DossierViolenciaDomestica.pdf>; COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, “II. Inadequacies in the Judicial Response to the Cases of Violence against Women: Obstacles to the Fulfillment of the Obligation to Practice Due Diligence and Combat Impunity,” *Access to Justice for Women Victims of Violence in the Americas*, RELATORIA SOBRE LOS DERECHOS DE LAS MUJERES, para. 154 (2007) *available at* [http://www.cidh.oas.org/women/access07/chap2.htm#\\_ftnref211](http://www.cidh.oas.org/women/access07/chap2.htm#_ftnref211); UNITED NATIONS POPULATION

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FUND (UNFPA), *Paraguay: Country Assessment on Violence against Women*, 44-45 (last accessed 6/22/15), available at <http://www.un.org/womenwatch/ianwge/taskforces/vaw/Paraguay.pdf>.

<sup>xxxviii</sup> 17 of 46 of new recommendations and 31 of 73 in progress recommendations. *Report of the Working Group on the Universal Periodic Review: Paraguay*, Human Rights Council (17<sup>th</sup> Sess.) U.N. Doc. A/HRC/17/18 (2011) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/123/44/PDF/G1112344.pdf?OpenElement>.

<sup>xxxix</sup> ICCPR, *supra* note 14, Article 6.

<sup>xli</sup> CRC, *supra* note 17, Article 6.

<sup>xlii</sup> CEDAW, *supra* note 16, Article 12.

<sup>xliii</sup> CRC, *supra* note 17, Article 24.

<sup>xliiii</sup> Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention*, (47<sup>th</sup> Sess.) U.N. Doc CAT/C/PRY/CO/4-6 para. 22 (2011).

<sup>xliv</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Fourth Periodic Report of Paraguay*, U.N. Doc. E/C.12/PRY/CO/4 para. 29 (2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/060/11/PDF/G1506011.pdf?OpenElement>.

<sup>xlv</sup> CAT, *supra* note 18, Article 1.

<sup>xlvi</sup> ICCPR, *supra* note 14, Article 7.

<sup>xlvii</sup> CRC

<sup>xlviii</sup> CAT, *supra* note 18, Article 1.

<sup>xlix</sup> *K.L v. Peru*, Human Rights Committee, Comm'n No. 1153.2003 (2005), available at <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/KL%20HRC%20final%20decision.pdf>.

<sup>1</sup> Committee on Civil and Political Rights, *General Comment No. 28*, UN Doc. CCPR/C/21/Rev.1/Add.10, para 11.

<sup>ii</sup> Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.