



Bolivia: Will new legislation criminalize missionary activity?

Concerns about religious freedom

Dennis P. Petri

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Abstract

In Bolivia, an ambiguous provision in the new Criminal Code, that could be interpreted to criminalize missionary activity, caused widespread commotion, particularly among Christian ministers. Considering Bolivia's poor track record in terms of religious freedom, this commotion is understandable. However, the concerns about the new Criminal Code seem only partially justified. Provided the ambiguity of its wording is satisfactorily addressed, this legal provision should not be an immediate source of alarm. After intense protests from various civil society groups, Bolivia's President, Evo Morales, announced he will abrogate the law, but it remains unclear whether this will really happen and if this means the ambiguous provision will be removed. It would require further research to determine whether the ambiguity of this norm was intentional.

1. Widespread commotion among Christian ministers about article 88 of the new Criminal Code

On 14 December 2017, the Asamblea Legislativa Plurinacional de Bolivia [Plurinational Legislative Assembly of Bolivia], Bolivia's Parliament, adopted a new *Código del Sistema Penal* [Criminal Code]. In article 88, subsection I, of this law, which is concerned with human

trafficking, the “Recruitment of persons for their participation in armed conflicts or in religious organizations or cults” is mentioned in a list of punishable offences which includes crimes such as organ extraction, forced labor or sexual exploitation. Any person engaging directly or indirectly in any such activities, the law states, is liable to imprisonment for seven to twelve years and economic reparation.¹

This provision caused widespread commotion among Christian ministers and missionaries in Bolivia, who understood it as a criminalization of missionary activity, and more generally of any type of ministerial work, such as inviting someone to attend a church service or preaching a religious message.² One Evangelical Pastor asked: “Does this law mean that we will be denounced when we take a person or a group to a retreat? Will I no longer be able to go out to preach the gospel?”³

Both Protestant⁴ and Catholic⁵ leaders have denounced the legislation, requesting it to be repealed. By linking the crime of human trafficking to religious activity, the provision is viewed by many analysts as being in contradiction with the constitutional right to religious freedom.⁶ The law is perceived to equate the engagement in armed conflict and other criminal activities with the involvement in religious organizations.⁷ It is indeed strange for religious organizations to be mentioned on the same line as armed conflict, in a legislative article that deals with human trafficking (which Bolivian law conceives very broadly to include cooptation of persons against their will).⁸ This raises the suspicion that its aim is to place restrictions on religious freedom.⁹

One of the focal points of the controversy is the interpretation of the concept of “recruitment”, which the law does not define.¹⁰ Protestant leaders are particularly concerned that “evangelism” could be labeled as “recruitment”: “For us, recruitment is evangelizing”, said the President of

¹ Law No. 1005 of 12/15/2018, Penal System Code, *Derechoteca*, 01/10/2018. Retrieved from <http://www.derechoteca.com/gacetabolivia/ley-no-1005-del-15-de-diciembre-de-2017/>

² “Los Hechos: Bolivia abriría la puerta a penalizar la predicación del evangelio”, *Coalición por el Evangelio*, 01/09/2018. Retrieved from <https://www.coalicionporelevangelio.org/articulo/los-hechos-bolivia-abriria-la-puerta-penalizar-la-predicacion-del-evangelio/>.

³ “Evo Morales amenaza con la cárcel por predicar el Evangelio”, *Protestante Digital*, 01/08/2018. Retrieved from http://protestantedigital.com/internacional/43780/Evo_Morales_amenaza_con_la_carcel_por_predicar_el_Evangelio

⁴ “De rodillas oran por Bolivia”, *El Diario*, 01/09/2018. Retrieved from http://www.eldiario.net/noticias/2018/2018_01/nt180109/nacional.php?n=40&-de-rodillas-oran-por-bolivia.

⁵ “Iglesia Católica dice que el Código Penal está ‘hecho a la medida del poder’ y pide su abrogación”, *La Razón*, 01/09/2018. Retrieved from http://www.la-razon.com/nacional/Demanda-Iglesia-abrogacion-Codigo-Penal-hecha-medida-poder-Evo_0_2853314679.html.

⁶ “Iglesia alerta sobre riesgo de penalización de actividad misional”, *El Mundo*, 01/18/2018. Retrieved from <http://elmundo.com.bo/web2/index.php/noticias/index?id=90328>.

⁷ “Nota pública sobre el nuevo Código de Sistema Penal de Bolivia”, *Federación Interamericana de Juristas Cristianos*, 01/11/2018. Retrieved from <http://www.fiajc.org/nota-publica-sobre-el-nuevo-codigo-de-sistema-penal-de-bolivia/>.

⁸ “Werden Christen jetzt kriminalisiert?”, *ERF Plus*, 01/19/2018. Retrieved from <https://www.youtube.com/watch?v=Zrpmzv1NetY>.

⁹ “Los Hechos: Bolivia abriría la puerta a penalizar la predicación del evangelio”, *Coalición por el Evangelio*, 01/09/2018. Retrieved from <https://www.coalicionporelevangelio.org/articulo/los-hechos-bolivia-abriria-la-puerta-penalizar-la-predicacion-del-evangelio/>.

¹⁰ “Los Hechos: Bolivia abriría la puerta a penalizar la predicación del evangelio”, *Coalición por el Evangelio*, 01/09/2018. Retrieved from <https://www.coalicionporelevangelio.org/articulo/los-hechos-bolivia-abriria-la-puerta-penalizar-la-predicacion-del-evangelio/>.

Iglesias Evangélicas Unidas de La Paz, a Protestant network.¹¹ A legal advisor to the Bolivian Episcopal Conference said: “An interpretation that could be given to this Code is that the action of inviting to receive training in seminaries could be understood as a form of recruitment.”¹² Another spokesperson of the Bolivian Episcopal Conference complained that “the manifest ambiguity [of the legal provision] clearly violates religious freedom.”¹³

The new Criminal Code is controversial on other fronts as well, and has led to large expressions of rejection. Among other things, the Code also contains provisions that upset other social groups such as doctors, transportation workers and journalists. As the Code would enter into force at the time of the 2019 general elections, many are concerned that any opposition voices would effectively be silenced.¹⁴ Conservative Christians are also worried about article 157, subsection 5, of the Code, which broadens the possibilities for abortion.¹⁵

2. Understandable concern: Bolivia’s poor track record in terms of religious freedom.

To properly assess the scope of the outcry about the Criminal Code it is necessary to obtain an accurate understanding of the broader policies of the Bolivian government toward religion. Beyond this legal provision there are a number of other reasons to be concerned about religious freedom in Bolivia.

For a number of years, Bolivia has been included on the “Persecution Watch List” of Open Doors International, which presents a group of countries that is not part of the World Watch List Top 50, but where serious degrees of hostility against Christians and churches are prevalent. One of the reasons for the inclusion of Bolivia on this list is the controversial “Law 351 for Granting of Juridical Personality to Churches and Religious Groups” which was passed in March 2013 in Bolivia, causing the country’s Christian community to worry.¹⁶

This law requires all churches and not-for-profit organizations to re-register their legal charters with the government. It involves supplying detailed data on membership, financial activity and organizational leadership. The law also stipulates a standardized administrative structure for all “religious organizations” which church groups must adopt. Churches failing to complete the registration within a stipulated two-year period would lose their legal right to exist.

¹¹ “Evangélicos oran de rodillas y demandan revisar el artículo 88”, *Página Siete*, 01/08/2018. Retrieved from <http://www.paginasiete.bo/nacional/2018/1/9/evangelicos-oran-rodillas-demandan-revisar-articulo-165903.html>.

¹² “Iglesia alerta sobre riesgo de penalización de actividad misional”, *El Mundo*, 01/18/2018. Retrieved from <http://elmundo.com.bo/web2/index.php/noticias/index?id=90328>.

¹³ “Iglesia Católica dice que el Código Penal está ‘hecho a la medida del poder’ y pide su abrogación”, *La Razón*, 01/09/2018. Retrieved from http://www.la-razon.com/nacional/Demanda-Iglesia-abrogacion-Codigo-Penal-hecha-medida-poder-Evo_0_2853314679.html.

¹⁴ “Werden Christen jetzt kriminalisiert?”, *ERF Plus*, 01/19/2018. Retrieved from <https://www.youtube.com/watch?v=Zrpmzv1NetY>.

¹⁵ “Conozca los 13 artículos del Código Penal que causan polémica y movilizan a sectores”, *Correo del Sur*, 01/08/2018. Retrieved from http://correodelsur.com/politica/20180108_conozca-los-13-articulos-del-codigo-penal-que-causan-polemica-y-movilizan-a-sectores.html.

¹⁶ Open Doors International (2015) *World Watch List 2015*.

According to a reporter based in Bolivia who requested to remain anonymous, “Protestant church leaders assert that, taken together, the new measures grant the government regulatory power over the internal affairs of churches to the point of defining what is, and is not, a church”¹⁷, thus restricting religious freedom. Law 351 imposes high taxes on both Catholic and Protestant Churches, leading many to fear their associations will end up dissolved as a result of the pressure to which the Morales government subjects them.¹⁸

3. No immediate reason for alarm

The concerns about article 88, subsection 1, of the new Criminal Code of Bolivia, as voiced by confessional leaders, are only partly justified. The first aspect that must be taken into consideration is the context of this legal provision, which are crimes related to human trafficking. There is no direct reason to assume it criminalizes all forms of religious activity. On the contrary, when observing the context of this legal provision, one can deduce that it only punishes criminal offences involving recruitment into religious groups,¹⁹ such as, for example, acts of psychological manipulation, forced community service or extortions of various nature that take place in some religious sects, or cases in which religious organizations are used to camouflage illicit practices. This kind of recruitment is very different from simply inviting someone to attend a church service.

In other words, the obvious interpretation of this norm is that the recruitment of a person into a religious organization or cult will be considered a crime if it has been carried out under the conditions of the crime of trafficking. That is, without consent or poorly informed consent, by force and for the purpose of exploitation.

Secondly, the Criminal Code, just like any other law or regulation, is subordinate to Bolivia’s national Constitution, which, in its article 4, protects religious freedom.²⁰ If there is a contradiction between the two norms, the Constitution prevails. Moreover, religious freedom is protected by several binding international treaties to which Bolivia is signatory, including article 12 of the American Convention on Human Rights²¹ and article 18 of the International Covenant on Civil and Political Rights.²² In addition, the UN Human Rights Committee in its General Comment 22 states that “[freedom of religion] cannot be derogated from, even in time of public

¹⁷ Personal interview (2015).

¹⁸ “Evo Morales amenaza con la cárcel por predicar el Evangelio”, *Protestante Digital*, 01/08/2018. Retrieved from http://protestantedigital.com/internacional/43780/Evo_Morales_amenaza_con_la_carcel_por_predicar_el_Evangelio

¹⁹ “Bolivia y la “persecución religiosa”, *Lupa Protestante*, 01/12/2018. Retrieved from <http://www.lupaprotestante.com/blog/bolivia-la-persecucion-religiosa/>.

²⁰ Constituent Assembly of Bolivia, New Political Constitution of the State, 2008. Retrieved from <http://pdba.georgetown.edu/Constitutions/Bolivia/constitucion2009.pdf>.

²¹ Organization of American State, (1969), *American Convention on Human Rights*. Retrieved from http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm

²² Office of the United Nations High Commissioner for Human Rights, (1966), International Covenant on Civil and Political Rights. Retrieved from <http://www.ohchr.org/SP/ProfessionalInterest/Pages/CCPR.aspx>.

emergency.”²³ Thus, at least in theory, article 88, subsection 1, of the Criminal Code, could never be used to restrict religious freedom.

Both the American Convention on Human Rights and the International Covenant on Civil and Political Rights admit that religious freedom may only be subject to limitations when this is necessary “to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” A case can be made that involuntary and coerced recruitment into a religious sect could justify such a limitation. If this is the case, it must be made explicit that this is what article 88, subsection 1, of the Criminal Code aims at.

4. Opportunity to reverse the legal provision?

It should be borne in mind that the adopted Criminal Code will only enter into force within 18 months,²⁴ which means that there is still ample opportunity to advocate for any amendments. In fact, the Speakers of the two Houses of the Bolivian Parliament have announced that they welcome comments and observations about any contentious article of the Criminal Code, which could lead to its “modification or improvement.”²⁵

It is of strategic relevance for Christian leaders who are concerned by the Criminal Code to take advantage of this opportunity to express their objections and to propose amendments to this norm.²⁶ Specifically, the ambiguity of the wording of article 88 could easily be taken away by a change in wording that clarifies without any margin for any alternative interpretation that this provision applies only to criminal offences related to human trafficking that could take place inside religious groups. In addition, the concepts of “recruitment” and “religious organizations and cults” should clearly be defined and their boundaries be established.

In sum, although the legal provision, is not an immediate reason for concern, its ambiguous wording must nevertheless be addressed, because ambiguity is always a source of legal insecurity. Ideally, this should be done through the consultation process of civil society organizations the Bolivian Parliament called for, but if this does not lead to a satisfactory amendment of norm, it will need to be seen how the Judge chooses to interpret it. Even then, there should not be any room for alternative interpretations because of the reasons exposed above.

²³ Human Rights Committee, (1994), General Comment 22, Article 18 (Session 48, 1993). Compilation of general comments and general recommendations adopted by human rights treaty bodies, U.N. Doc. HRI / GEN / 1 / Rev.1 at 35. Retrieved from <http://hrlibrary.umn.edu/gencomm/hrcom22.htm>.

²⁴ “Nuevo Código Penal entrará en vigencia luego de 18 meses de aprobarse”, *El Deber*, 11/10/2017. Retrieved from <https://www.eldeber.com.bo/bolivia/Nuevo-Codigo-Penal-entrara-en-vigencia-luego-de-18-meses-de-aprobarse-20171110-0019.html>.

²⁵ “La ALP elabora una metodología para atender a todos los sectores que tengan observaciones a artículos del Código del Sistema Penal”, Cámara de Diputados de la Asamblea Plurinacional de Bolivia, 01/15/2018. Retrieved from <http://www.diputados.bo/prensa/noticias/la-alp-elabora-una-metodolog%C3%ADa-para-atender-todos-los-sectores-que-tengan>.

²⁶ In addition to article 88, the section in the Criminal Code concerning the crime of abortion could also pose a real threat to Christian health professionals. Religious actors should also consider this when they propose amendments to the norm.

However, in a prejudiced society, arbitrary interpretations cannot be ruled out completely and could therefore endanger evangelistic activities. A reliable source in Bolivia says:

“The question here for most Bolivians is not what the text of the Code says, nor where it contradicts the Constitution. People have a deep distrust of Evo [Morales] and his Vice-President, Álvaro García Linares. They have a propensity of re-interpreting or ignoring constitutional guarantees when they go against their agenda. Because Evo has stacked the courts with his judges who never seem to disagree with the President on any constitutional issue (such as Law 351 and his eligibility for re-election), nobody believes he will play honest and fair with this new law.

Plus, Evo keeps harping on making Bolivia ‘another Cuba’ and Garcia Linares recently described himself on a CNN interview as ‘Total Communist.’ We know how things operate there: the government makes up ridiculously irrelevant or complex ‘crimes’ that most citizens can easily commit in their ordinary business dealings or conversations, then arrests and jails those who seem to be enemies. This Criminal Code looks like a move in the same direction.”²⁷

At writing, Bolivia’s President Evo Morales has announced he has ordered Parliament to abrogate the new Criminal Code, in response to widespread protests and strikes against it. In practical terms, this means the law will be discussed again in both Houses of Parliament for another year, offering civil society organizations further opportunities to voice their concerns.

However, caused in part by contradictory statements made by Bolivia’s Government, a large amount of uncertainty remains concerning the current status of the law and the real possibilities for the law to be amended in the future. Many civil society groups who protested against the law are waiting to see if Evo Morales and Parliament are serious about withdrawing this law and devising another with input from jurists, civic groups, professional guilds and other groups that should be involved. Evo Morales has already declared that he does not expect the current version of the Criminal Code to change substantially.²⁸ It is therefore unclear whether the legislators will be willing to amend the article that so much worries religious actors.

5. Intentional ambiguity?

Having established the main flaw of the norm – its ambiguity –, it is interesting to explore possible reasons for it. Different scenarios can be imagined. In one scenario, the ambiguity could have been a mistake – a simple oversight or slip-up –, which can easily be corrected when audited by an expert in legislative technique.²⁹ Because of its apparent contradiction with article 4 of the Constitution, it would almost certainly be identified through the control of

²⁷ Personal interview (2018).

²⁸ “Evo aboga ley penal y pide a la ALP una nueva norma consensuada”, *La Prensa*, 01/22/2018. Retrieved from <http://www.laprensa.com.bo/nacional/20180122/evo-aboga-ley-penal-pide-la-alp-nueva-norma-consensuada>.

²⁹ Petri Dennis P. & Pastor José A. (2017) *Aprendamos a Incidir. Estrategias y herramientas para una incidencia política efectiva*, Plataforma C. Retrieved from www.aprendamosincidir.com.

constitutionality³⁰ by the Constitutional Tribunal.³¹ However, because article 88, subsection I, of the Criminal Code creates such a degree of ambiguity this scenario seems unlikely. As any student of criminal law should be aware, criminal law, by design, needs to be very precise and leave as little room as possible for interpretation.³²

The rejection of the former scenario leads to explore a scenario in which the ambiguity was actually deliberate, i.e. intentionally aiming at creating insecurity for religious organizations, as some critics have contended. A possible basis for this hypothesis is not only the increasingly hostile environment toward religion since Evo Morales' became Bolivia's President in 2006 but also the fact that article 88 of the new Criminal Code almost literally copies the text of article 281 bis of the former Criminal Code (reformed in 2012),³³ but with some notable changes.

In the 2012 revision of the former Criminal Code, “the recruitment of people to participate in armed conflicts or religious sects” was added to the list of punishable crimes related to human trafficking.³⁴ Notice the difference with the new Criminal Code which speaks of “religious organizations and cults”, instead of “religious sects.”³⁵ However the term “religious sect” may be defined, it is undeniably much more limited than the broader concept of “religious organization.”

Moreover, the former Criminal Code is very specific in its description of the crime of human trafficking (“who by any means of deception, coercion, threat, use of force and / or a situation of vulnerability even with the consent of the victim, by himself or by a third person induces, performs or favors the transfer or recruitment, deprivation of freedom, shelter or reception of human beings, inside or outside the national territory”), in contrast with the new Criminal Code which simply refers to the crime of human trafficking as “the person who, by himself or by third parties, captures, transports, transfers, deprives of liberty, receives or receives persons with any of the following purposes.” Again, note the difference.

Notwithstanding the likelihood of the former scenario, there is yet another scenario that deserves to be mentioned. The ambiguity of the wording of article 88, subsection I, in the new Criminal Code could perhaps also be explained by the increasing – and worrying – “religious illiteracy” in postmodern societies, i.e. a growing misunderstanding of what religion is and what role it plays in society, including the nature of the relation between religion and politics and the practical

³⁰ Rivera Santiváñez José A. (2012). “El Estatuto Jurídico del Juez Constitucional en Bolivia”. In *Estatuto jurídico del juez constitucional en América Latina y Europa; Libro homenaje al doctor Jorge Carpizo*, pp. 259-291, Institute of Legal Research, National Autonomous University of Mexico. Retrieved from <https://archivos.juridicas.unam.mx/www/bjv/libros/7/3166/47.pdf>.

³¹ It must be observed that the Constitutional Tribunal can hardly be considered an independent institution in Bolivia's present political context.

³² Pérez Bourbon Héctor (2007) *Manual de Técnica Legislativa*, Buenos Aires, Konrad Adenauer Stiftung, Retrieved from <http://www.kas.de/wf/doc/17520-1442-4-30.pdf>.

³³ Plurinational Legislative Assembly, Comprehensive Law Against Human Trafficking and Trafficking, Law 263, 07/31/2012. Retrieved from <https://bolivia.infoleyes.com/norma/3946/ley-integral-contra-la-trata-y-tr%C3%A1fico-de-personas-263>.

³⁴ The adoption of the revisions to the Criminal Code in 2012 did not trigger any controversy that is any way comparable to the present controversy surrounding the new Criminal Code.

³⁵ “Evangélicos oran de rodillas y demandan revisar el artículo 88”, *Página Siete*, 01/08/2018. Retrieved from <http://www.paginasiete.bo/nacional/2018/1/9/evangelicos-oran-rodillas-demandan-revisar-articulo-165903.html>.

meaning of the concept of religious freedom (Patterson 2011³⁶; Prothero 2007³⁷; Dinham & Francis 2015³⁸; Petri forthcoming³⁹). This could explain why the authors of the Criminal Code may have been unable to distinguish missionary activity from, for example, psychological manipulation, and thus simply amalgam the two without differentiating between legitimate expressions of religious expression and criminal offenses.⁴⁰

The difference between the wordings of the two versions of the Code and the religious illiteracy hypothesis are not, in themselves, sufficient proof to sustain any of the proposed scenarios. Before jumping to conclusions, it is necessary to analyze the parliamentary records when this article was debated and interview participating legislative actors.

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³⁶ Patterson Eric, (2011) *Politics in a Religious World. Building a Religiously Literate U.S. Foreign Policy*, Continuum International Publishing Group, New York.

³⁷ Prothero Stephen (2007) *Religious Literacy. What Every American Needs to Know – and Doesn’t*, HarperCollins, New York.

³⁸ Dinham Adam & Francis Matthew (ed.) (2015), *Religious Literacy in Policy and Practice*, Policy Press, Bristol

³⁹ Petri Dennis P. (2019). *The Specific Vulnerability of Religious Minorities*, PhD thesis at VU University, forthcoming

⁴⁰ In a similar case, a law was adopted by a provincial legislature in Argentina prohibiting “psychological manipulation” in churches. Cf. “Argentina’s fight to hold onto religious freedom”, *World Watch Monitor*, 05/05/2014, <https://www.worldwatchmonitor.org/2014/05/argentinas-fight-to-hold-onto-religious-freedom/>.

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Annex: Article 88 of the new Criminal Code of Bolivia

5.1 ARTÍCULO 88. (TRATA DE PERSONAS).

I. Será sancionada con prisión de siete (7) a doce (12) años y reparación económica la persona que, por sí o por terceros, capte, transporte, traslade, prive de libertad, acoja o reciba personas con alguno de los siguientes fines:

1. Venta u otros actos de disposición del ser humano;
2. Extracción, venta o disposición ilícita de fluidos o líquidos corporales, células, órganos o tejidos humanos;
3. Reducción a esclavitud bajo cualquier modalidad;
4. Explotación laboral, trabajo forzoso o cualquier forma de servidumbre;
5. Servidumbre costumbrista;
6. Explotación sexual o prostitución forzada;
7. Embarazo forzado;
8. Turismo pornográfico o sexual;
9. Mendicidad forzada;
10. Matrimonio servil, unión libre o de hecho servil;
11. Reclutamiento de personas para su participación en conflictos armados o en organizaciones religiosas o de culto;
12. Empleo en actividades delictivas;
13. Realización ilícita de investigaciones biomédicas; o,
14. Guarda o adopciones ilegales.

II. En igual sanción incurrirá quien, por cuenta propia o por terceros, encubierta u ostensiblemente, financie, posea o administre casas, locales o establecimientos donde se facilite, contribuya o promueva actividades para los fines ilícitos descritos en el Parágrafo precedente.

III. La sanción será agravada a prisión de nueve (9) a catorce (14) años, reparación económica y, en su caso, inhabilitación, cuando concurra alguna de las siguientes circunstancias:

1. Engaño, intimidación, coacción, amenaza, uso de la fuerza, abuso de la situación de dependencia, vulnerabilidad o estado de necesidad de la víctima;
2. Concesión o recepción de pagos o beneficios para obtener el consentimiento de una persona que tenga autoridad sobre otra;
3. La persona autora sea cónyuge, conviviente o sostenga con la víctima una relación análoga de afectividad, tenga parentesco con ésta hasta el cuarto grado de consanguinidad o segundo de afinidad, tenga a su cargo su tutela, guarda, custodia, curatela o educación, o tenga respecto de ella una posición de responsabilidad o confianza;
4. La persona autora sea servidora o servidor público, goce de inmunidad diplomática o sea profesional médico o afín;
5. Se utilicen sustancias estupefacientes o psicotrópicas, medicamentos o armas;
6. La víctima sea mujer embarazada, persona con discapacidad o enfermedad grave;
7. La persona autora sea parte de una organización criminal;
8. Se trate de víctimas múltiples; o,
9. Como consecuencia del hecho, se contagie a la víctima una enfermedad de transmisión sexual incurable o se le produzca una lesión gravísima que ponga en peligro su vida, integridad o seguridad.