



OHCHR REGISTRY

11 JUN 2012

Recipients: HR Committee
K. Fox (Encl.)



May 8, 2012

Secretariat of the Human Rights Committee
Palais des Nations
1211 Geneva
Switzerland

Subject: Alternative report regarding human rights violations of Peruvian women resulting from the lack of a national protocol for ensuring access to therapeutic abortion services, for consideration on the 107th Session of the Human Rights Committee.

Distinguished Members of the Committee:

CLADEM (*Comité de América Latina y El Caribe para la Defensa de los Derechos de la Mujer*) and DEMUS (*Estudio para la Defensa de los Derechos de la Mujer*) wish to submit an alternative report regarding the lack of a national protocol for ensuring access to therapeutic abortion services, which results in violations to the rights of women in Peru.

1. The Issue

Therapeutic abortion, which is performed to save the life or protect the health of a gestating woman, has been legal in Peru since 1924, as per article 119 of the Criminal Code of Peru: any abortion performed by health care personnel with consent of the pregnant woman is not punishable if it is the only means available for saving the life of the woman or preventing severe and permanent damage to her health.

The State of Peru has failed to adopt a protocol for regulating therapeutic abortion and to adopt measures for ensuring that legal –high quality– abortion services are sufficiently available, physically and financially accessible, ethically respectful from a medical point of view, and culturally appropriate.

The health care protocol would determine when such pregnancies should be terminated, by whom, following which method or approach, and where women can turn if this right is denied.



This nationwide norm regulating legal abortion must contemplate situations that not only severely and permanently affect women's physical health, but those that affect their mental health as well.¹

The lack of this protocol has a severe impact on the health and life of Peruvian women. According to statistics by the Ministry of Health (MINSA) of Peru, between the years 2005 and 2008, 121 women were forced to carry anencephalic fetuses to term through the denial of therapeutic abortion services.² In addition, the Medical Association of Peru has stated that 200 women die every year from lack of access to legal abortion.³

Based on 2009 data issued by MINSA, Peru has the second highest maternal mortality rate in all of South America. Reports show that 71% of maternal mortalities derive from direct causes (hemorrhaging, infections, hypertension, among others), while 29% derive from indirect causes. Indirect causes of maternal mortality relate to lack of access to therapeutic abortion services.

2. The Human Right Committee's Ruling in the KL vs. Peru Case-Notification No. 1153/2003

Because of the inexistence of this norm for ensuring access to legal abortion, Peruvian women carry high-risk pregnancies to term; as was the case of a teenage girl whose initials are K.L. and whose case against the State of Peru⁴ was decided by the United Nations Human Rights Committee in October 2005. In the year 2001, K.L. was carrying an anencephalic fetus and was denied access to therapeutic abortion services by the Public Hospital of Lima despite the fact that her gynecologist had indicated the need for abortion and that the risk of severe and permanent damage to her physical and mental health had been established.

¹In its Report titled in Spanish "*Salud mental: nuevos conocimientos, nuevas esperanzas*," page 5, the World Health Organization (WHO) stresses that the definition of mental health comprises everything from "subjective wellbeing" to "autonomy" and "self-fulfillment," all of which are intricately related to the full exercise of sexual and reproductive rights as well as with compliance to a life plan which, in the case of women, includes wanted maternity.

²Data submitted by the Ministry of Health through Official Report 360-2006-OGAJ/MINSA to the Executive Secretary of the National Human Rights Commission of the Ministry of Justice (February 21, 2006) in response to data request No. 10-000441 issued by DEMUS as per the Transparency Act of April 2010. According to projections by PROMSEX (*Centro de Promoción y Defensa de Derechos Sexuales y Reproductivos*), this number could be even higher. If pregnancies with other abnormalities that are incompatible with sustaining life after birth are also included, this number reaches 945, according to a Report by Human Rights Watch (2010).

³"Perú 21" Newspaper, November 10, 2011. Statement by the president of the Reproductive Health Committee of the *Medical Association of Peru*.

⁴K.L. vs. Peru-Notification No. 1153/2003, approved by the United Nations Human Rights Committee on October 24, 2005.



In its ruling,⁵ the Committee highlighted that failure to provide this type of service constitutes a violation of the right to be free from cruel, inhumane, and degrading treatment, as well as of the right to privacy, to special treatment on the basis of being a minor, and of the right to effective remedy. Therefore, the Committee found that the State of Peru “has an obligation to adopt measures for preventing similar violations in the future” as well as “an obligation to provide the plaintiff with effective remedy, including compensation.”⁶ Therefore, the State of Peru is urged to publish this ruling.

To date, the State of Peru has failed to comply with these obligations. This is evident in the case of a (13 year-old) teenage girl whose initials are L.C.⁷ and who became pregnant as a result of rape after which she tried to kill herself in 2007 by jumping off the roof of her home. After being transferred to a public hospital, scheduled surgery was canceled when the pregnancy was confirmed. Even though the teenage girl's mother formally requested therapeutic abortion in order to perform necessary surgery for treating her daughter's spinal injuries, this request was denied. The surgery was finally performed when the girl suffered a miscarriage, almost three and half months after surgery had been indicated as necessary treatment. L.C. comes from a poor family, which has hindered her possibility of receiving the intensive rehabilitation care she needs.⁸

Questions

We request that the Human Rights Committee consider asking the State of Peru the following questions:

1. What current or future measures is Peru adopting to ensure therapeutic abortion as per law? Particularly, what current measures have been adopted for issuing a domestic protocol for legal abortion care that includes clear mechanisms for access to the procedure, consistent with a broader interpretation of its scope in terms of protecting both the physical as well as mental health of women?

⁵ The ruling of the United Nations Human Rights Committee was the first to address the issue of abortion within the international human rights system.

⁶ Human Rights Committee. CCPR/C/85/D/1153/2003, paragraph 8.

⁷ The case was submitted to the CEDAW Committee who issued its ruling in L.C. vs. Peru-Notification No. 22/2009.

⁸ In its Ruling dated October 2011, the CEDAW Committee established that the State of Peru violated L.C.'s right to health while failing to comply with its obligation to modify discriminatory socio-cultural patterns and adopt all appropriate measures for ensuring the protection of women against discrimination, as well as its obligation to modify or repeal any laws that are discriminatory against women. The Committee found that the State of Peru had violated the rights of L.C. by denying her therapeutic abortion and issued recommendations including: “To establish a mechanism for effective access to therapeutic abortion under conditions that protect the physical and mental health of women and prevent similar rights violations in the future,” as well as “to examine the restrictive interpretation of therapeutic abortion.”



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2. What current or future measures is the Peruvian State adopting to ensure adequate public funds for the coverage, quality, and cultural pertinence of legal abortion services?
3. What current or future measures is the State of Peru adopting or planning to adopt for obtaining efficient and accurate data on therapeutic abortion on a national and regional level?
4. Why has Peru failed to comply with the recommendations issued by the Human Rights Committee in the K.L. case and by the Committee on the Elimination of Discrimination against Women in the L.C. case?

Recommendations

We hereby suggest that the Committee consider issuing the following recommendations for the State of Peru:

1. To urge the State of Peru to adopt a national protocol for ensuring access to therapeutic abortion.
2. To urge the State of Peru to comply with the recommendations issued by the Human Rights Committee in the K.L. case and by the Committee on the Elimination of Discrimination against Women in the L.C. case.
3. To urge the State of Peru to adopt efficient and reliable therapeutic abortion-related data collection systems and to ensure sufficient funds for the implementation of strategies aimed at ensuring access to this legal abortion service.
4. To urge the State of Peru to advance toward the creation of a comprehensive sexual and reproductive health service system with national coverage that ensures access to quality and culturally pertinent care to the entire population, free from all forms of discrimination, including therapeutic abortion services.
5. To urge the State of Peru to adequately institute and fund a series of interventions and policies for ensuring the accessibility, availability, pertinence, and quality of therapeutic abortion services.
6. To urge the State of Peru to review its law in order to legalize abortion under the grounds of rape or sexual abuse.