March 15, 2012

Secretary, Committee on Economic, Social and Cultural Rights
UNOG-OHCHR
Palais des Nations
1211 Geneva
Switzerland

Subject: Supplementary information on the right to reproductive health in Peru for consideration in the 48th Session of the Committee on Economic, Social and Cultural Rights, scheduled for April 30 to May 18 in Geneva.

Distinguished Committee Members:

The Center for Reproductive Rights (*Centro de Derechos Reproductivos*), Center for the Promotion and Defense of Sexual and Reproductive Rights (*Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos*, PROMSEX), Studies for the Defense of Women's Rights (*Estudio para la Defensa de los Derechos de la Mujer*, DEMUS), and Planned Parenthood Federation of America (PPFA) would like to provide complementary information to the alternative report on sexual and reproductive health that was jointly submitted with other organizations[1] for the 46th Session of the Committee, at which time the Working Group initially analyzed the State of Peru's report.

Our preliminary report provided information on six issues regarding gender, status, sexual orientation, and age-based discrimination in the exercise of the right to health; these issues are: maternal mortality, abortion, contraception, HIV, access to health and sexual orientation, and access to health for teens. We would like to emphasize that the information submitted in that report is still applicable and we believe that it is paramount that this Committee keeps all these factors in mind when reviewing the report of the Peruvian State. Moreover, in this report, we would like to include additional information on two issues we deem crucial for the Peruvian State's compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The first of these issues is compliance with the State's obligation to guarantee women the right to health without discrimination, particularly to ensure the provision of legal reproductive health services, such as therapeutic abortion. The second issue is the importance of implementing decisions issued by United Nations human

[1] Catholics for Choice (*Católicas por el Derecho a Decidir*), Peru; Center for Popular Research and Promotion (*Centro de Investigación y Promoción Popular*, CENDIPP), Latin American and Carribbean Committee for the Defense of Women's Rights (*Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer*, CLADEM), Peru; Institute for the Study of Health, Sexuality and Human Development (*Instituto de Estudios en Salud, Sexualidad y Desarrollo Humano*, IESSDEH), Independent Lesbian Socialist Feminists (*Lesbianas Independientes Feministas Socialistas*, LIFS); Bureau for Monitoring Sexual and Reproductive Rights (*Mesa de Vigilancia de los Derechos Sexuales y Reproductivos*); and Manuela Ramos Movement (Movimiento Manuela Ramos).

rights organs, particularly the Human Rights Committee and the Committee for the Elimination of Discrimination against Women, in the context of guaranteeing all women the right to health without discrimination.

1. **The right to access reproductive health services without discrimination (articles 2, 3, and 12): The guarantee of access to legal abortion.**

Articles 2, 3, and 12 of the ICESCR protect the right to enjoy the highest attainable standard of health free from all forms of discrimination. Access to legal abortion services is intricately related to gender-based discrimination, as women are the only ones who require this reproductive health service. The right to be free from discrimination and the right to equality in the enjoyment of sexual and reproductive health both require that certain services, goods, and conditions are available to fulfill the specific needs of women. The above includes the need to pay special attention to health-related policies and to allocate resources for fulfilling the needs of women.[2]

In accordance with the ICESCR, States must create the conditions necessary to ensure medical attention and services to all in case of illness. This provision has been interpreted and developed in accordance with General Comment No. 14 by the Committee on Economic, Social and Cultural Rights (ESCR Committee), which highlights the duty of States to offer a wide range of affordable, high-quality health services that include sexual and reproductive health services.[3] Additionally, this General Comment includes the fundamental principle of freedom from gender-based discrimination in the provision of health services and recommends adopting a gender-based perspective when designing health-related policies and programs.[4]

Despite this standard, Peru has not implemented any measures to ensure access to legal abortion services, which particularly affects women and teens with limited financial resources. In Peru, therapeutic abortion has been legal since 1924.[5] However, despite the time that has elapsed and the different cases and recommendations that reveal the need for implementing mechanisms to ensure access to legal abortion services, to date, there are not any domestic-level regulations for determining the conditions under which therapeutic abortions can be performed, thus limiting Peruvian women's access to health when such procedures are required and posing a risk to their lives.

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[2] Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation 24: Women and Health*, 17, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

[3] Committee on Economic, Social and Cultural Rights (ESCR Committee), *General Comment No. 14*: *The right to the highest attainable standard of health*, 14, U.N. Doc. E/C.12/2000/4 (2000).

[4] *Id.* 18-21.

[5] Criminal Code (Peru), Article 19 ("Article 119: Therapeutic Abortion. Any abortion carried out by a physician with consent from the pregnant woman or her legal representative, if applicable, is nonpunishable if it is the only means available for saving the pregnant woman's life or for preventing greater permanent damage to her health.") *available at* http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codpenal.htm&vid=Ciclope:CLPdemo.

Therapeutic abortion exists because is a result from a number of pregnancies that occur in women with prior health conditions which are aggravated by the pregnancy and, thus, pose a threat to the women (such is the case for women undergoing dialysis, or women with severe neurological lesions that worsen with pregnancy or malignant neoplasms that require surgery, radiation therapy or chemotherapy). The same occurs in cases in which the illness begins during the pregnancy, thus causing complications throughout the gestational period and posing a risk to the woman's life as well as her physical and mental health (such is the case with treatment-resistant hyperemesis gravidarum, chorioamnionitis, and anencephaly). These types of illnesses, combined with lack of access to legal abortion, contribute to the elevated maternal mortality rate observed in Peru. According to the Ministry of Health, in 2009, 29% of maternal deaths resulted from indirect causes –mainly illnesses that complicate pregnancies or are aggravated further by the pregnancy.[6] The Medical Board of Peru (*Colegio Médico del Perú*) has indicated that 200 Peruvian women die each year from lack of access to therapeutic abortion services.[7]

An investigation of abortion cases in four hospitals throughout Lima from 2007 to 2009 found that out of a total of 22,427 cases of abortion, 87 could be deemed therapeutic abortions, representing 0.39% of the total number of abortions. However, only 35 of these cases indicated with any precision the actual health grounds used for the termination of the pregnancy, while there was no mention of these grounds in the remaining 52 cases.[8]

The lack of clarity in terms of the right to access legal therapeutic abortion often leads women to seek clandestine, illegal, and unsafe abortions. Unsafe abortion is one of the five main causes of pregnancy-related deaths in Peru,[9] where one in every five women who undergoes an abortion is later hospitalized because of abortion-relation complications.[10] It is noteworthy that the risk of complications from unsafe abortion is higher in women who are poor than in women who are not poor.[11] According to a 2006 report, there are approximately 376,000 unsafe abortions in Peru each year.[12] In 2007, the General Departments of Health of the Ministry of Health (*Direcciones Generales de Salud del Ministerio de Salud*, MINSA), reported that 40,794 incomplete abortions had been treated at their facilities, but a 10% omission rate

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[6] Ministry of Health, *Domestic Sexual and Reproductive Health Strategy, Situation of maternal mortality* [slide].

[7] Dr. Miguel Gutiérrez, President of the High-Level Committee on Sexual and Reproductive Health (*Comité de Alto Nivel de Salud Sexual y Reproductiva*) of the Medical Board of Peru, Oral statement (Nov. 2011), *available at* http://peru21.pe/noticia/1331333/muertes-maternas-son-negligencia.

[8] PROMSEX, INTERRUPCIÓN TERAPÉUTICA DEL EMBARAZO POR CAUSALES DE SALUD 21-25 (2009), *available* at http://www.promsex.org/docs/Publicaciones/interrupcionterapeuticacausalesTavara.pdf

[9] GENERAL DEPARTMENT OF HEALTH, MINISTRY OF HEALTH, PERU, DOMESTIC SEXUAL AND REPRODUCTIVE HEALTH STRATEGY, STRATEGIC NATIONAL PLAN FOR THE REDUCTION OF MATERNAL AND PERINATAL MORTALITY 2009-2015 [ESTRATEGIA SANITARIA NACIONAL DE SALUD SEXUAL Y REPRODUCTIVA, *PLAN ESTRATÉGICO NACIONAL PARA LA REDUCCIÓN DE LA MORTALIDAD MATERNA Y PERINATAL 2009-2015]* 27 (2009), *available at* http://www.minsa.gob.pe/servicios/serums/2009/normas/1_penrmm.pdf

[10] DELICIA FERRANDO, EL ABORTO CLANDESTINO EN EL PERÚ, HECHOS Y CIFRAS 24 (2002).

[11] DELICIA FERRANDO, EL ABORTO CLANDESTINO EN EL PERÚ, REVISION 19 (2006), *available at* http://abortolegalyseguro.com/blog/aborto-en-peru/el-aborto-clandestino-en-el-peru-revision-delicia-ferrando/

[12] *Id.* at 29.

was also reported, due to insufficient or inexact data in Peru.[13] Therefore, the number of women who were hospitalized and at unnecessary risk is even higher.

This Committee has sustained, on several occasions, that there is a connection between illegal and unsafe abortion and elevated maternal mortality rates.[14] Peru's systematic failure to ensure access to health services when a woman's life is at risk or when her mental or physical health could suffer severe and permanent damage, as well as its restrictive interpretations of this law, violate the fundamental rights of women that are established in the Constitution of Peru and the rights that are promoted and recognized by this Committee and in international human rights laws.

Denial of abortion services often worsens the vulnerability of marginalized groups, particularly adolescents. Two cases brought before United Nations treaty monitoring bodies reveal the systemic nature of the situation in Peru, and the particular need to adopt a domestic protocol to effectively provide access to therapeutic abortion services.

2. The obligation of the Peruvian State to comply with Decisions issued by treaty monitoring bodies in order to ensure the right to health without discrimination: The cases of K.L. and L.C. against Peru.

In October 2005, the Human Rights Committee (HRC) issued its views in the case of *K.L. v. Peru*. K.L. are the initials of a teenage girl who, in 2001, 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.

In its ruling,[15] the Committee highlighted that failure to provide this type of abortion service constitutes a violation of the right to be free from cruel, inhumane, and degrading treatment, as well as the rights to privacy, to special treatment on the basis of being a minor, and to

[13] AMNESTY INTERNATIONAL, DEFICIENCIAS FATALES: BARRERAS A LA SALUD MATERNA EN EL PERÚ [FATAL DEFICIENCIES, BARRIERS TO MATERNAL HEALTHCARE IN PERU] 14 (2009), *available at* http://www.amnesty.org/es/library/asset/AMR46/008/2009/es/ec497a51-0bab-4140-b9c3-971604f87061/amr460082009spa.pdf

[14] ESCR Committee, *Final Observations: Benin,* U.N. Doc. CESCR E/C.12/1/Add.78 (2002); ESCR Committee, *Final Observations: Brazil,* U.N. Doc. E/C.12/1/Add.87 (2003); ESCR Committee, *Final Observations: Cameroon,* U.N. Doc. E/C.12/1/Add.40 (1999); ESCR Committee, *Final Observations: Republic of Mauritius,* U.N. Doc. E/C.12/1994/8 (1994); ESCR Committee, *Final Observations: Mexico,* U.N. Doc. E/C.12/1/Add.41 (1999); ESCR Committee, *Final Observations: Mexico* U.N. Doc. E/C.12/MEX/CO/4 (2006); ESCR Committee, *Final Observations: Nepal,* U.N. Doc. E/C.12/1/Add.66 (2001); ESCR Committee, *Final Observations: Panama,* U.N. Doc. E/C.12/1/Add.64 (2001); ESCR Committee, *Final Observations: Paraguay,* U.N. Doc. E/C.12/PRY/CO/3 (2008); ESCR Committee, *Final Observations: Poland,* U.N. Doc. E/C.12/1/Add.26 (1998); ESCR Committee, *Final Observations: Russian Federation,* U.N. Doc. E/C.12/1/Add.94 (2003); ESCR Committee, *Final Observations: Senegal,* U.N. Doc. E/C.12/1/Add.62 (2001).

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

effective remedy. Therefore, the Committee found that the Peruvian State *"has an obligation to take steps to ensure that similar violations do not occur in the future"* as well as "*an obligation to furnish the author with an effective remedy, including compensation.*"[16] To date, authorities have failed to comply with these obligations.

L.C. are the initials of a 13 year-old girl who became pregnant as a result of rape and later tried to commit suicide in 2007 by jumping off the roof of her home. After being transferred to a public hospital, her scheduled surgery was canceled when her pregnancy was confirmed. Even though the adolescent girl's mother formally requested a therapeutic abortion in order to perform necessary surgery to treat 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 which she requires as she is now paraplegic.

In its views issued in October 2011, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) established that the Peruvian State 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 laws that are discriminatory against women. On the basis of the above considerations, the CEDAW Committee has issued the following recommendations to the Peruvian State:

- Provide L.C. with remedies, including adequate compensation for moral and material injury as well as any rehabilitation services that are consistent with the severity of the violation inflicted upon her rights and with her state of health.
- 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.
- Ensure that practices that protect reproductive rights are understood and respected at all health care facilities, including: i) training and professional development programs to change the attitude and behavior of healthcare staff toward adolescent girls who request reproductive health services and to address needs that are specific to sexual violence, and ii) guidelines or protocols to guarantee the availability of and access to public health services.
- Examine the restrictive interpretation of therapeutic abortion.
- Review existing legislation in order to decriminalize abortion in cases of rape.[17]

The K.L. and L.C. cases are, unfortunately, not the only two existing emblematic examples of this issue. In late 2010, another case was reported by the Peruvian press of a woman who was denied therapeutic abortion despite needing radiation therapy to treat cancer – which is counter-indicated in cases of pregnancy. This woman was subjected to chemotherapy during her pregnancy, which she had to carry to term. Denial of abortion affected her health as she

[16] Human Rights Committee, Views, Communication No. 1153/2007, 8, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).
[17] CEDAW Committee, Views, Communication No. 22/2009, 9, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

was forced to unnecessarily carry a pregnancy to term, which resulted in malformations to the fetus and aggravated the mother's clinical condition.[18] In addition, in early March 2012, there were reports of a case of a woman with neurological lesion who was ultimately provided a therapeutic abortion at a public hospital only after receiving inadequate treatment at another healthcare facility where she was initially evaluated and subjected to unnecessary administrative procedures that threatened her life and health.[19]

3. In order to ensure access to health without discrimination and comply with the measures established in Decisions of United Nations treaty monitoring bodies, Peru must adopt a domestic protocol for therapeutic abortion.

Both the K.L. and L.C. cases as well as treaty monitoring bodies recommend that the State adopt measures of non-repetition to prevent such rights violations in the future. In the L.C. case, the Committee on the Elimination of Discrimination against Women explicitly referred to the need to adopt mechanisms for facilitating effective access to therapeutic abortion. Nonetheless, a domestic protocol for therapeutic abortion care has not been approved – despite the years that have elapsed since the Human Rights Committee's ruling in the K.L case, the recent reiteration of these criteria in the L.C. case, and the fact that through the Ministry of Health, the Peruvian State has acknowledged its obligation to approve such a protocol and has repeatedly indicated that the protocol will be issued.[20] The Medical Board of Peru has supported the need to approve such a protocol in order to guarantee the work of healthcare professionals.[21] Failure to adopt such measures for preventing the repetition of similar events has led to further violations of the rights of adolescents and women.

One of the key elements for ensuring actual access without discrimination to all women who require or choose legal abortion in exercising their right to health is the existence of protocols or clinical practice guidelines, which are defined as a set of "*recommendations that are systematically developed for approaching a specific clinical issue in order to assist both healthcare professionals as well as patients in the decision-making process for adequate and timely healthcare.*"[22]

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[18] *"Me negaron aborto terapéutico",* LA REPUBLICA, Oct. 10, 2010, *available at* http://www.larepublica.pe/impresa/me-negaron-aborto-terapeutico-2010-10-09.

[19] Protocolo que no espera, CARETAS, *available at* http://www.caretas.com.pe/Main.asp?T=3082&S=&id=12&idE=1004&idSTo=0&idA=57425.

[20] The requirement of a domestic protocol for providing therapeutic abortion care has had intensive media coverage. See *Ministro Ugarte: "Próximamente será divulgado protocolo sobre el aborto terapéutico"*, ANDINA, Sept. 30, 2010, *available at* http://www.andina.com.pe/Ingles/Noticia.aspx?id=jXRtUhw5Gy4=; *Aborto terapéutico en dos o tres meses*, PERU 21, May 28, 2010, *available at* http://peru21.pe/noticia/486496/peru-aplicarian-aborto-terapeutico.

[21] Dr. Miguel Gutiérrez, President of the High-Level Committee on Sexual and Reproductive Health (*Comité de Alto Nivel de Salud Sexual y Reproductiva*) of the Medical Board of Peru, Remarks in Peru's National Radio (Radio Nacional del Perú) (Nov. 2011), *available at* http://www.youtube.com/watch?v=2oBnRGwOQlo.

[22] VÍCTOR ÁLVAREZ, VIABILIDAD JURÍDICA DE UNA GUÍA TÉCNICA PARA LA INTERRUPCIÓN TERAPÉUTICA DEL EMBARAZO [LEGAL VIABILITY OF A TECHNICAL GUIDE FOR THE THERAPEUTIC INTERRUPTION OF PREGNANCY] 14 (2008), *available at*

Throughout the world, including Peru, protocols are established for all medical procedures; these protocols are also known as Clinical Practice Guidelines and they contain standards for guiding medical staff and facilitating timely healthcare to users. In countries in which abortion is not against the law, as is the case with therapeutic abortion in Peru, there is an obligation to provide this service in public healthcare systems in order to prevent risks. To that effect, the World Health Organization (WHO) has developed a model guideline titled: "Risk-Free Abortion: Technical Guide and Policies for Healthcare Systems" (*Aborto Sin Riesgos: Guía Técnica y de políticas para Sistemas de Salud*).[23]

In addition, the Peruvian State should follow the WHO's Strategic Approach for strengthening sexual and reproductive health policies and programs; this approach has been adopted by 25 countries and "*consists of a three-step process for helping countries to evaluate their needs and priorities in terms of reproductive health, to practice policies and adapt programs for the purpose of fulfilling those needs, and, ultimately, to increase successful interventions. Although it was initially implemented in 1993 as a systematic approach for introducing contraceptives, the Strategic Approach has been adapted to face a series of issues related to sexual and reproductive health and has proven to be an effective method for strengthening policies and programs.*"[24]

In its Concluding Comments to the Peruvian State, the Committee on the Elimination of Discrimination against Women expressed its concern over Peru's failure to follow the recommendations issued in the *K.L. v. Peru* case and also requested that the Peruvian State comply with the Human Rights Committee's recommendations regarding that case.[25] These final observations have been of great use for the enforceability of the protocol on an internal level.

In addition, the Peruvian State's failure to approve the therapeutic abortion protocol has been described by the petitioners in the K.L. case[26] in the reports submitted to the Human Rights Committee since 2006.

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http://www.promsex.org/docs/Publicaciones/viabilidadjuridicaguiaintterapembvictoralvarez.pdf (citing Ministry of Health (Peru), *Norma Técnica para la elaboración de guías de práctica clínica* [Technical Norm for the Development of Clinical Practice Guidelines] (2005). The Technical Norms contains the outline for all clinical practice guidelines, as well as the process for their development, validation, and enforcement.

[23] WORLD HEALTH ORGANIZATION, ABORTO SIN RIESGOS, GUÍA TÉCNICA Y DE POLÍTICAS PARA SISTEMAS DE SALUD [ABORTION WITHOUT RISK, TECHNICAL GUIDE AND POLICIES FOR HEALTH SYSTEMS] (2003), *available at* http://whqlibdoc.who.int/publications/2003/9275324824_spa.pdf.

[24] WORLD HEALTH ORGANIZATION, ENFOQUE ESTRATÉGICO PARA FORTALECER POLÍTICAS Y PROGRAMAS DE SALUD SEXUAL Y REPRODUCTIVA [THE STRATEGIC APPROACH FOR STRENGTHENING SEXUAL AND REPRODUCTIVE HEALTH POLICIES AND PROGRAMS] 3 (2008), *available at* http://whqlibdoc.who.int/hq/2007/WHO_RHR_07.7_spa.pdf.

[25] CEDAW Committee, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Peru*, 24 & 25, U.N. Doc. CEDAW/C/PER/CO/6 (2007).

[26] Center for Reproductive Rights (*Centro de Derechos Reproductivos*), Studies for the Defense of Women's Rights (*Estudio para la Defensa de los Derechos de la Mujer*, DEMUS), and Latin American and Carribbean Committee for the Defense of Women's Rights (*Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer*, CLADEM).

4. Questions and Recommendations

According to the information hereby submitted, we respectfully request that the Committee consider issuing the following questions:

1. What current or future measures is the Peruvian State adopting to guarantee therapeutic abortion as established by 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, in a way that is consistent with a broader interpretation of its scope in terms of protecting both the physical as well as mental health of women?
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 Peruvian State adopting for obtaining efficient and accurate data on therapeutic abortion?
4. Why has the State failed to comply with the Human Rights Committee's recommendations in the *K.L. v. Peru* case and the Committee for the Elimination of Discrimination against Women's recommendations in the *L.C. v. Peru* case?

In addition, we hereby suggest that the Committee issue the following recommendations:

1. Urge the Peruvian State to adopt a domestic protocol to guarantee access to therapeutic abortion.
2. Urge the Peruvian State to comply with all the recommendations issued by the Human Rights Committee in the case of *K.L. v. Peru* and by the Committee on the Elimination of Discrimination against Women in the case of *L.C. v. Peru*.
3. Urge the Peruvian State 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 legal abortion services.
4. Urge the Peruvian State to advance toward the creation of a comprehensive sexual and reproductive 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. Urge the Peruvian State to adequately institute and fund a series of interventions and policies for ensuring the accessibility, availability, pertinence, and quality of therapeutic abortion services.
6. Urge the Peruvian State to implement the WHO's Strategic Approach for strengthening sexual and reproductive health policies and programs.

We appreciate this Committee's consistent commitment toward the eradication of discrimination in access to reproductive health. We are at your disposal for additional information.

Sincerely,

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