

Lima, February 6, 2013

Human Rights Committee

UN High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10
Switzerland

Re: Additional information on the list of questions to be addressed at the review of Peru's 5th report in the 107th session of the Committee.

DEMUS – *Estudio para la Defensa de los Derechos de la Mujer* and Heartland Alliance for Human Needs & Human Rights wish to provide additional information on the list of questions to be addressed at the review of Peru's 5th report in the 107th session of the Human Rights Committee (herein, Committee or HRC) in relation to articles 2, 3, 6, 7, 25, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR).

ADDITIONAL INFORMATION ON THE LIST OF QUESTIONS FOR THE PERUVIAN STATE

Non-discrimination principle, equality between men and women, and violence against women (articles 3, 6, 7, 25, 26 and 27).

Please inform on measures taken to fight discrimination based on sexual orientation and gender identity.

Discrimination based on sexual orientation:

In Peru, international doctrine and case-law have not been applied to cases of discrimination based on sexual orientation taken to INDECOPI¹ and to the Justice system, in detriment of consumers who allege to have been discriminated against. Greater evidences are demanded of those claiming discrimination, in a departure from the international trend that places the burden of proving the differential treatment was justified on the accused, even more so in cases where a suspicion exists. Moreover, the mere accusation of the victim and the evidence generated by her/him are not considered evidences. If the accused company submits documents in its own defence from which it is possible to infer adverse conclusions, they cannot be used as evidence of the

¹ *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual.*

offending behaviour. Even though the mandate of INDECOPI includes organizing and carrying out operations to identify the existence of discriminatory behaviours based on sexual orientation,² since the resolution that created this mandate was issued, no such operation has been conducted.

With regard to Peruvian law, there are norms that seriously violate the non-discrimination principle, such as the Legislative Decree 1150 “Disciplinary regime for the Peruvian National Police” whose MG 55 code considers a serious break of conduct “*to have sex with persons of one’s own gender that cause scandal or undermines institutional image.*”

Another concern is the discriminatory attitude of the Peruvian delegation to the OAS which has proposed to exclude sexual orientation as a protected category against discrimination in the Draft Inter-American Convention on the Human Rights of Older Persons and has recommended that, as far as possible, the term “sexual orientation” not be used in spite of it being included in the Peruvian Constitution, Constitutional Procedural Code and laws – as well as in international law – as a category.

Right to identity and to a name for LTGB persons:³

In Peru, there is no established legal procedure for changing one’s name and sex so the trend has been to resort to an abridged legal procedure or an appeal for legal protection. Both processes require a medical certificate stating that the claimant suffers from gender dysphoria, even when the defence lawyer does not mention it in his/her arguments. The procedure can take a long time: from one year and seven months to five years for a name change, and one to three years for sex change. Another requirement is to prove that the bodily transformation has begun, and this is indispensable for the claim to be accepted. All these requirements are left to the intervening judge’s discretion and constitute some of the main obstacles for upholding this right. The same level of evidence is required for a petition to change one’s name or one’s sex, rendering the process very tiring and sometimes inaccessible for those who wish to have their identity recognized.

Please indicate the measures taken to follow-up on the recommendations by the Committee and other treaty bodies with regard to abortion, so additional exceptions are effectively foreseen and implemented to the prohibition and criminalization of abortion in cases such as when the pregnancy results from rape or incest. Please inform about protocols adopted to regulate the implementation of therapeutic abortion at the national level. Please indicate which measures have been taken to adequately inform all women and adolescents about contraceptive methods and how to avoid unwanted pregnancies.

Legal abortion:

² Resolution 0665-2006/TDC-INDECOPI.

³ Lesbian, transgender, gay and bisexual persons.

In Peru, abortion is legal only when the woman's life or health is at risk. In spite of the law, women often cannot access abortion services due to the lack of medical protocols. The *Colegio Médico del Perú* (Peruvian Medical Association) has said that 200 women die every year because of lack of access to therapeutic abortion services.⁴ Lack of clarity about the legal and administrative framework to access legal therapeutic abortion often makes women resort to clandestine, illegal and unsafe abortions. Unsafe abortion is one of the 5 top causes of pregnancy-related deaths in Peru. Even though the Health Ministry statistics show that in Lima and the greater Lima area the number of therapeutic abortions has steadily increased between 2002 and 2006 from 26 to 699 cases, this increase in these numbers factors in emergency procedures done in cases where there have been complications during/after the abortion and is also related to improvements in data collection.

United Nations treaty bodies have intervened in two cases against Peru that illustrate the failure to guarantee access to legal abortion services. In both cases, young women who were in critical need of medically required and legally allowed health services were denied them due to the lack of medical protocols.

In *KLL v. Peru*, a pregnant minor who was carrying an anencephalic fetus – a condition that leads to the fetus being unable to survive outside the uterus – was denied access to abortion. As a result, she was forced to carry her pregnancy to its end and breastfeed the child during the four days it managed to live outside the uterus. The Human Rights Committee decided that the denial of access to legal abortion in this case constituted a violation to the right to be free from cruel, inhuman and degrading treatment and to the right to privacy among others. In this case, the Committee also highlighted that Peru had to provide effective recourse to the claimant and also guarantee that this kind of violation would not happen again in the future. To the present date, Peru has not fulfilled any of these recommendations.

In the *LC v. Peru* case (CEDAW Committee, 2011) a 13-year-old girl who became pregnant after being raped attempted suicide by jumping from the roof of her home. Once hospitalized, the medical staff refused to carry a needed emergency surgery to avoid placing her pregnancy at risk. Few months later, LC suffered a spontaneous miscarriage – probably induced by the injuries caused by her fall – and only then was the surgery performed. The CEDAW Committee condemned Peru for denying legal abortion to LC and decided it violated several of the claimant's human rights. The Committee considered the State had violated LC's rights to not be discriminated and to health, as well as the State obligation to eliminate gender stereotypes among others. It also recommended the State Party to: 1) provide reparations including economic compensation; 2) review its laws and establish a mechanism for effective access to therapeutic abortion; 3) ensure that all dispositions relating to the Convention and to General Recommendation 24 on reproductive rights are known throughout the health facilities through education, training, guidelines and protocols; 4) review its laws and decriminalize abortion when the pregnancy is the product of rape or sexual abuse; and

⁴ Newspaper "Perú 21", November 10, 2011. Statement by the President of the Reproductive Health Committee, Peruvian Medical Association.

5) review its narrow interpretation of when abortion is therapeutic in line with General Recommendation 24, the Beijing Declaration and Plan of Action.

In spite of the views of these monitoring bodies and their clear recommendations on access to legal abortion, Peru has not yet implemented a system guaranteeing this access to women. As a result, women continue to lack access to medical services to which they are entitled by Peruvian law.

Abortion in case of rape:

In spite of several recommendations and observations by treaty monitoring bodies, Peru continues to criminalize abortion in case of rape.

Peru is among the countries with the highest rates of reported rapes in the continent⁵, which demonstrates how widespread the phenomenon is in our country.

In its different expressions, sexual violence implies serious consequences for the physical, mental, sexual and reproductive health of the women subjected to it. Victims are at high risk of unwanted pregnancies, contracting sexually transmitted infections (STIs) including HIV, and developing depression and suicidal thoughts.

After a rape occurs, a forced pregnancy resulting from it becomes a second instance of sexual violence, this time perpetrated by the State that not only has failed to protect the woman from the first instance of violence (the rape) but now, ignoring her suffering and post-traumatic stress, forces her to continue with the pregnancy. This forced pregnancy also implies an ongoing re-living of the violence every time she looks at the child, to which the social blame and stigma affecting the mother and the child – that are seen as having altered the community order and its ideals – must be added.⁶

The forced pregnancy due to rape attacks women's autonomy and dignity, as the State does not treat them as "rights bearers" but as "means" to protect another being's life or health. This imposition deeply affects the pregnant woman's life project, further aggravating the effects of the crime of rape.

Decriminalizing abortion in case of rape would not mean imposing abortion but rather giving women who have been raped the possibility to decide, on the basis of their beliefs, life project and health condition, among other factors, if they want to continue with their pregnancy or not.

⁵ MUJICA, JARIS. *Violaciones Sexuales en el Perú 2000-2009, Un informe sobre el estado de la cuestión*. Lima: PROMSEX, 2011, p.53.

⁶ ESCRIBENS, PAULA. *Milagros y la violencia del conflicto armado interno. Una maternidad Forzada*. Lima: DEMUS, 2012, p. 39.

Emergency oral contraceptives:

Since 2009, and because of a verdict of the Constitutional Court (CC), Peru changed its legal trend⁷ and, without much basis, ordered the Ministry of Health to abstain from developing free distribution of emergency oral contraceptives (EOC) at the national level as a public policy. Also, the Judicial system forced the Ministry to forbid free distribution of this contraceptive method⁸, that had been established in a Resolution⁹ based on technical reports issued by the Pan-American Health Organization, the National Health Bureau (*Dirección General de Salud de las Personas*) and General Medicines, Supplies and Drugs Bureau (*Dirección General de Medicamentos, Insumos y Drogas*) all of which stated that EOC were not abortive.

Right to life, prohibition of torture and other cruel, inhuman or degrading treatments, and fight against impunity (Articles 2, 6 and 7).

Please describe the measures taken to guarantee investigation and punishment for human rights violations perpetrated during the armed conflict that lasted from 1980 to 2000.

On **violence against women in the internal armed conflict**, the Final Report of the Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación*, CVR) revealed that during the Peruvian internal armed conflict, rape was committed to an extent that constitutes a crime against humanity¹⁰. CVR documented 538 rape cases, of which 527 were committed against women, and clearly states that this number is an *under-representation* given the specific nature of the crime. When the report was issued, in 2003, CVR had brought only 3 cases of rape against women to the Attorney General's Office. At the present date, only 19 cases are being prosecuted but no case has yet been decided.¹¹

The main obstacles faced by these cases are as follows: proving the facts and the context in which they took place; establishing the degree of responsibility of the perpetrators; defining the crime (timing of the applicable laws, interpreting and applying international laws to the domestic sphere); denial by the Ministry to provide relevant information to clarify the facts; and lack of expertise in gender, women's human rights and intercultural approaches on the part of judges. In rape cases, three other difficulties must be added: women refuse to report the incidents due to fear, shame and mistrust of the relevant authorities (Attorney General's Office and Judicial system); those who decide to report them are faced with investigations that re-victimize them (a forensic exam more than 20 years after the rape was committed, confronting their aggressors,

⁷ In 2006, the CC decided that the emergency pill had contraceptive effects. In Expediente 7435-2006-PC/TC. Verdict issued on November 13, 2006; Lima.

⁸ *Ministerio de Salud. Resolución ministerial 652-2010/MINSA*. Published on May 14, 2011.

⁹ *Ministerio de Salud. Resolución ministerial 167-2010/MINSA*. Published on March 9, 2010.

¹⁰ CEPAL. *Estudio nacional sobre la violencia contra las mujeres* (Peru). Llaja Villena, Jeannette; Lima 2010.

¹¹ Information taken from the Shadow Report 2012 submitted to the Committee on Torture.

retelling of the facts in the different procedural stages, lack of specialized protocols, lack of gender and intercultural approaches in the Courts personnel, etc.) and those who decide to take their cases to Court lack free legal counsel provided by the Peruvian State. It is worth mentioning that even though the Peruvian State has ratified the Rome Statute of the International Criminal Court with an aim to provide criminal law protection for similar complaints in the future, to date, the Government has failed to adjust its domestic criminal law to the Statute.

Please describe the measures taken to guarantee truth, justice and reparation for more than 2000 women subjected to forced sterilization during the Fujimori administration.

During his mandate, Alberto Fujimori promoted the implementation of the National Reproductive Health and Family Planning Program (*Programa Nacional de Salud Reproductiva y Planificación Familiar*, 1996-2000), reportedly to reduce poverty and claim women's autonomy. However, thousands of Peruvian women particularly those living in poverty in the outskirts of cities and rural women in the Andes and Amazon areas, were deprived of their reproductive rights when subjected to tubal ligations by national health personnel without their consent and under unhygienic conditions. This program ended up becoming a State policy that violated women's human rights and the actions carried out as part of this program constitute a crime against humanity.

On October 10, 2003, and in the context of the María Mamérita Mestanza vs. Peru case before the Inter-American Commission on Human Rights (IACHR), the Peruvian State signed a Friendly Settlement (FS) where it recognized that it had violated Mestanza's human rights and committed to provide compensation to her relatives as well as to investigate and punish the deeds resulting from implementation of the mentioned program in Peru. Following the FS, an investigation was opened and later filed on December 11, 2009. On October 21, 2011, the Attorney General's Office decided to extend the territorial competency of the Supraprovincial Attorney Office to reopen the investigation in the case known as "María Mamérita Mestanza Chávez and forced sterilizations". On November 23, 2012 the First Supraprovincial Attorney Office in Lima decided to reopen the investigation on forced sterilization in Peru.

However, the Attorney Office in-charge lacks the necessary resources to conduct an investigation with guarantees of due process considering the complexity of the case and the high number of victims.

It is also worth mentioning that women who suffered forced sterilization did not receive comprehensive compensations, they have only been granted membership in the Comprehensive Health System (*Sistema Integral de Salud*)¹², something that many of them ignore as of the present date.

¹² Health Ministry. Ministry Resolution 121-2006-TR. In accordance with Ministry Resolution 591-2006/MINSA.

QUESTIONS AND RECOMMENDATIONS

According to the submitted information, we respectfully request the Committee to consider asking the following questions to the Peruvian State:

1. Which measures has Peru taken to allow victims of discrimination based on sexual orientation to access justice and reparations?
2. Which measures has the Peruvian State taken to allow LTGB persons to access their rights to identity and name?
3. Which guidelines has Peru issued to implement the recommendations formulated on the KLL v. Peru and LC v. Peru cases on the legal abortion issue?
4. Which measures has Peru taken to follow-up on the different recommendations by international bodies to review its laws criminalizing abortion with an aim to allow abortion when the pregnancy is the result of rape?
5. Why has the Peruvian State not taken into account technical official data on the non-abortive effects of emergency contraception to allow its free distribution?
6. Which measures has Peru taken for women victims of rape during the armed conflict to access justice and reparation?
7. Which measures is Peru adopting or planning to adopt to guarantee justice and reparation for victims of forced sterilization?

We also wish to suggest to the Committee to consider making the following recommendations to the State:

1. Encourage the Peruvian State to adjust its laws on discrimination based on sexual orientation to the international doctrine and case law on the matter.
2. Urge Peru to establish a specific procedure on the right to identity and to a name for LTGB persons in accordance with international human rights standards.
3. Encourage the Peruvian State to adopt guidelines for care in legal abortion cases and to implement the recommendations issued on the KLL v. Peru and LC v. Peru cases.
4. Encourage the Peruvian State to review its laws and decriminalize abortion when the pregnancy is the result of rape.
5. Encourage the Peruvian State to implement the observations and recommendations of different international bodies with regard to the right to health and particularly family planning.

6. Urge Peru to establish specific justice policies to prosecute cases of rape during the armed conflict, assigning the required resources.
7. Urge the Peruvian State to allocate the necessary economic, human and technical resources to effectively investigate forced sterilizations, and to request that it develops a reparations policy for all victims in these cases.