

**PROMSEX**

Centro de Promoción y Defensa de los  
Derechos Sexuales y Reproductivos



Católicas por el  
Derecho a Decidir - Perú



Estudio para la defensa  
de los derechos de la mujer



Instituto promoviendo desarrollo social

October 12, 2012

## **SECRETARIAT OF THE COMMITTEE AGAINST TORTURE**

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

### **Subject: Supplementary information on rape in Peru for discussion at the 49th Session of the Committee against Torture.**

Distinguished Members of the Committee:

The Center for the Promotion and Defense of Sexual and Reproductive Rights (Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos, PROMSEX), Catholics for Choice Peru (Católicas por el derecho a decidir Perú), DEMUS Office for the Defense of Women's Rights (DEMUS Estudio para la defensa de los derechos de la mujer), and the Institute for the Promotion of Social Development (Instituto Promoviendo Desarrollo Social, IPRODES) wish to provide additional information to the report submitted by the Peruvian State for discussion at the Committee's 49th session.

Our report seeks to address the issue that was prioritized by the Committee on the List of issues prior to the submission of Peru's sixth periodic report, in item 24, "measures [that] have been taken to prevent, monitor, investigate and punish acts of sexual violence, particularly against women and girls," in conjunction with Article 16 of the Convention.

#### **I. Lack of Adequate Official Information about Rape**

In Peru, we have no qualitative statistics for acquiring systematic, nationwide knowledge of the incidence of reported cases and judgments of violations to women's rights, included rape. Only the Public Prosecutor, through its Crime Observatory [Observatorio de la Criminalidad], has developed a statistical system that allows us to know the existing number of complaints of cases of sexual violence, considering indicators that show the differential impact of gender violence. However, even at the Observatory, latest statistics on sexual violence are<sup>1</sup> updated to 2011 only for Metropolitan Lima and Callao, the nation's capital.

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<sup>1</sup> CRIME OBSERVATORY OF THE PUBLIC PROSECUTOR. *Weekly Bulletin No. 23: Violation of sexual freedom in Metropolitan Lima and Callao 2000 - 2011*. Lima: Public Prosecutor, March 2011, available at [http://www.mpfm.gob.pe/descargas/observatorio/estadisticas\\_/20120321163314133236559442043012.pdf](http://www.mpfm.gob.pe/descargas/observatorio/estadisticas_/20120321163314133236559442043012.pdf) CRIME OBSERVATORY OF THE PUBLIC PROSECUTOR *Weekly Bulletin No. 24: Violation of sexual freedom in Metropolitan Lima and Callao 2000 - 2011*. Lima: Public Prosecutor, March 2011, available at [http://www.mpfm.gob.pe/descargas/observatorio/estadisticas\\_/20120321163453133236569342048148.pdf](http://www.mpfm.gob.pe/descargas/observatorio/estadisticas_/20120321163453133236569342048148.pdf)

Remaining government information on rape is quantitative. In 2011, the National Police registered 5,303 reported cases of rape on a national level. Of these, 5,032 complaints (94.9%) were made by women and 271 (5.1%) by men. Forty three point two percent (43.2%) of complaints (2,290) of rape involved female victims between the ages of 14 and 17. The Public Prosecutor registered, in Metropolitan Lima and Callao, 5,286 complaints of violation of sexual freedom between January and August 2011; in addition, its quantitative analysis reveals that an average of 661 cases were reported per month, 22 cases per day and 1 case per hour, and the main victims are women.

## II. Obstacles to Access to Comprehensive Health Care of Rape Victims

The national human rights body has reported that girls, teens and adult women who are victims of rape face the following obstacles to comprehensive health care<sup>2</sup>:

- Health policies aimed at addressing violence against women focus on their physical recovery, while mental health care is relegated or ignored.
- The public health system does not have a unique registration system for managing relevant information on the care provided to victims, or the type of violence they suffered, or the link between the victim and the offender, among other essential information for the proper design of a public policy in this area.
- There is no unique national model for medical/legal care in health facilities. The Ministry of Health has issued norms that are not uniform and have no correlation with the standards of the National Institute of Legal Medicine [Instituto Nacional de Medicina Legal], which is the only body that certifies evidence for court proceedings. Additionally, other health agencies, such as ESSALUD (social insurance), and community and private centers lack regulations for dealing with victims of violence. The lack of treatment protocols for female victims of violence constitutes a challenge for ensuring quality care and the gathering evidence for combating impunity.
- Current regulations oblige Ministry of Health staff to conduct clinical examinations, laboratory testing, sampling and prescribing certain medications that allow victims to recover and prevent further damage to their physical and mental health, and gathering evidence for court proceedings. However, there is a high degree of non-compliance with protocols due to lack of supplies, and deficiencies restrict access of victims to the justice system, hampering the recovery of their overall health and potentially causing even more damage due to lack of protection from unwanted pregnancy and the spread of STDs, such as HIV and Hepatitis B.
- Health personnel performing services for female victims of violence do not have specialized training. As a result, care is given without taking into account the particular characteristics of violence against women and its effects on physical and mental health, leading to poor quality care.

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<sup>2</sup> OMBUDSMAN. *The right to health of female victims of violence: supervision of health facilities in Lima and Callao*. Division Report No. 003-2010-DP/ADM. Lima: Ombudsman, October 2010, available at <http://www.defensoria.gob.pe/modules/Downloads/boletines/adjuntia/Informe-de-Adjuntia-N-003-2010DP-ADM.pdf> and OMBUDSMAN. *The right to health of female victims of violence: supervision of the health facility in Arequipa, Junin, Lima, Piura, and Puno*. Division Report No. 003-2012-DP/ADM. Lima: Ombudsman, August 2012, available at <http://www.defensoria.gob.pe/modules/Downloads/informes/varios/2012/informedeadjuntiainformemujerviolencia.pdf>

- Oral emergency contraception is not provided to female victims of rape because in a Judgment, under Docket No. 02005-2009-PA-CT and dated October 16, 2009, the Constitutional Court banned the distribution of this drug in public health services.
- Public health care lacks special environments that ensure the privacy of violence victims.
- Free comprehensive coverage is not provided for prevention, care, recovery, and monitoring of female victims of violence in health facilities. In Peru, there are two systems of public health insurance, the Universal Health Insurance Model (Aseguramiento Universal en Salud, AUS) and the Prioritized List of Health Interventions (Listado Priorizado de Intervenciones Sanitarias, LPIS), and none of them contain a holistic approach to recovery coverage of victims.

### III. Obstacles to Access to Justice for Female Victims of Rape

Girls and adult female victims of rape face the following obstacles to access to justice according to the national human rights body, based on studies of court records in cases of rape of adult women,<sup>3</sup> little girls, and teenagers<sup>4</sup>:

- Gender stereotypes that encourage impunity continue to persist. There have been recent cases where responsibility is transferred to the victim for her behavior, thus minimizing the seriousness of the crime, which shows the persistence of certain discriminatory cultural patterns in the perceptions of judges.
- Re-victimizing actions persist, such as the lack of physical spaces with visual and auditory privacy, reiteration of statements in different phases of trials, confrontation between the victim and her aggressor, repetitions of the victim's statements, among others.
- Physical evidence is prioritized - gynecological evidence is prioritized over other evidence, such as statements, psychological evaluations, biological testing, and others. The Peruvian National Police and Public Prosecutor do not have any training programs in research techniques aimed at improving evidence-gathering standards in cases of sexual crimes.
- In most cases, victims do not have free legal defense.
- There is little use of protective measures for victims, the most common of which is simply reserving victim identity, which is mandatory in cases where victims are children and teenagers.
- During the course of judicial investigation proceedings the most commonly used measure is compulsory appearance in court (restricted or simple): if offenders are free, victims are exposed to risk given the lack of protective measures.
- Half of cases of rape end in a stay of proceedings (due to lack of evidence), early termination of proceedings (due to the aggressor's confession), and acquittals. Most of the other half end in convictions, sentences are not enforced and aggressors go free.
- In court proceedings, the practice of providing evidence to support personal and moral damage, lost profits and life project of victims has not been incorporated, which is reflected in the fact that financial compensation ranges between 50 and 350 dollars in most cases.

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<sup>3</sup> OMBUDSMAN. *Sexual Violence in Peru: An analysis of court cases*. Division Report No. 004-2011-DP/ADM. Lima: Ombudsman, November 2011, available at <http://www.defensoria.gob.pe/modules/Downloads/informes/varios/2011/informe-adjuntia-004-2011-DP-ADM.pdf>

<sup>4</sup> Ombudsman. *The application of criminal justice in cases of sexual violence against children and adolescents*. Defense Report No. 126. Lima: Ombudsman, November 2007, available at <http://www.defensoria.gob.pe/informes-publicaciones.php>

#### IV. The Criminalization of Abortion in Cases of Rape

In Peru, the practice of abortion is criminalized even in cases of rape and malformation incompatible with life outside the womb. According to Article 120 of the Criminal Code, the only form of abortion with a reduced sentence is that of a pregnancy resulting from *non-spousal* rape (no more than three months in prison), if the abortion resulted from *spousal* rape, the applicable penalty is that of article 114 (no more than two years in prison).<sup>5</sup>

This is particularly relevant when one considers how sexual violence is present in the daily lives of women in Peru. Comparative studies indicate that approximately 5% of raped women suffer unwanted pregnancies, which in Peru equals a minimum of 35,000 pregnancies as a result of sexual assault per year<sup>6</sup>.

The criminalization of abortion in cases of rape in Peru concurs with complaints from women who resort to clandestine abortion services and suffer complications that require medical care, as there are laws that force health care professionals to report them. Although not all professionals meet this obligation, as it is inconsistent with the ethical framework of the exercise of their profession, current norms expose women who resort to post-abortion health services to investigation and criminal prosecution<sup>7</sup>.

The Human Rights Committee has expressed concern over the criminalization of abortion in cases of rape in Peru<sup>8</sup>. The Committee against Torture expressed similar concern during the last examination of the Peruvian State<sup>9</sup> and, this year, so has the Committee on Economic, Social, and Cultural Rights<sup>10</sup>. Furthermore, in the opinion in the *L.C. v. Peru* case, the Committee on the Elimination of Discrimination against Women recommended that the Peruvian State "review its legislation to decriminalize abortion when pregnancy results from rape or sexual abuse."<sup>11</sup>

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<sup>5</sup>Peruvian Criminal Code. Article 114. - Self-administered Abortion. A woman who causes her own abortion, or consents to someone else practicing an abortion on her, shall be punished with imprisonment not exceeding two years or community service of fifty-two hundred and four days. Article 120. - Sentimental and Eugenic Abortion. Abortion is punishable by imprisonment not exceeding three months: 1. When the pregnancy is the result of non-spousal rape or unconsented artificial insemination occurring outside the marriage, provided the facts were reported or investigated, at least to and by the police; or 2. When it is likely that the future person is at risk of physical or mental defects, provided there is medical diagnosis. Available at: <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codpenal.htm&vid=Ciclope:CLPdemo>

<sup>6</sup> CHAVEZ ALVARADO, Susana (editor). *Apuntes para la acción: El derechos de las mujeres a un aborto legal*. Lima: Centre for the Promotion and Defense of Sexual and Reproductive Rights - PROMSEX, September 2007, pp. 53-54. Available at <http://www.promsex.org/docs/Publicaciones/apuntesabortolegalsegedicion.pdf>

<sup>7</sup> This mandate is established in the following norms: LAW No. 26,842. GENERAL HEALTH LAW. Article 30.- When there are indications of criminal abortion, physicians are obliged to bring the matter to the attention of the competent authority. LEGISLATIVE DECREE No. 957. NEW CRIMINAL PROCEDURE CODE. Article 326.- Power and obligation to report: 1. Any person has the power to report criminal acts to the relevant authority, provided that the exercise of criminal action to pursue is public. 2. However, the following are obliged to report such acts: a) Those who are required to do so by express mandate of the law. In particular, health professionals who find out about these crimes in the course of their work, as well as educators for offenses which have taken place in their school. [...]

<sup>8</sup> CCPR/C/79/Add.72, November 18, 1996, item 22 and CCPR/CO/70/PER, November 15, 2000, item 20.

<sup>9</sup> CAT/C/PER/CO/4, July 25, 2006, item 23.

<sup>10</sup> E/C.12/PER/CO/2-4, May 30, 2012, item 21.

<sup>11</sup> CEDAW/C/50/D/22/2009, November 25, 2011, item 9.2, paragraph c).

Despite these recommendations from UN treaty-compliance monitoring bodies, there have been no legal initiatives to date for decriminalizing abortion in cases of rape. In October 2009, the final Special Criminal Code Review Commission approved the decriminalization, in the Draft Criminal Code, of the interruption of pregnancy in cases of rape, artificial insemination or unconsented transfer of a fertilized egg, if the facts had been criminally reported; however, this project has currently been dismissed for discussion by Congress.

## **V. Suggested Questions and Recommendations to the Peruvian State**

According to the information submitted, we respectfully request that the Committee consider asking the state the following **questions**:

1. What steps have been taken to acquire quantitative and qualitative information about rape by gender and age?
2. What actions have been taken to ensure free comprehensive health coverage for victims of rape to include prevention, care, recovery and monitoring?
3. What steps have been taken to ensure that women who have been raped can have free access to oral emergency contraception in public health facilities?
4. What steps have been taken to revise legislation criminalizing abortion for rape, according to the recommendations of UN treaty compliance monitoring bodies?
5. What steps are being taken to ensure that Peruvian judges incorporate a gender perspective in their work?
6. What steps have been taken to ensure free legal defense for victims of rape?
7. What steps have been taken to ensure effective protection measures for victims?
8. What steps have been implemented to combat impunity in cases of rape?
9. What actions have been taken to ensure comprehensive reparations for victims of violence?

### **We also suggest that the Committee consider making the following recommendations to the State:**

1. Organize a system of quantitative and qualitative information about rape by gender and age.
2. Ensure free access to oral emergency contraception in public health facilities for women who have suffered rape.
3. Give free comprehensive coverage of physical and mental care, as well as sexual and reproductive health, to female victims of sexual violence.
4. Review currently-approved health care protocols and design a comprehensive care model with an intercultural perspective to ensure the recovery of the health of the victim and the implementation of a medical/legal approach to care, as needed to ensure the investigation of crimes.
5. Ensure free legal defense to victims of rape.
6. Improve research standards of sexual offenses involving an intercultural and age-and-gender-appropriate approach to victims.
7. Make organizational, budgetary, and policy changes to ensure the addition of gender-related courses to regular training programs for judges.
8. Promote specialization of the Peruvian National Police, Public Prosecutor and judiciary in the area of sexual offenses.

9. Prohibit dismissal or acquittal as a result of government inaction, as well as premature termination and the suspension of sentences if the requirements contemplated in the domestic system are not met in these cases.

We are available to provide additional information if necessary.

Sincerely,



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