



May 30, 2014

HUMAN RIGHTS COMMITTEE

Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10, Switzerland

Ref: Petitioners' report on the actions undertaken by the Peruvian State concerning the decision rendered by the Human Rights Committee in Communication 1153/2003 (*KL v. Peru*)

1. The Office for the Defense of Women's Rights (DEMUS) is Peruvian an organization that aims to strengthen an alternative path towards the protection and recognition of women's human rights, especially sexual and reproductive rights, and strives to produce a new cultural paradigm of women and sexuality. The Center for Reproductive Rights (CRR) is an NGO dedicated to promoting the equality of women around the world by guaranteeing their reproductive rights as human rights. The Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), a network of feminist organizations spanning 15 countries across Latin America and the Caribbean, works to protect and ensure the enforceability of women's human rights from a feminist and critical perspective on the law.

2. DEMUS, CRR and CLADEM submit this report for your consideration, on the actions undertaken by the Peruvian State concerning the decision rendered by the Human Rights Committee in Communication 1153/2003 (*KL v. Peru*).

3. This report is divided in two parts. The first one addresses the state of compliance of the three main recommendations that the Peruvian State has according to the Human Right Committee decision in the *KL v. Peru* case. The second one describes legal action undertaken to encourage Peru's compliance with that decision.

INFORMATION ON THE ACTIONS UNDERTAKEN BY THE PERUVIAN STATE ON THE RECOMMENDATIONS RAISED BY THE HUMAN RIGHTS COMMITTEE DECISION IN THE KL VS. PERU CASE

4. In its decision on *KL v. Peru*, the Human Rights Committee laid out three fundamental recommendations:

- a. The State party should undertake measures to ensure that similar violations do not occur in the future;¹
- b. The State party should furnish the author with an effective remedy, including compensation;² and

¹ *KL v. Peru*. Human Rights Committee, Eighty-fifth session 17 October - 3 November 2005, para. 8. U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

² *Ibid.* para. 8 [Hereinafter *KL v. Peru*].



c. The State party is requested to publish the Committee's Views.³

5. Thirteen years after KL's human rights were first violated, the Peruvian State has partially complied with one of the three recommendations laid out by the Committee, consisting in the publication of this decision in the Peruvian System of Legal Information, which has limited access. Below is a summary of the status of compliance with the remaining recommendations.

a. **First Recommendation: The Peruvian State must undertake steps to ensure that similar violations do not occur in the future**

6. In order to prevent further violations analogous to the KL v. Peru case, such as the denial to access the right to legal abortion, the Peruvian Health Ministry should, *inter alia*, adopt national guidelines on legal abortion. The "Technical Guidance" or "Abortion Protocol" for the therapeutic interruption of pregnancy play a crucial role by setting out when, how and by whom the procedure is to be performed, and where should the woman direct its claim if such right is denied. Protocols must be part of Peruvian State sexual and reproductive health policies and must conform to World Health Organization (WHO) guidelines issued in 2003: *Safe abortion: technical and policy guidance for health systems*.⁴

7. The fact that Peru has adopted no such Technical Guidelines is contrary to the minimum abortion care standards set out by WHO and the UN Committee on Economic, Social and Cultural Rights (CESCR). According to General Comment 14 by the CESCR, therapeutic abortion services must be available in sufficient number, accessible, affordable, respectful of medical ethics, culturally appropriate, and of good quality.⁵ Also, national regulations must ensure that legal abortion is available whenever Peruvian women face serious risks of permanent harm to either their physical or mental health.

8. Revealing that it lacks the political will to comply, nine years after the Committee's decision, Peru has adopted no national therapeutic pregnancy termination "Technical Guidelines" or "Protocols". Peru's compliance with this recommendation is essential to diminish the number of related women's deaths. As the Peruvian Medical Association has noted, up until 2011 lack of access to therapeutic abortion causes up to 200 deaths a year,⁶ while unsafe abortion remains one of the top-five causes of pregnancy-related mortality in Peru.

9. The Peruvian State has frequently cited a draft document titled *Comprehensive Technical Guidance for Therapeutic Pregnancy Termination Through the 22nd Week* (the proposed Technical Guidance). While DEMUS is aware that four such proposals have been entertained through the Alejandro Toledo, Alan García and Ollanta Humala administrations, none have been adopted.

10. The Peruvian State has noted that therapeutic abortion protocols are in place at the National Maternal and Perinatal Institute and thirteen other public hospitals throughout Peru.⁷ Yet, as health care

³ *Ibid.* para. 9.

⁴ *Safe abortion: technical and policy guidance for health systems*. World Health Organization, Geneva. 2003. p. 7.

⁵ Committee on Economic, Social and Cultural Rights [hereinafter CESCR], General Comment No. 14: *The right to the highest attainable standard of health* (Article 12 of the Covenant), para. 9. U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter CESCR General Comment No. 14].

⁶ Chairman of the Peruvian Medical Association's Reproductive Health Committee. *Peru 21*, 10 November 2011.

⁷ Ministry of Women's Issues and Vulnerable Populations. Sixth Compliance Report, Equal Opportunity Act. 2013, p. 71.



facilities in Peru total 624 (155 public/469 private), this is clearly insufficient.⁸ A negligible number of facilities follow legal provisions to provide women access to legal abortion services, while most of the population goes unserved.

11. Three key developments took place in 2014 around the “Technical Guidance”. First, the Ministry of Justice’s National Human Rights Council issued a recommendation stating that the “Technical Guidance” should be adopted having found that its contents met constitutional and international standards. Second, the Ministries Council Presidency responded that it had no jurisdiction to issue a binding legal opinion regarding the “Technical Guidance”, and that other opinions in this regard were equally non-binding. Third, the Directorate for Human Health did revise the text of the Guidance and submitted it for a technical review process.⁹

12. The petitioners note with concern that nine years after the Human Rights Committee decision in the *KL v. Peru* case, the Peruvian State is still reviewing and soliciting opinion on the proposed “Technical Guidance”, while women continue to be denied access to therapeutic abortion services, in clear violation of their human rights.

b. **Second Recommendation: The State Party must furnish the author with an effective remedy, including compensation**

13. In 2017, the Peruvian State offered KL \$10,000 (ten thousand U.S. dollars) as the financial reparation for the violations found in the *KL v. Peru* decision issued by the Human Rights Committee. In 2007 she declined the offer, citing the State Party’s failure to acknowledge that it was compensating her for the violation of the rights protected under articles 2, 7 and 17 of the International Covenant on Civil and Political Rights, as determined by the Committee; as well as its inadequacy relative to the extent of the damages caused.

14. The petitioners addressed before the Committee¹⁰ that reparation for direct and moral damages caused by the State Party’s continued failure to implement the decision should be set at no less than US\$96,250 (ninety six thousand, two hundred and fifty U.S. dollars).¹¹

c. **Third Recommendation: The State Party must publish the Committee's decision**

15. The aim of having the *KL v. Peru* decision published is to help Peruvian women learn about their right to receive legal abortion services from the Peruvian State. It is worrisome that although therapeutic abortion has been legal in Peru since 1924, many do not know this.

16. As such, the decision should be published in the official media and be a key component of public awareness campaigns that the Ministries of Health and Justice should implement.

⁸ *Establecimientos del sector de salud y MINSa por tipo en el Perú: 2002 – 2009. Base de datos de establecimientos de salud.* Oficina General de Estadística e Informática, Ministry of Health, 2009.

⁹ Congress of Peru. Letters 334-2013 (26 December 2013) and 359-2013 (28 January 2014) to PROMSEX from congresswoman Luisa María Cuculiza Torre.

¹⁰ Petitioner Proposal Concerning the Human Rights Committee Decision in *KL v. Peru*, Communication 1153/2003, submitted to the HRC in 2007. Annexed to the writ of *amparo*.

¹¹ In *Tysiqc v. Poland*, a case involving a pregnant woman denied legal abortion services although delivery could result in eyesight loss, the European Court of Human Rights sentenced Poland to pay €25,000 as moral damages and €14,000 for costs and expenses.



17. While the text of the decision is available at the web site of the Ministry of Justice Legal Information System, it has not been published in *El Peruano*, the official gazette.

LEGAL ACTION UNDERTAKEN TO ENSURE COMPLIANCE WITH THE DECISION IN PERU

18. Faced with the Peruvian State's continued refusal to implement the Decision on the KL case in the domestic level, DEMUS and other feminist organizations have sought legal redress through writs for the protection of fundamental rights (writ of *amparo*).

a. Writ of *amparo* on the right to petition

19. Through a writ of *amparo*, DEMUS and other feminist organizations asked the Courts to order the Ministry of Health to guarantee their right to petition¹², by responding in legally motivated writing to the briefs submitted on November 22, 2007, July 23, 2008, October 17, 2008, January 28, 2009, and May 5, 2009 in the legal deadline and under their responsibility. Requests contained in these briefs included:

- (a) To adopt a clinical guidance or a therapeutic abortion protocol.
- (b) To ensure that the guidance states that therapeutic abortions are to be performed to prevent serious, permanent harm to either the physical or mental health of women.
- (c) To report on actions undertaken on the clinical guidance proposal submitted by the Health Ministry to the Ministries Council Presidency.
- (d) To adopt additional measures to ensure women's immediate and adequate access to legal abortion services.
- (e) To adopt the proposed *Comprehensive Technical Guidance for Therapeutic Pregnancy Termination Through the 22nd Week*.

20. On August 8, 2013, the Fifth Constitutional Court of Lima notified DEMUS that it had ruled in favor to protect the right to petition against the Ministry of Health over its refusal to respond to several requests on therapeutic abortion.

21. In that decision, the Court found no reasonable excuse for the conduct of Ministry of Health officials. They considered that their conduct is insensitive, manifestly arbitrary and impossible to dismiss, especially as the said briefs were based on Human Rights Committee Decision 1153/2003 of October 2005 in *KL v. Peru*, a decision concerning the right to life and dignity of women. The Court ordered the Ministry to respond in writing within the statutory period to the requests submitted by DEMUS and other feminist organizations.

22. Nearly a year later, the Ministry has yet to comply with the Court's decision.

b. Writ of *amparo* on the right to access international justice

¹² *Derecho de petición* for its name in Spanish "allows individuals to direct a request of varied content to public powers, parliamentary organs and governments". (Congreso de la República, *Derecho de petición*, http://www.congreso.gob.pe/pvp/pedidos/derecho_peticion.asp (última visita: 20 de Mayo de 2014))



23. KL's mother filed a petition for a writ of *amparo* seeking the protection of her right to access international justice and effective access to justice by means of the Peruvian State's compliance with the Human Rights Committee decision of October 24, 2005.¹³ This is currently scheduled for a ruling.

PETITION


24. Pursuant to the foregoing, we respectfully request that the United Nations Human Rights Committee adopt measures to ensure the Peruvian State adequate compliance with its decision in *KL v. Peru*, including:

- i. To urge the State party to undertake the necessary steps to effectively guarantee the right of Peruvian women to therapeutic abortion.
- ii. To urge the State party to comply with the Human Right Committee decision in *KL v. Peru*, including:
 - a. To comply with the recommendation to undertake the steps to ensure that similar violations do not occur in the future.¹⁴ As part of sexual and reproductive health policies consistent with the guidelines set out in "Safe abortion: technical and policy guidance for health systems" (World Health Organization, 2003), the Peruvian State should:
 - Direct the Ministries of Health and Women's Issues to implement coordinated awareness campaigns designed to educate Peruvian women about their right to therapeutic abortion;
 - Based on Economic, Social and Cultural Rights Committee General Comment 14, enact comprehensive national regulations to provide legal abortion in cases of risk to the life and/or physical or mental health of women.;¹⁵ and
 - Issue legal norms to guarantee full funding for legal abortion services, including the required physical infrastructure, provider staff, a public information system, and referral and counter-referral systems.
 - b. To urge the State party to provide KL with compensation commensurate with the magnitude of the violation of the rights protected under articles 7, 17, 24 and 2 of the International Covenant on Civil and Political Rights.¹⁶
 - c. To urge the State party to publish the decision of the Human Rights Committee in *KL v. Peru* in the nationwide public media in all of Peru's official languages.

Sincerely,


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Directora
DEMUS


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Directora Regional
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Marisol España
Responsable de Litigio
CLADEM

¹³ A ruling on a claim filed by our client against the State party on 13 November 2002.

¹⁴ *Op. cit.* *KL v. Peru*, *supra* note 1, para. 8.

¹⁵ *Op. cit.* CESCR General Comment No. 14 *supra* note 5.

¹⁶ *Op. cit.* *KL v. Peru*, *supra* note 1, para. 8.