

Because children who are victims of sexual violence cannot legally access safe abortion services or access emergency contraception, these children must choose between having an unsafe clandestine abortion or the spectrum of health risks which accompany an adolescent pregnancy.

Now more than ever, an explicit recommendation towards the decriminalization of abortion in cases of sexual violence is crucial to achieve the right to health without discrimination for adolescents.

We respectfully request the Committee on the Rights of the Child to consider addressing the following recommendation to the Peruvian government during the 71<sup>st</sup> Session:

- To rapidly approve legislation that would allow for exceptions to the abortion ban when pregnancy is the result of sexual violence or forced insemination without the woman's consent.
- To resume the free distribution of emergency contraception through the public health system.

## Peru: The Impact of Sexual Violence on Children's Reproductive Rights

In November 2015, the Center for Reproductive Rights provided supplementary information on Peru, scheduled for review by the Committee on the Rights of the Child (CRC) during its 71<sup>st</sup> Session. This report highlights Peru's failure to comply with its obligations under the Convention on the rights of the Child (the Convention) to respect, protect and fulfill children's right to life, survival and development, health, and equality and non-discrimination, by (1) criminalizing abortion in cases of sexual violence and (2) failing to provide access to affordable sexual and reproductive health services, including emergency contraception without discrimination.

### SEXUAL VIOLENCE AGAINST CHILDREN IN PERU

Peru has the highest rate of sexual violence in South America, with 63,545 reported cases of rape between 2000 and 2009.<sup>i</sup> What is more, 34% of victims between 10 and 19 become pregnant as a result of the attack they experience.<sup>ii</sup> Yet even in cases of sexual violence, abortion remains criminalized by the Penal code.<sup>iii</sup> Without legal access safe abortion services, these children must choose between unsafe clandestine abortions or the spectrum of health risks that accompany adolescent pregnancy.

Having an unsafe abortion is one of the five main causes of pregnancy-related death in Peru.<sup>iv</sup> Young women and minors are at particularly high risk as they are less likely to have access to the funding or health information necessary to find safe clandestine abortion services, and are often not physically capable of carrying a pregnancy to term. Complications from pregnancy and childbirth are the second most prevalent cause of death for 15 to 19-year-old girls global<sup>v</sup> and the risk of death from pregnancy-related complications is four to eight times greater for girls below age 15.<sup>vi</sup> Other negative health consequences include anemia, malaria, HIV and other sexually transmitted infections, postpartum hemorrhage and mental illness.<sup>vii</sup> In the case of minors, every pregnancy could potentially cause serious and permanent damage. These children should not be forced to wait until potentially life-threatening complications develop in order to access legal abortion services.

## PERU'S CRIMINALIZATION OF ABORTION IN CASES OF SEXUAL VIOLENCE

Abortion in Peru is criminalized under Article 119 of the Penal Code of 1924 (as amended, the "Penal Code")<sup>viii</sup>. The Penal Code provides a limited exception where abortion is necessary to prevent death or serious injury (defined as "therapeutic abortion"), however no exception is available for pregnancies resulting from non-consensual sex or insemination, sexual violence or incest<sup>ix</sup>. A woman who terminates a pregnancy through abortion may receive a prison sentence of up to two years<sup>x</sup>. The Penal Code sets a high bar, allowing therapeutic abortion only when "it is the only means to save the life of the woman or to avoid serious and permanent damage to her health."<sup>xi</sup> In the case of minors, every pregnancy could potentially cause serious and permanent damage. These children should not be forced to wait until potentially.

## HARDSHIPS FACED BY ADOLESCENTS OF LOWER SOCIOECONOMIC STATUS IN ACCESSING EMERGENCY CONTRACEPTION

The harm suffered by victims of sexual violence in Peru is exacerbated by the restrictive laws and policies around emergency contraception. Emergency contraception (EC) is the most effective way to prevent pregnancy in cases of rape or sexual abuse.<sup>xii</sup> In spite of the high rates of sexual abuse in the country, Peru has banned the free distribution of EC in the public healthcare system, resulting in limited access to this essential medicine.<sup>xiii</sup> In addition, adolescents in Peru often lack access to the reproductive health information and services they need, resulting in high rates of unplanned pregnancies and increasing the likelihood that sexual violence will result in pregnancy.

Though modern contraceptive methods such as EC are increasingly available through private health care suppliers, the costs to a purchaser are significant, especially because over half of the population of Peru lives in poverty (almost a quarter lives in extreme poverty).<sup>xiv</sup> As a result, at least 68% of contraceptive users are reliant on the public health system, which provides cheaper and less effective methods of birth control and which no longer distributes emergency contraception. This situation wherein only some have access to effective birth control constitutes discrimination on the basis of women's socio-economic status.

# Peru's Failure to Guarantee Reproductive Rights Violates the Rights of Life, Survival and Development (Article 6), Health (Articles 3(2), 17 and 24), and Non-Discrimination and Substantive Equality (Article 2)

## CHILDREN'S RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT (ARTICLE 6)

Guaranteeing all adolescents the right to autonomously make decisions about their sexual and reproductive health is a critical step toward realizing the right to life, survival and development. United Nations Treaty Monitoring Bodies (UNTMBs) have expressed concern about adolescents' lack of access to sexual and reproductive health services and the impact that this has on their lives and development, including by urging states to ensure adequate access to such services to reduce adolescent pregnancy and maternal mortality.<sup>xv</sup> The Committee on the Rights of the Child recognizes that unsafe abortion may lead to maternal mortality, in violation of adolescents' right to life.<sup>xvi</sup> Failure to guarantee adolescent's access to abortion and other reproductive health services violates Article 6 of the Convention on the Rights of the Child.

## CHILDREN'S RIGHT TO HEALTH (ARTICLES 3(2), 17 AND 24)

In the context of reproductive rights, "[c]hildren's right to health contains a set of freedoms and entitlements."<sup>xvii</sup> This includes "the right to control one's health and body, including sexual and reproductive freedom to make responsible choices",<sup>xviii</sup> as well "access to a range of facilities, goods, services and conditions that provide equality of opportunity for every child to enjoy the highest attainable standard of health."<sup>xix</sup> To this end, the CRC recognizes that adolescents should have access to short- and long-term contraceptive methods;<sup>xx</sup> "safe abortion and post-abortion care services, irrespective of whether abortion itself is legal,"<sup>xxi</sup> and maternal health services.<sup>xxii</sup> A holistic approach to the right to children's health within the broader framework of international human rights standards involves the realization of children's right to sexual and reproductive health services.<sup>xxiii</sup> Failure to guarantee children's right to sexual and reproductive health violates Articles 3(2), 17 and 24 of the Convention on the Rights of the Child.

## GIRLS' AND ADOLESCENTS RIGHTS TO SUBSTANTIVE EQUALITY AND NON-DISCRIMINATION (ARTICLE 2)

The CRC recognizes that children who are discriminated against "are more vulnerable to abuse, other types of violence and exploitation," and their health and development are put at greater risk.<sup>xxiv</sup> Article 2 requires states parties to respect the rights set forth in the Convention without discrimination, and ensure that all children are protected against discrimination.<sup>xxv</sup> States are obligated to take affirmative measures to protect children's right to non-discrimination and diminish or eliminate conditions that cause discrimination through measures such as legislative changes, changes in administration and resource allocation, and educational measures designed to change attitudes.<sup>xxvi</sup> UNTMBs recognize that restrictive laws on sexual and reproductive health services violate the right to nondiscrimination.<sup>xxvii</sup> Guaranteeing all adolescents the right to make autonomous decisions about their sexual and reproductive health and rights is a critical component of the right to equality and nondiscrimination, due to the disproportionate impact it has on girls. Chile's legislation criminalizing abortion under all circumstances violates Article 2 of the Convention on the Rights of the Child.

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<sup>i</sup> JARIS MUJICA, VIOLACIONES SEXUALES EN EL PERU (SEXUAL VIOLENCE IN PERU) 2000-2009 78 (2001).

<sup>ii</sup> *Id.*

<sup>iii</sup> PERU, PENAL CODE (1991), Art.114, 115, 119 and 120.

<sup>iv</sup> AMNESTY INTERNATIONAL (AI), FATAL FLAWS: BARRIERS TO MATERNAL HEALTH IN PERU 14 (2009), available at: <https://www.amnesty.org/en/documents/AMR46/008/2009/en/>.

<sup>v</sup> WORLD HEALTH ORGANIZATION (WHO), *Adolescent Pregnancy, Fact Sheet No. 364* (Sept. 2014), available at <http://www.who.int/mediacentre/factsheets/fs364/en/>.

<sup>vi</sup> WORLD HEALTH ORGANIZATION (WHO), PREGNANT ADOLESCENTS: DELIVERING ON GLOBAL PROMISES OF HOPE 10 (2006).

<sup>vii</sup> WHO, *supra* note v, *Adolescent Pregnancy, Fact Sheet No. 364* (Sept. 2014), available at <http://www.who.int/mediacentre/factsheets/fs364/en/>.

<sup>viii</sup> PERU, PENAL CODE (1991), Art.114, 115, 119 and 120.

<sup>ix</sup> *Id.*

<sup>x</sup> *Id.* Art. 118.

<sup>xi</sup> *Id.* Art.119. [CRR unofficial translation].

<sup>xii</sup> WORLD HEALTH ORGANIZATION (WHO), *Emergency Contraception, Fact Sheet No. 244* (July 2012), available at <http://www.who.int/mediacentre/factsheets/fs244/en/>.

<sup>xiii</sup> Tribunal Constitucional de Perú [Constitutional Court of Peru], Sentencia [Decision] No. 7435-2006 – PC/TC, available at <http://www.tc.gob.pe/jurisprudencia/2006/07435-2006-AC.html>.

<sup>xiv</sup> AI, *supra* note IV.

<sup>xv</sup> *See, e.g.*, Human Rights Committee, *Concluding Observations: Peru*, para. 14, U.N. Doc. CCPR/C/PER/CO/5 (2013).

<sup>xvi</sup> CRC Committee, *Gen. Comment No. 15*, para. 56.

<sup>xvii</sup> *Id.* para. 24

<sup>xviii</sup> *Id.*

<sup>xix</sup> *Id.*

<sup>xx</sup> *Id.* para. 70.

<sup>xxi</sup> *Id.*

<sup>xxii</sup> *Id.* paras. 51-57.

<sup>xxiii</sup> *Id.* paras. 53-54.

<sup>xxiv</sup> CRC Committee, *Gen. Comment No. 4*, para. 6.

<sup>xxv</sup> CRC, *supra* note 1, art. 2.

<sup>xxvi</sup> CRC Committee, *Gen. Comment No. 5*, para. 12.

<sup>xxvii</sup> CRC Committee, *Concluding Observations: Namibia*, para. 57(a), U.N. Doc. CRC/C/NAM/CO/2-3 (2012); (“The State party’s punitive abortion law and various social and legal challenges, including long delays in accessing abortion services within the ambit of the current laws for pregnant girls. In this regard, the Committee notes with concern that such a restrictive abortion law has led adolescents to abandon their infants or terminate pregnancies under illegal and unsafe conditions, putting their lives and health at risk, which violates their rights to life, to freedom from discrimination, and to health”).