

OBSTACLES TO THE ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES FOR GIRLS AND ADOLESCENTS VICTIMS OF RAPE

Recommendations of the 2nd cycle of the UPR:

N.º 116.97 Adopt and implement a national protocol to guarantee equal access to therapeutic abortion for women and girls as part of sexual and reproductive health services (Finland)

N.º 116.98 Adopt the necessary measures to inform women and girls about their rights related to access to sexual and reproductive health services, including the possibility of abortion, as established by domestic legislation (Mexico)



Implementation of the recommendations:

ACCESS TO EMERGENCY ORAL CONTRACEPTION (EOC) IN PUBLIC SERVICES

In 2012, the State agreed to implement the recommendations related to guaranteeing access to sexual and reproductive health services. However, since 2009, due to a Constitutional Court judgment, access to emergency oral contraception (EOC) in public establishments is prohibited, even for victims of rape. But its sale in private pharmacies is not prohibited. Since August 2016, the provision of EOC in public services is temporary because of a *precautionary measure* ordered by the First Constitutional Court of Lima, in the framework of a process for the protection of fundamental rights (amparo) submitted by a Peruvian citizen.

As part of the compliance with this *precautionary measure*, according to the Ministry of Health (MINSA), from August 2016 until the end of March 2017, 31120 blister packs of levonorgestrel 0.75 mg. were distributed. However, this distribution did not take place in 10 departments: Amazonas, Huancavelica, Huánuco, Moquegua, Pasco, Piura, Puno, Tacna, Tumbes and Ucayali. Similarly, MINSA has reported that during the year 2016 and until March 2017, **while 2832 girls and adolescents between the ages of 12 and 17, who were victims of rape, had access to public health services, only 26 accessed to the EOC or some other method of contraception.**

INADEQUATE IMPLEMENTATION OF THE THERAPEUTIC ABORTION PROTOCOL AND ITS UNAVAILABILITY FOR RAPE VICTIMS WHOSE PREGNANCIES RISK THEIR LIVES OR HEALTH

In 2012, the State agreed to adopt and implement a Therapeutic Abortion Protocol. However, although it was approved in 2014, in practice **it is not guaranteed to victims of rape whose pregnancies clearly risk their lives and mental, physical and social health, mainly in the case of girls and adolescents. One of the challenges for its effective implementation is that the Protocol only standardizes the treatment of women with pregnancies up to 22 weeks of gestation, even if the Criminal Code does not establish this time limit. Thereby, it arbitrarily reduces access to these services.**

In Peru, **30% of cases of maternal mortality have indirect causes¹** (non-obstetric causes due to other diseases) and it is observed that 14.9% of the deceased women were adolescents between the ages of 12 and 19. However, these deaths **could have been avoided if these women had access to therapeutic abortion**, because their pregnancies worsened their health and risked their lives. Likewise, during 2016, there were 85 childbirths performed amongst girls under the age of 11 and 404 in adolescents between the ages of 12 and 17². From January to March 2017, there were 12 childbirths performed in girls under the age of 11 and 6,516 in adolescents between the ages of 12 and 17³. In 2017 there were 2 cases in the media regarding **girls who were raped by relatives and could not access health services to prevent or terminate a pregnancy that risked their lives**

¹ MINSA. National Center for Epidemiology, Prevention and Control of Diseases. Available at: <http://www.dge.gob.pe/portal/docs/vigilancia/sala/2017/SE33/mmaterna.pdf>

² Communication N.º 08-2017-SIS/OGIIT OGIIT from the Comprehensive Health Insurance from the Ministry of Health. In response to a request to access public information submitted by PROMSEX on April 24 of this year.

³ Ibidem.

or health. In Jaén (Cajamarca) a 10-year-old girl, raped by her uncle, became pregnant. In August 2017 it was known that she was at 6 months of gestation. *“It is a high-risk pregnancy. A 10-year-old girl is not prepared for a pregnancy. Her uterus, her pelvis and her organs are not ready to carry a baby”*, said the Dean of the Medical School of Cajamarca⁴. Nevertheless, when asked about the possibility of therapeutic abortion, the Dean said: “According to the law, it can be done. However, it is still an open debate”. This demonstrates the restrictive interpretation of the guarantee of therapeutic abortion and the absence of a rigorous analysis on the impact of pregnancy in the life or health of pregnant girls. Additionally, in La Libertad, a 13-year-old girl became pregnant after systematic rapes performed by her brother-in-law. Due to the lack of family support, her teachers reported the events: *“You’re going to have a baby, I told her. Then the child hugged me and the only thing she was asking was: ‘Teacher, help me. I don’t want my belly to grow’ (...)”*, said the teacher⁵. However, she also did not have access to therapeutic abortion and continued with her forced pregnancy.

In addition to all of this, Bill 387-2016/CR, which proposes **the decriminalization of abortion in cases of rape**, is still **pending discussion** in the Congress of the Republic, **despite the fact that in 2011 the CEDAW Committee established the international responsibility of the State in the case of L.C. vs. Peru**. This case stipulated as a preventive measure the decriminalization of abortion in cases of rape. This recommendation has not yet been implemented by the State.

Recommendations suggested for the 3rd cycle of the UPR:

- Ensure access to sexual and reproductive health services and comprehensive sex education, according to the commitments established in the *Montevideo Consensus on Population and Development and the Sustainable Development Goals 2030 N°.3 (Health and Well-being) and N°.5 (Gender Equality)*.
- Ensure permanent access to information on, and distribution of, the emergency oral contraception (EOC) in public health services, including victims of rape.
- Ensure the availability of therapeutic abortion for girls and adolescent victims of rape whose pregnancies affects their lives physically, mentally and social health; and complement the Therapeutic Abortion Protocol with the standardization of the procedure for pregnancies beyond the 22 weeks.
- Decriminalize abortion when pregnancy is the result of rape, in order to avoid forced pregnancies and motherhoods.
- In accordance with what is set forth in the *National Plan on Human Rights 2012 – 2014*, the State shall submit a report from the World Health Organization (WHO), the Pan American Health Organization (PAHO), or a specialized organization of international prestige, in regard to the effects of the EOC and, on this basis, adapt its public policy.

Questions suggested for the 3rd cycle of the UPR:

- What measures are being implemented to decriminalize abortion in the case of women who become pregnant because of rape?
- Why does the National Technical Guide of therapeutic abortion only standardize the procedure of comprehensive treatment for pregnant women with less than 22 weeks of gestation if Article 119 of the Criminal Code does not establish this time limit?
- Why, despite being a commitment of the National Plan on Human Rights 2014-2016, has the State not yet requested to the WHO, PAHO, or a specialized organization of international prestige, to inform on the effects of the emergency oral contraception (EOC) in order to adapt, on this basis, its public policy?

⁴ Available at: <http://elcomercio.pe/peru/cajamarca/nina-10-anos-embarazada-recibe-atencion-medica-jaen-noticia-447669>

⁵ Available at: <http://peru21.pe/actualidad/menor-13-anos-queda-embarazada-violada-sistematicamente-cunado-60-anos-2291740>