

September 06, 2013

**SECRETARIAT OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION  
AGAINST WOMEN**

**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)**

Dear Sirs or Madams:

In the framework of the preparation of the list of issues for the 58th meeting of the Committee on the Elimination of Discrimination against Women, to be held from 06 to 25 July 2014, where the Peruvian State will be evaluated, the **Center for the Promotion and Defense of Sexual and Reproductive Rights - PROMSEX**, a feminist non-governmental organization, composed of men and women, professionals and activists, that seeks to contribute to the validity of the integrity and dignity of all persons in the access to sexual and reproductive health, justice and human security; hereby submits relevant information on sexual and reproductive rights in Peru: 1) The lack of access to abortion for therapeutic reasons and 2) the criminalization of abortion in cases of rape; which are facts that constitute a serious violation of the article 1, 2, 3, 5, 12 and 16 e) of the Convention on the Elimination of All Forms of Discrimination against Women.

## **I. SUMMARY**

### **Articles 1, 2 (c) (f), 5, 12:The right to health care without discrimination: the lack of access to abortion for therapeutic reasons**

In this regard, Peru has received the following recommendations and observations on the part of the present Committee:

"9. Review its legislation with a view to establishing a mechanism for the effective access to therapeutic abortion, under conditions that will protect the physical and mental health of women and to prevent similar violations in the future to the present case". *CEDAW/C/ 50/D/ 22/2009, Communication No. 22/2009 case L. C. vs. Peru.*

"482. The Committee notes with concern the high maternal mortality rate and particularly mortality resulting from illegal abortions, including among adolescents, and the requirements that may prevent women from obtaining medical treatment in abortion cases" *CEDAW/C/SR.583 and 584 (2002)*

"11. The refusal by a State Party to provide for the provision of certain reproductive health services to women in legal conditions is discriminatory". *General Comment No. 24, 20th session, the women and health. A/ 54/38/Rev. 1, cap. I (1999)*

“340. The Committee recommends that the Government of Peru review its law on abortion and ensure that women have access to full and complete health services, which include safe abortion, and to emergency medical attention when complications arise from abortions”. *Suplement No. 38 - A/53/38/Rev.1, 22 (1998)*

1. Therapeutic abortion, as defined in article 119° of the Peruvian Criminal Code as the interruption of pregnancy to save the life of the pregnant woman or avoid serious and permanent damage to her health<sup>1</sup>, is not punishable in Peru since 1924<sup>2</sup>. One of the most important elements to ensure real access and without discrimination to all women, who need a non-punishable abortion, is the existence of protocols or guidelines for clinical practice. Throughout the world, including Peru, medical procedures have these patterns that generate standards for health-care personnel and guide a timely attention to the health of the users; in Peru, the attentions relating to sexual and reproductive health have specific guides of attention that rule at the national level<sup>3</sup>. In countries where abortion is not contrary to the law, as in Peru is the therapeutic abortion, there is an obligation to provide the service in the public health systems by eliminating the unnecessary risks that women that require this attention can be subjected<sup>4</sup>.
2. According to information from the Table on the Fight Against Poverty, which compiles information from the Ministry of Health, reported the direct causes of maternal death: 40.2 % were due to hemorrhage, 32% due to the hypertensive disease induced by pregnancy, 17.5 % to abortion, and the 4.1 % due to infection related to the pregnancy. That is to say, preventable causes. Between the years 2010 and 2012 there was an increase in the percentage of maternal deaths in adolescents between 12 and 17 years of age, being suicide the main indirect cause of maternal deaths in adolescents (56 %).<sup>5</sup>
3. At the date of this communication, the Peruvian State, through the Ministry of Health, has not approved the national protocol in spite of having recognized his obligation and have offered it on multiple occasions.<sup>6</sup> It is necessary to take into account that the National Plan for Gender Equality 2012-2017 has as a target for the reduction of maternal mortality to 2017, the adoption of the protocol for the care of therapeutic abortion.
4. In October 2005, the United Nations Human Rights Committee issued its opinion in the case of K. L. vs. Peru. K. L. are the initials of a teenager that in 2001 was in pregnancy of a anencephalic fetus and a public hospital in Lima did not provide her with the possibility of

<sup>1</sup> PERUVIAN PENAL CODE. Article 119.- therapeutic abortion.

It is not punishable abortion carried out by a doctor with the consent of the pregnant woman or his legal representative, if any, when it is the only way to save the life of the pregnant woman or to prevent serious and permanent damage to her health.

<sup>2</sup> The abortions justified in therapeutic reasons are explained because a number of pregnancies are developed on previous pathologies in which the gestation increases the state of women's health by putting it at risk and because pathologies occur during pregnancy, which complicate their course, with risk to the life and physical and mental health of the pregnant women.

<sup>3</sup> MINISTRY OF HEALTH. *National guides to comprehensive care of the Sexual and Reproductive Health*. Lima: MOH, 2004.

<sup>4</sup> That is why the World Health Organization has a model guide entitled "Safe Abortion: Technical Guide and Policies for Health Systems", available in [http://whqlibdoc.who.int/publications/2003/9275324824\\_spa.pdf](http://whqlibdoc.who.int/publications/2003/9275324824_spa.pdf)

<sup>5</sup> Table of Coordination on the Fight against Poverty. Maternal and Neonatal Health, balance Report 2012

<sup>6</sup> The requirement of a national protocol for attention to therapeutic abortion has had a great bounce in press as can be seen in the following journalistic notes

links: <http://www.andina.com.pe/Ingles/Noticia.aspx?id=jXRtUhw5Gy4=>; <http://peru21.pe/noticia/486496/peru-aplicarian-aborto-terapeutico>; ; <http://peru21.pe/imprensa/noticia/piden-aprobar-protocolo-aborto-legal/2010-05-29/276174> <http://www.larepublica.pe/archive/all/larepublica/20100908/23/node/288041/todos/13> <http://peru21.pe/imprensa/noticia/abortos-terapeuticos-no-cuentan-protocolos/2011-02-16/297203>

terminating her pregnancy, despite the fact that her gynecologist, a member of the medical corps of the same hospital had recommended it; and despite that it was an accredited risk of a serious and permanent damage to their physical and mental health. The Committee specifically recommended to the Peruvian State to take steps to prevent similar cases in the future.<sup>7</sup>

5. The absence of protocol has given rise to violations of the rights of other adolescents and women. L. C. is the initials of a 13-year-old teenager victim of rape, who attempted suicide in March 2007, by jumping from the roof of his house. Moved to a public hospital, she was recommended to have a surgical intervention, to prevent the consolidation of the damage suffered by the fall, the same that was not practiced when her pregnancy was confirmed. Despite the fact that a therapeutic abortion was formally requested to the Director of the hospital, the request was not granted. L. C. suffered a spontaneous miscarriage and only after that an operation was scheduled, for his injuries of her vertebral column, which was almost three and a half months after the need of it was decided.
6. In its opinion of October 2011, the Committee on the Elimination of Discrimination Against Women (CEDAW) considered that the Peruvian State has violated the rights of L. C. and made the state the following indications, that Peru has not yet expressed willingness to implement:
  - Provide to L. C. reparation measures that include an adequate compensation for moral and material damage as well as rehabilitation measures according with the seriousness of the violation of their rights and their state of health.
  - Establish a mechanism for the effective access to therapeutic abortion, in conditions that protect the physical and mental health of women and to prevent violations similar to the present case in the future.
  - Take measures in relation to reproductive rights that are known and respected in all health centers, which includes (i) education and training programs for health professionals to change their attitudes and behaviors in relation to adolescent women who wish to receive reproductive health services, so they can meet their specific needs related to sexual violence and (ii) guidelines or protocols to ensure the availability and access to public health services.
  - Examine the narrow interpretation of therapeutic abortion.
  - Review the legislation to decriminalize abortion when the pregnancy is caused by a rape.<sup>8 9</sup>

To date, it has not been complied with any repair - individual or direct - for L. C., or to the measures of non-repetition.

7. The cases K. L. and L. C. are not, unfortunately, the only emblematic. At the end of 2010, it was reported in the Peruvian press another case of a woman who, despite needing cancer

<sup>7</sup> You can access the text of the opinion of the Human Rights Committee of the UN in <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/KL%20HRC%20final%20decision.pdf>

<sup>8</sup> You can access the text of the opinion of the Committee on [http://www2.ohchr.org/english/law/docs/CEDAW-C-50-D-22-2009\\_sp.pdf](http://www2.ohchr.org/english/law/docs/CEDAW-C-50-D-22-2009_sp.pdf)

<sup>9</sup> In his concluding remarks to the Peruvian State, this Committee previously said his concern because Peru did not act on the recommendations of the Committee on Human Rights made in connection with the case of K. L. and also asked the State to meet the recommendations of the Committee on Human Rights made in connection with that case. CEDAW/C/PER/CO/6, paragraphs 24-25.

treatment, was not granted the right to receive truthful information and to terminate the pregnancy; instead, she was subjected to chemotherapy while pregnant, which affected her health and unnecessarily prolonged her pregnancy.<sup>10</sup> Also, in March 2012 was reported the case of a woman who was not properly treated in a health center, where she was initially evaluated<sup>11</sup>, arguing administrative formalities that put at risk her life and also caused a risk of serious and permanent damage to her health, so he had to resort to another public hospital where he underwent a procedure of therapeutic abortion.

8. The Office of the Ombudsman, the national agency for human rights, has recommended in its First and Second Report on the implementation of the Law on Equal Opportunities between Women and men that the Ministry of Health should approve the protocol for the care of therapeutic abortion<sup>12</sup>. The same has been done in their annual reports for the years 2006 to 2009<sup>13</sup>. With regard to the L. C. case it has spoken again, requesting its approval.<sup>14</sup>
9. With date August 8<sup>th</sup>, 2013, the Fifth Constitutional Court of Lima declared founded the writ of amparo for the right to petition<sup>15</sup> against the Ministry of Health, for not having answered to the requests for information made in November 2007, July and October 2008 and January and May 2009, on the adoption of the Therapeutic Abortion Protocol, regarding the K. L. case, followed in the Human Rights Committee, indicating the need to provide a formal response about the process of approval of this document.
10. Despite the fact that there is currently a proposal for a *Medical Guide for comprehensive care of voluntary interruption by therapeutic indication of pregnancy less than 22 weeks with informed consent* that has the favorable opinion of the Ministry of Women and Vulnerable Populations, this has not yet been approved. Therefore, the situation of women who require a therapeutic abortion to safeguard their lives and their health is still in the same condition of precariousness and neglect on the part of the Peruvian State.
11. On June 17<sup>th</sup>, 2013 the Commission on Women and Family of the Congress of the Republic adopted an opinion on the Draft Law N° 549/2012-CR called "New Children and Adolescents Code". The opinion raises two modifications to the original bill. In the first place, it states that the rights of the conceived are absolute, and enjoy special protection and privileged; in second place, it points out that when there is a situation of conflict of rights and interests of children and adolescents - including the rights and interests of the unborn - with other legitimate rights, such as the right to life or health of the woman<sup>16</sup>, the first must

<sup>10</sup> Information available at: <http://www.larepublica.pe/impresas/me-negaron-aborto-terapeutico-2010-10-09> <http://www.larepublica.pe/archive/all/larepublica/20101011/21/node/294077/todos/13>

<sup>11</sup> Information available at: <http://www.caretas.com.pe/Main.asp?T=3082&S=&id=12&idE=1004&idSTo=0&idA=57425>

<sup>12</sup> Office of the Ombudsman. Deputy Defender for the Rights of Women. *First Report on the implementation of the Law on Equal Opportunities of Women and Men*. Report of Deputy Defender No. 001-2008-DP/ADDM. Lima: Ombudsman's Office, 2008, pp. 21, 28, 39; Office of the Ombudsman. Deputy Defender for the Rights of Women. *Second Report on the implementation of the Law on Equal Opportunities of Women and Men*. Report of Deputy Defender No. 001-2009-DP/ADDM. Lima: Ombudsman's Office, 2009, pp. 98-100. Available at: <http://www.defensoria.gob.pe/informes-publicaciones.php>

<sup>13</sup> Office of the Ombudsman. *Tenth Annual Report of the Ombudsman (January-December 2006)*, pp. 176-177; Office of the Ombudsman. *Eleventh Annual Report of the Ombudsman (January-December 2007)*, pp.169-170; Office of the Ombudsman. *Twelfth Annual Report of the Ombudsman (January-December 2008)*, pp.143 and 156; Office of the Ombudsman. *Tenth third Annual Report of the Ombudsman (January-December 2009)*, p. 155. Available in <http://www.defensoria.gob.pe/informes-publicaciones.php>

<sup>14</sup> Office of the Ombudsman. Press Release No. 320/ DP/BICE/2011. Available at: <http://www.defensoria.gob.pe/modules/Downloads/prensa/notas/2011/NP-320-11.pdf>

<sup>15</sup> This demand was filed by the Study Center for the Defense of Women and others against MINSAs.

<sup>16</sup> **Article IV.- Subject of law**

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prevail, what is a barrier to the application of therapeutic abortion, despite the fact that it is decriminalized since 1924.

12. Peru has received a number of recommendations of other Committees of the United Nations, as the Human Rights Committee<sup>17</sup>, Committee against Torture,<sup>18</sup> and in the Universal Periodic Review<sup>19</sup>, where they expressed their concern for the high percentage of maternal deaths associated with abortion and recommended approval of the national protocol for therapeutic abortion.

## **Article 1, 2, 12: The right to health care without discrimination: the criminalization of abortion in cases of rape**

In this regard, Peru has received the following recommendations and observations on the part of the present Committee:

"9. The State Party should review its legislation to decriminalize abortion when the pregnancy is caused by a rape or sexual abuse". *CEDAW/C/ 50/D/ 22/2009, Communication No. 22/2009 case L. C. vs. Peru.*

"24. The Committee urges the State Party to review its narrow interpretation of therapeutic abortion, which is legal; so as to focus more on the prevention of adolescent pregnancies and consider reviewing the legislation related to abortions in cases of unwanted pregnancy, with a view to eliminate the sanctions that are imposed on women who undergo an abortion". *CEDAW/C/PER/CO/6 - January 15<sup>th</sup> to February 2<sup>nd</sup>, 2007.*

"31. When possible, legislation criminalizing abortion must be modified, in order to abolish the punitive measures imposed on women who undergo an abortion". *General Comment No. 24, 20th session, Women and health. A/ 54/38/Rev. 1, cap. I (1999).*

"339. The Committee notes with concern that there is a close link between the rate of abortions practiced and the high rate of maternal mortality, and notes that the criminalization of abortion does not desist from the abortion but that it is unsafe and dangerous to women. *A/ 53/38/Rev. 1, June 22 to July 10, 1998*"

"446. The Committee urged the Government to examine the causes of high rates of maternal mortality caused by the clandestine abortions and to review the law on abortion, taking into account the health needs of women and to consider the possibility of suspending a sentence of imprisonment imposed on women who had been subjected to illegal abortions". *A/ 50/38, parag. 398 -451, January 16th to February 3rd, 1995.*

The children and adolescents are subject to law, understood as the title and the progressive realization of rights, freedoms and guarantees; and, are also subject to duties. *Also, they deserve special protection.*

*The unborn is a legal person in everything that favors him or her and enjoys special protection and privileged (bold and italics ours).*

### **Article VII.- Best interests of the Child**

It is understood by the best interests of the child and adolescent, the satisfaction, integral, simultaneous and harmonic, of their rights.

*When there are conflicts between the rights and interests of children and adolescents and other rights and interests equally legitimate, the former shall prevail (bold and italics ours).*

<sup>17</sup> CCPR/C/PER/CO/5, 29 April, 2013

<sup>18</sup> CAT/C/PER/Q/6, 15 and 16 November, 2012.

<sup>19</sup> A/HRC/22/15, 27 December, 2012

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1. In Peru, the practice of abortion is criminalized even in cases of rape and malformation incompatible with extra uterine life. In accordance with article 120 of the Penal Code, only has a lesser penalty the abortion of a pregnancy resulting from a violation *outside* of marriage (not more than three months of imprisonment); if the abortion is from a rape *within* marriage, the applicable penalty would be that of the general type of article 114° (no more than two years of imprisonment).<sup>20</sup>
2. This is particularly relevant if we take into account how sexual violence is present in the everyday lives of women of Peru. Currently, Peru is the country with the highest rate of rape complaints in all South America (22.4 complaints of rape per 100,000 inhabitants)<sup>21</sup>. Comparative studies indicate that approximately 5% of the women raped result with an unwanted pregnancy, which applied to the case of Peru would be equivalent to a minimum of 35 thousand pregnancies as a product of sexual assaults annually.<sup>22</sup>
3. It is also estimated that approximately 12% of Peruvian women has been forced at least once in their life to have sexual relations that did not want to or did not approve<sup>23</sup>. And this situation is directly related to the fact that, according to the Ministry of Women and Vulnerable Populations, in the year 2010, the Women's Emergency Centers registered a total of 1333 cases of sexual violence against women between 10 and 14 years and 1191 cases of sexual violence against women between 15 and 19 years. A total of 258 (34 %) women in both groups were pregnant, as a result of the sexual violence that affected them.<sup>24 25</sup>
4. The criminalization of abortion in Peru concurs with the complaint of women who come to services of clandestine abortion and develop complications that involve medical care since there are legal standards, as article 30 of the General Law of Health and the Code of Criminal Procedures,<sup>26</sup> which obligate to the health operators to denounce them, despite being a constitutional duty/ right of the doctor to keep the professional secrecy<sup>27</sup>, and to have a binding judgment to Peru (De la Cruz Flores case versus Peru) before the Inter-American

<sup>20</sup> **PERUVIAN PENAL CODE. Article 114. - Self-abortion.** The woman who causes its abortion, or consents to another practice, shall be punished with imprisonment of not more than two years or with community service for fifty-two to one hundred and four days. Article 120. - Sentimental and eugenic abortion. The abortion will be punished with imprisonment of not more than three months: 1. When the pregnancy was the result of rape out of marriage or non-consensual artificial insemination and that occurred outside of marriage, provided that the facts have been reported or investigated, at least by the police; or 2. When it is likely that the human being in pregnancy will lead to birth with serious physical or mental defects, if there is always a medical diagnosis. Available at: <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codpenal.htm&vid=Ciclope:CLPdmo>

<sup>21</sup> Mujica, Jaris. *Rape in Peru 2000-2009. A report on the state of the question.* Lima: PROMSEX, 2011.

<sup>22</sup> CHAVEZ ALVARADO, Susana (editor). *Notes for the action: The rights of women to a legal abortion.* Lima: Center for the Promotion and Defense of the Sexual and Reproductive Rights - PROMSEX, September 2007, pp. 53-54. Available at: <http://www.promsex.org/docs/Publicaciones/apuntesabortolegalsegediccion.pdf>

<sup>23</sup> National Institute of Statistics and Informatics (INEI). *Demographic and Family Health Survey 2011.* Lima: INEI, 2012.

<sup>24</sup> Ministry of Health & UNFPA. *Data Sheet 3. Violence against women in their teens.* Lima: Ministry of Health & UNFPA, 2012.

<sup>25</sup> It is necessary to mention that the relationship between sexual violence and pregnancy is exacerbated by the lack of access to methods, since 2009 the Peruvian Constitutional Court banned the free distribution at the national level of emergency oral contraception in violation of the sexual and reproductive right of women.

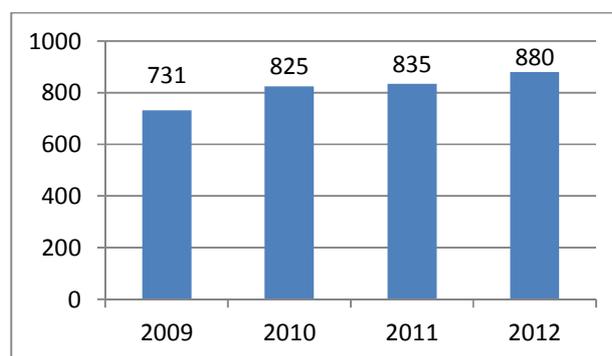
<sup>26</sup> **That mandate is set out in the following standards:** LAW 26842. GENERAL HEALTH LAW. Article 30. - The physician who provides medical care, when there is evidence of criminal abortion is obliged to bring the matter to the attention of the competent authority. LEGISLATIVE DECREE 957. NEW CRIMINAL PROCEDURE CODE. Article 326.- authority and obligation to denounce: 1. Any person has the right to denounce the offenses before the appropriate authority, always and when the exercise of the criminal action for persecuting them is public. 2. However, the foregoing shall formulate complaint: (a) those who are obliged to do so by express command of the law. In particular what are health professionals for the crimes that know about it in the performance of its activity, as well as the educators for the crimes that might have taken place in the educational center. [ ... ]

<sup>27</sup> **POLITICAL CONSTITUTION OF PERU. Article 2.-** Every person has the right... (18) to keep silent about their political beliefs, philosophical, religious or any other nature, as well as save the professional secrecy.

Court of Human Rights where it is considered that the State violated the principle of legality by imposing to the doctors the obligation to report possible criminal behaviors.

5. According to the Observatory of Crime of the Public Prosecutor<sup>28</sup> said, from the reports of the Information System to Support the Fiscal Work (SIATF) and the System of Fiscal Management (SGF) that in the period 2009-2012 there were a total of 3271 abortion complaints to the Public Prosecutor at the national level.<sup>29</sup>

**Chart 1**  
**Abortions in the Public Ministry at the national level**



**Own Elaboration**

**Source:** Public Ministry Observatory of Crime

6. The Human Rights Committee has expressed its concern about the criminalization of abortion in cases of rape in Peru<sup>30</sup>. The same has been pointed out by the Committee against Torture on the occasion of the last review of the Peruvian State<sup>31</sup> and it has also been expressed this year by the Committee on Economic, Social and Cultural Rights<sup>32</sup>. Also, in the opinion of the case L. C. against Peru, the Committee on the Elimination of Discrimination against Women recommended to the Peruvian State "review its legislation to decriminalize abortion when the pregnancy is caused by a rape or sexual abuse"<sup>33</sup>.
7. Despite these recommendations of bodies that monitors United Nations treaties, to date there are not any legal initiative to decriminalize abortion in cases of rape. In October 2009, the last Special Commission Reviewing the Penal Code approved to decriminalize, in the Preliminary Draft of the new Penal Code, the interruption of a pregnancy in cases of rape, artificial insemination or transfer of a non-fecundated ovule nonconsensual or fetal malformations, provided that the facts had been denounced according to criminal laws; however, this project has been dismissed for discussion in the current Congress of the Republic.

<sup>28</sup> Observatory of crime in the Public Ministry. *Chart No. 1. Crimes recorded in the Office of Public Prosecutions for the crime of abortion according to district prosecutor, geographical district and year*. Lima: Observatory of crime in the Public Ministry, 2013.

<sup>29</sup> The information that sends the Judicial System does not segregate enough among women, doctors and people who provide the service.

<sup>30</sup> CCPR/C/ 79/Add.72, 18 November 1996, subparagraph 22, CCPR/CO/70/PER, 15 November, 2000, subparagraph 20.

<sup>31</sup> CAT/C/PER/CO/4, 25 July, 2006, subparagraph 23.

<sup>32</sup> E/C. 12/PER/CO/ 2-4, May 30, 2012, subparagraph 21

<sup>33</sup> CEDAW/C/ 50/D/ 22/2009, 25 November 2011, subparagraph 9.2, section (c).

## II. SUGGESTED QUESTIONS

### **Articles 1, 2, 12: The right to health care without discrimination: the lack of access to abortion for therapeutic reasons**

1. What current and future measures are being taken by the Peruvian State to ensure access to therapeutic abortion in accordance with the law? Particularly, what current measures have been taken to issue a national protocol for the attention of the legal abortion to include clear mechanisms for access to the procedure, in accordance with a broad interpretation of its scope, which includes the protection of the physical and mental health of women?
2. Why does the State have not complied with the recommendations of the Committee on the Elimination of All Forms of Discrimination Against Women in the case L. C. vs. Peru?; What are the steps that is taking to comply with the recommendations issued?
3. What answer will give the State, through the Ministry of Health, with respect to the requirement to approve the national protocol of therapeutic abortion, regarding the ruling of August 8<sup>th</sup>, 2013 of the Fifth Constitutional Court of Lima?

### **Article 1, 2, 12: The right to health care without discrimination: the criminalization of abortion in cases of rape**

1. What measures are being taken by the Peruvian State before the high rate of rape and pregnancy as a result of such violations?
2. What is the Peruvian State doing to decriminalize abortion in cases of pregnancy resulting from rape (article 120 of the Penal Code) and ensure the life, health and freedom of the Peruvian women?
3. Why does the Peruvian State have regulations that obligate to the health operators to denounce women that are attended when they have evidence of a criminal abortion, in violation of the constitutional duty/ right of the professional secrecy? What steps is taking the Peruvian State to modify these rules?

We hope that the information provided will serve for a better assessment of the state of human rights in Peru.

Sincerely,



Rossina Guerrero  
Director