

December 15, 2015

**Committee on the Rights of the Child**  
**Human Rights Treaties Division**  
**The Office of the High Commissioner of the United Nations on Human Rights**  
**Palais Wilson - 52, rue des Pâquis**  
**CH-1201 Geneva (Switzerland)**

**Ref. Report for the 71st Session of the Committee on the Rights of the Child (January 11 - 29, 2016) regarding the right to sexual and reproductive health of children and adolescents in Peru.**

Dear members of the Committee of the Rights of the Child,

In order to inform the list of issues for evaluation of the Peruvian government at the 71st session of the Committee on the Rights of the Child (January 11 to January 29, 2016); **the Center of Promotion and Defense of Sexual and Reproductive Rights – PROMSEX, Planned Parenthood Federation of America, and Centro Ideas – Piura** hereby submit relevant information on four issues affecting the health and the sexual and reproductive rights of children and adolescents in Peru: 1) Lack of access to emergency contraception (EC), 2) Lack of access to safe and legal abortion, which includes: therapeutic abortion, criminalization of abortion in case of rape and violation of confidentiality, 3) Lack of acknowledgment of the sexual and reproductive rights of children and adolescents and 4) Child trafficking for purposes of sexual exploitation.

Sexual and reproductive rights are an important part of everyone's rights to health, life, and dignity, but they are especially important for girls and adolescents. As such, reproductive rights receive broad protection under this Convention. Article 24 of the Convention recognizes girls' and adolescents' right "to the enjoyment of the highest standard of health" and requires state parties "develop family planning and education services." Article 6 protects the right to life, and requires states to ensure children's development "to the maximum extent possible." Articles 19, 34, 37, and 39 require states to provide special protections against sexual abuse, to prevent cruel treatment of children, and to promote recovery for child victims of sexual abuse and exploitation. Article 2 prohibits discrimination on the basis of sex, and Articles 13 and 28 require states to provide education and information on sexual and reproductive health. This Committee has recognized that girls and adolescents face numerous barriers to reproductive and sexual health services and information, as well as additional risks of sexual abuse and exploitation.<sup>1</sup> In General Comment 4, this Committee recognized the importance of reproductive health services,<sup>2</sup> family planning services,<sup>3</sup> "sexual and reproductive information,"<sup>4</sup> access to health services for pregnant women,<sup>5</sup> and the need to reduce maternal morbidity and mortality in adolescent girls, particularly those

---

<sup>1</sup> Committee on the Rights of the Child, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/4 (2003) [hereinafter Committee on the Rights of the Child, *General Comment No.4*].

<sup>2</sup> *Id.* para. 28.

<sup>3</sup> *Id.* para. 10.

<sup>4</sup> *Id.* para. 28.

<sup>5</sup> *Id.* para. 31.

caused by early pregnancy and unsafe abortion practices.<sup>6</sup> In spite of these protections, the rights of girls and adolescents in Peru continue to be violated by a lack of access to abortion, even though it is legal when the life or health of the woman is threatened by the pregnancy; a lack of access to emergency contraception, by the state's failure to acknowledge sexual and reproductive rights of children and adolescents and a lack to stop child trafficking for purposes of sexual exploitation,

We will present updated information on the matter of sexual and reproductive health based on the content of Comments 4 and 15; the latter asserts that “the right of the child to health consists of a series of liberties and rights. Among these liberties, of increasing relevance as capacity and maturity increase, it is worth mentioning the right to control our own health and body, including sexual and reproductive freedom to adopt responsible decisions”.<sup>7</sup>

Finally, it should be noted that the subjects we shall discuss have also been highlighted by numerous other committees within the United Nations that are concerned with protection of human rights. These include the Committee on Economic, Social and Cultural Rights, the Committee against Torture, the Committee for the Elimination of all Forms of Discrimination Against Women (CEDAW), the Human Rights Committee, and the Universal Periodic Review (UPR), in which there has been concern regarding the increase of pregnancies and maternal mortality in adolescents, lack of access to reproductive and sexual health services for adolescents, criminalization of abortion in cases of rape and sexual exploitation of girls and adolescent. Similarly, the Peruvian Government has been brought before international human rights mechanisms in two cases for denying adolescents access to legal abortion: the case of K.L. vs. Peru<sup>8</sup> before the Human Rights Commission, and the case of L.C. vs. Peru<sup>9</sup> before the Committee of CEDAW. In the latter, the Committee recommended that Peru should

- “ii. (...) establish a **mechanism for effective access to therapeutic abortion** protecting the physical and mental health of women, and preventing similar violations in the future.
- iii. [...] take measures in relation to reproductive rights that are known and respected in all health centers, including i) education and outreach programs for health professionals to change their attitudes and behavior with regard to **adolescents who wish to receive reproductive health services and that respond to their specific health needs related with sexual violence, and ii) guidelines or protocols to guarantee availability and access to public health services**[...]
- iv. Examine the restricted interpretation of therapeutic abortion.
- v. **Review the legislation to legalize abortion in cases where pregnancy is the result of rape.**<sup>10</sup>

---

<sup>6</sup> *Id.* para. 31.

<sup>7</sup> Committee on the rights of the child. General Comment No. 15 (2013) on the rights of the child to enjoy the highest standard of health possible (Article 24). CRC/C/GC/15, paragraph. 24.

<sup>8</sup> Human Rights Commission (HRC), K.L. vs. Peru, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003 (2005).

<sup>9</sup> L.C. vs. Peru, Committee for the Elimination of Discrimination against Women, Communication No. XX/2011 paragraph XX, UN Doc. CEDAW/C/50/D/22/2009, available at: [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>10</sup> In their final observations to the Peruvian Government, the CEDAW Committee also expressed its concern as Peru has not implemented the recommendations of the Human Rights Commission issued in relation to the case of K.L. and thereby requested that they comply with the recommendations of the Human Rights Commission issued in relation to this case. Committee for the Elimination of Discrimination against Women, *Final Observations: Peru* at XX, paragraph 24, UN Doc. CEDAW/C/PER/CO/6, subsections 24-25. February 2, 2007

This report intends to highlight that public policies and regulations of the Peruvian Government do not guarantee access to the wide range of modern contraceptives, including emergency contraception, access to legal abortion, and access to sexual and reproductive health services for girls and adolescents. As well as that Peru has also not achieved progress towards the elimination of trafficking of children for purposes of sexual exploitation. Therefore, Peru is violating its international obligation to respect, guarantee and adopt measures in its domestic law regarding the foregoing rights, and has failed to take into account the general recommendations made by this Committee regarding the sexual and reproductive rights of children and adolescents.<sup>11</sup> In this sense, we respectfully suggest that the Committee on the Rights of the Child issue the following recommendations to Peru:

- i) review its national legislation to allow free access to emergency contraception within the public health system;
- ii) implement in an appropriate manner the Therapeutic Abortion Technical Guide, through a comprehensive interpretation of the right to health in its three dimensions (physical, mental and social), legalize abortion in cases of rape, and derogate legal provisions that oblige health operators to report women and adolescents for the alleged crime of abortion;
- iii) implement in the health sector and the administration of justice the Judgment of the Constitutional Court (Docket No. 00008-2012-PI/TC), which recognized the right to sexual freedom of adolescents between the ages of 14 and 18 and guarantees their access to sexual education and sexual and reproductive health services (SRHS);
- iv) have a comprehensive national health policy for the care and protection of the health of adolescent victims of trafficking with purposes of sexual exploitation.

## I) GENERAL INFORMATION:

- Currently, in Peru people under the age of 15 represent 28% of the population (approximately 8 million); in the year 2025, they will represent 24% of the population.<sup>12</sup> Youth between the ages of 15 and 29. In 2013 this represented the 27% of the population and 75% of them live in an urban area.<sup>13</sup> Of those aged 12 and above, 58% consider themselves mestizo, 23% Quechua, 5% Aymara, of the Amazon region, black, mulatto or mixed race black and 5% white.<sup>14</sup>
- Youth currently represent a high percentage of the population, this is known as the “demographic bonus”<sup>15</sup>, which started in our country in 2005 and will last 42 years, approximately until 2047. This phenomenon has allowed the economic take off of many emergent Asian countries. However it can only be embraced if adequate economic and social policies are adopted and directed to extend educational opportunities and productive employment for youth. (UNFPA 2012: 21)

---

<sup>11</sup> General Comment No. 4 Committee on the Rights of the Child, health and development of adolescents in the context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4 (2003); General Comment No. 15 on the right of the child to enjoy the highest standard of health possible. CRC/C/GC/15 – 2013

<sup>12</sup> INEI and UNFPA (2015) Statistical Digital Publication. Page 06, available at:

[http://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitales/Est/Lib1251/Libro.pdf](http://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1251/Libro.pdf)

<sup>13</sup> SENAJU and UNFPA (2013) La Juventud en el Perú. Page 01, available at:

[http://www.unfpa.org.pe/WebEspeciales/2013/Abr2013/TC/Flyer\\_La%20Juventud%20del%20Peru%20ok.pdf](http://www.unfpa.org.pe/WebEspeciales/2013/Abr2013/TC/Flyer_La%20Juventud%20del%20Peru%20ok.pdf)

<sup>14</sup> *Ibid.* Page 02.

<sup>15</sup> UNFPA (2012) the regional demographic bonus in Peru. Lima: UNFPA. Page 21, available at:

[http://www.regionloreto.gob.pe/sirvaes/Ordenanza12\\_2009.pdf](http://www.regionloreto.gob.pe/sirvaes/Ordenanza12_2009.pdf)

- The development of a large number of adolescents is threatened by poverty, drug use, violence due to unsafe conditions for citizens, poor quality education, unemployment and under-employment, domestic violence and other issues.<sup>16</sup> Additionally there are the risks of exercising sexuality without information or access to reproductive health and prevention, which results in unwanted pregnancies and sexually transmitted diseases such as HIV. In Peru, 14.6% of adolescent girls have been pregnant or are currently pregnant.<sup>17</sup>

## II) CONTENT:

### **2.1. Article 24, paragraph 1 of the Convention on the Rights of the Child: The State does not guarantee the right to enjoy the highest standard of health possible and to services for the treatment of diseases and health rehabilitation**

#### **2.1.1. The prohibition to distribute Emergency Oral Contraceptives (EOC) in the public health system violates the right to reproductive health of girls and adolescent girls.**

1. EOC is a hormonal contraceptive method considered an essential supply by the World Health Organization (WHO). This contraceptive method is fundamental within the reproductive health services because it is the only method that can prevent a pregnancy after unprotected sexual contact, when a regular contraceptive method has failed or been used incorrectly, used, or in cases of rape. EC is especially needed in Peru where there are high rates of sexual violence against women, especially adolescents. Preventing a pregnancy caused by rape can decrease the occurrence of unsafe and clandestine abortions in a legal context in which abortion in cases of rape is criminalized and the right to health is narrowly interpreted, not considering the possibility of a therapeutic abortion for victims of sexual violence whose mental health has been affected.
2. EOC is essential for adolescents to exercise their right to the highest standard of health possible, including sexual and reproductive health. However, emergency contraception is not available in the public health system in Peru, even for victims of rape. Although in 2006, the Peruvian Constitutional Court determined that the emergency contraceptive pill had contraceptive effects and should be distributed in public health facilities,<sup>18</sup> in 2009 the Court modified case law and blocked the Ministry of Health from developing a public policy that would have permitted free distribution at the national level “the morning-after pill”. This decision, prompted by a claim from a religious organization,<sup>19</sup> was based on the “reasonable doubt regarding the way

---

<sup>16</sup> SENAJU and UNFPA (2010) Rostro Joven de los Objetivos de Desarrollo del Milenio. Lima: SENAJU, UNFPA page 63 - 129

<sup>17</sup> Op. Cit INEI and UNFPA page 11

<sup>18</sup> Constitutional Court. Docket 7435-2006-PC/TC. Judgment issued on November 13, 2006; Lima.

<sup>19</sup> Such judgment was issued as a result of a constitutional guarantee proceeding initiated in the year 2004 by NGO “Acción de Lucha Anticorrupción” (it defines itself as a non-profit Legal Christian Catholic organization concerned for the “progress made in the moral deterioration of society”), which filed a claim against the Ministry of Health in order that such state directorate abstains from: a) initiating the distribution program of the “Morning-after pill” in all public and welfare entities, clinics and other hospital centers and b) distribute under promotional labels projects that the Executive Branch pretends to approve and carry out regarding the Emergency Oral Contraceptive Method, without prior consultation of the Congress of the Republic. According to said NGO, they are trying to prevent the flagrant violation of the right to life of the conceived embryo. Such claim was declared valid by the Peruvian Court without taking into account the reports that were sent as *amicus curiae* by several civil society organizations and institutions such as the Ombudsman’s Office, the Pan-American Health Organization (PAHO), the World Health Organization (WHO), the Medical Association of Peru, among others, that agreed on the fact that the “Morning-after pill” did not have any abortive effect, as it had been stated by the claimants.

in which EOC acts on the endometrium and its possible abortive effect”.<sup>20</sup> In spite of the fact that the State does not provide EOC free of cost or sell it in public hospital pharmacies, paradoxically, the sale and distribution of EOC is allowed in private drug stores and pharmacies. This has resulted in a situation of discrimination; not all women, much less adolescents, have the economic resources to acquire it. The measure violates the State’s obligation to respect adolescents’ right to reproductive health, and is a regressive measure adopted by the State regarding this right.<sup>21</sup>

3. The 2009 judgment included the possibility of reversal if new scientific information showed that the emergency contraceptive pill (EOC) was not abortive. Facing this possibility, the Ministry of Health of Peru (MINSA) published Ministerial Resolution No. 167-2010/MINSA (March 9, 2010) ordering the distribution of EC stating that the use of Levonorgestrel as such was not abortive and did not cause mortal or dangerous side effects. However, given that a legal petition was filed arguing that this resolution did not comply with the order of the Constitutional Court, the Ministry of Health issued Ministerial Resolution No. 652-2010/MINSA (August 19, 2010) prohibiting once again the free distribution of EC. This new prohibition violates that set forth by the Inter-American Court of Human Rights, which in the case of *Artavia Murillo and Others vs. Costa Rica*, defined “conception”, in the sense of Article 4.1, as occurring when the embryo is implanted in the uterus, for which reason before this event Article 4 of the Convention does not apply.<sup>22</sup> Therefore, even if the outdated sanitary register still supports the abortive effects of EOC, there is no protection of the right to life before implantation takes place, for which reason EOC could be distributed again for free by the public health system.
4. The Ministry of Health’s prohibition of the distribution of oral emergency contraceptives has affected women’s access to the public health service. According to the Ministry of Health (MOH), in 2007, 29,682 kits of EC were used; 24,198 in 2008 and 35,324 in 2009; after the Constitutional judgment, the Yuzpe Method was provided, albeit in much lower number: 4,631 in 2010; 9,503 in 2011 and 7,296 in 2012.<sup>23</sup> This indicated that adolescents were being deprived “of their right to enjoy health services that include access to emergency contraceptive methods, which must be immediately available for sexually active adolescents”.<sup>24</sup> The right to information, as provided in Article 13 of the Convention, is also violated, as adolescents are not able to seek or receive information on effective contraceptive methods or to use the best available scientific technology. The side effects related to the Yuzpe Method make it difficult for women to complete as indicated thereby contributing to decreased effectiveness.
5. Victims of sexual violence suffer the harshest consequences of the prohibition of the free distribution of EOC, which cannot be included in Emergency Care Kits in cases of sexual violence. As a consequence of the 2009 decision, this restriction violates protocols for assisting cases of rape, which include EC; the WHO has stated that “[i]f a woman seeks health care a few hours and up to five days after the sexual attack, emergency

---

<sup>20</sup> Constitutional Court. Docket 2005-2009-PA/TC. Judgment issued on October 16, 2009; Lima.

<sup>21</sup> Constitutional Court. Docket 7435-2006-PC/TC. Judgment issued on November 13, 2006; Lima.

<sup>22</sup> Case of *Artavia Murillo and Others vs. Costa Rica*. Inter-American Court of Human Rights, preliminary Exceptions, Fund, Repairs and Costs, Inter-American Court of Human Rights (ser. C) No. 257, (Nov. 28, 2012), paragraph 264 [hereinafter *Artavia Case*].

<sup>23</sup> GENERAL HEALTH DIRECTORATE OF PERSONS OF THE MINISTRY OF HEALTH, (Official Communication No. 1400-2013-DGSP/MINSA).

<sup>24</sup> Committee on the Rights of the Child. General Comment No. 15 (2013) on the right of the child to enjoy the highest standard of health possible. CRC/CGC/15, paragraph, 70.

contraception shall be provided to her”<sup>25</sup>. The main victims of sexual violence are women that come from vulnerable populations, including girls and adolescent, those who live in rural and jungle areas, and those that live in extreme poverty. A study carried out by PROMSEX showed that between 2000 and 2009, 78% of rape reports were filed by victims under the age of 18 (49,659)<sup>26</sup>. The same study found that Peru has the highest rate of reported rape in South America (22.4 cases of rape reported per 100 000 inhabitants.)<sup>27</sup>

6. In accordance with Articles 19, 34, 37 and 39 of the Convention on Rights of the Child, States are obligated to adopt positive measures to protect the physical and mental integrity of rape victims. Such obligations have been extended to include prevention of pregnancy after rape. Prevention of pregnancy after rape through the use of emergency contraception improves a young victim’s chances of recovering her physical and psychological health. According to Article 39 of the Convention, the State shall take “all appropriate measures to promote the physical and psychological recovery and social reintegration of every child victim of abuse; torture or any other form of cruel treatment or suffering that is inhuman or degrading in an environment that promotes health, respect of oneself and the dignity of the child”. The Peruvian government’s failure to prevent unwanted pregnancies in child and adolescent victims of sexual abuse is a clear violation of Article 39.
7. To force girls and adolescents to continue unwanted pregnancies constitutes cruel and inhumane treatment, prohibited by Article 37 of the Convention, and high pregnancy rates in girls and adolescents in Peru indicates that the State is in violation of its obligation to protect girls and adolescents against all forms of sexual abuse (Article 34). Furthermore, mental **health effects resulting from continuing with an unwanted pregnancy that has resulted from a rape, can be considered an independent act of damage, or an action that makes “the constant exposure to the rape committed against her” an act of torture according to the Committee against Torture.**<sup>28</sup> A recent study indicated that 55% of Peruvian adolescents impregnated as a result of rape said they had felt some kind of emotional discomfort, highlighting fear, concern, and distress. Almost 35% experienced a symptom that could be related to a depressive syndrome.<sup>29</sup>
8. In order to comply with its human rights obligations under the Convention for the Rights of the Child and the General Comments made by the Committee, the 2009 decision of the Constitutional Court must be reversed, making EC legal and accessible in public health facilities, in order to guarantee that the needs of adolescent and child victims of rape are met, and that their rights to privacy and confidentiality are protected. In compliance with the National Plan of Human Rights 2014-2016, the Ministry of Health must request that WHO, the Pan American Health Organization (PAHO) or another specialized organization of international prestige provide comment regarding the alleged abortive effect of EOC, and adapt public policy accordingly.

---

<sup>25</sup> World Health Organization, Guidelines for Medico-Legal Care for Sexual Violence 64 (2003); Available at: <http://whqlibdoc.who.int/publications/2004/924154628X.pdf>; PAHO, Fact Sheet: Emergency Contraception in the Americas, paragraph 64; available at: <http://www.paho.org/english/hdp/hdw/emergencycontraception.PDF>.

<sup>26</sup> JARIS MUJICA, PROMSEX, RAPE IN PERU 2000 – 2009. A REPORT ON THE STATUS OF SITUATION 66 (2011), Information extracted from the Round Table of Citizen Surveillance on Sexual and Reproductive Rights. International Conference on Population and Development Cairo + 20: Reading of the Platform for the Action of Cairo 20 years in Peru (1994 – 2014). Lima, June 2013, page 16.

<sup>27</sup>JARIS MUJICA, PROMSEX. RAPE IN PERU 2000 – 2009. REPORT ON THE STATUS OF THE SITUATION (2011). Lima, June 2013, page. 50.

<sup>28</sup> CAT, paragraph 61

<sup>29</sup> TAVARA, Luis. Impact of pregnancy on the health of adolescents (Peru). PROMSEX: 2015, p. 43.

### **2.1.2. Limitations in access to therapeutic abortion and the criminalization of abortion for grounds of sexual violence, as well as violation of professional secrecy by part of the physicians in cases of alleged abortion in Peru**

9. Girls and adolescents who seek abortion in Peru encounter three fundamental problems. The first is a lack of effective implementation of the guidelines for therapeutic abortion (as provided by the "National Technical Guide on the Standardization of the Comprehensive Care of the Pregnant Woman in the Voluntary Termination of Pregnancy of less than 22 weeks by Therapeutic Indication with Informed Consent"), as well as the limited interpretation of the right to health, which does not include affectation of mental health for victims of sexual violence within the acceptable indications for therapeutic abortion. The second is the criminalization of abortion on the grounds of rape and restrictions limiting access to abortion services; this is particularly concerning given the high incidence of sexual violence in Peru, with girls and adolescents the most vulnerable and affected group. Finally, physicians are obligated by law to report alleged crimes of abortion, which violates confidentiality and prevents girls and adolescents from seeking obstetric care even in cases of miscarriage because of fear of investigation and prosecution. These three problems violate, the right to health, the right to reproductive rights, and the right to substantive equality for girls and adolescent.

#### **A) Deficient implementation of the Therapeutic Abortion Protocol**

10. After a process that lasted more than 90 years, Peru's "National Technical Guide on the Standardization of the Comprehensive Care of the Pregnant Woman in the Voluntary Termination of Pregnancy of less than 22 weeks by Therapeutic Indication with Informed Consent in the framework of Article 119° of the Criminal Code" was published on June 28, 2014. The Technical Guide establishes the procedure for access to therapeutic abortions in Peru. Civil society organizations welcomed this development, which should facilitate access to abortion without discrimination for those women who qualify by establishing standards for health personnel and guidelines for users. Nonetheless, as of this writing the Peruvian State has not complied effectively with the recommendations of the UN special agencies, especially what the CEDAW Committee pointed in its 2014 period of sessions regarding effective access to health services, beyond having approved the Technical Guide itself<sup>30</sup>. The provision of legal abortion in Peru should be evaluated against international human rights standards, for example, acceptability, accessibility, speed and quality for providing the service. The implementation (or lack thereof) of the terms set forth in the Guide should be considered as a part of this evaluation.

Furthermore, bearing in mind the serious effects of an unwanted or forced pregnancy on the physical, mental, and social health of girls and adolescents, termination of pregnancy for therapeutic reasons should be available to this population under the health exception. The restrictive interpretations of the health exception for therapeutic abortion that are currently favored in health services in Peru must be overcome.

11. Both the Human Rights Committee and the CEDAW Committee have recommended that the Peruvian state adopt and implement a protocol to protect the right to therapeutic abortion for adolescents. We hereby present summaries of the two cases in question.

---

<sup>30</sup> 36. (...) As such, the Committee recommends that the State party: (g) Disseminate information on the technical guidelines on therapeutic abortion among all health staff and ensure a broad interpretation of the right to physical, mental and social health in their implementation. CEDAW Committee, Concluding Observations on the combined 7<sup>th</sup> and 8<sup>th</sup> periodical reports of Peru. CEDAW/C/PER/CO/7-8.

### 1) The case of K.L. against Peru

12. In October of 2005, the Human Rights Commission of the UN issued its opinion on the case of K.L. vs. Peru. K.L. was an adolescent who conceived an anencephalic fetus in 2001, and was denied a termination of pregnancy by a public hospital in Lima, despite obtaining the approval of a gynecologist (a member of the hospital's medical staff) and having documented that the pregnancy constituted a serious and permanent damage for her physical and mental health. The Committee recommended that Peru adopt measures to avoid the occurrence of similar cases, including the approval of a therapeutic abortion protocol<sup>31</sup>. In March 2012, the "Judiciary admitted the constitutional guarantees claim of K.L. against the Ministry of Health and the Ministry of Justice with regard to the right to international jurisdiction in order to comply with the Opinion of the United Nations against the Peruvian State for not having provided legal abortion services."<sup>32</sup>
13. In December 10, 2015 the Peruvian State published in its State Gazette "El Peruano" the K.L. decision. However, the compliance of individual compensation, including material reparations and public apologies is still pending.

### 2) L.C. case against Peru

14. In 2007, L.C, a 13-year-old rape victim tried to commit suicide by jumping from the roof of her house. She was taken to a public hospital, where physicians recommended surgery to treat spinal column injuries resulting from the fall; this was denied to her after she was confirmed to be pregnant. Even though a therapeutic abortion was formally requested to the hospital management, the abortion was denied. L.C. later suffered a miscarriage, and only then did the hospital schedule the operation, which was carried out almost three and a half months after it had been recommended.
15. In its October 2011 opinion, the CEDAW Committee determined that the Peruvian State had violated L.C.'s human rights and made both specific recommendations to compensate L.C. and the general recommendations described in the legal framework of this report. Based on the CEDAW's Committee decision, L.C.'s representatives have tried to generate a constructive dialogue with the Peruvian State to promote the implementation of the CEDAW Committee's individual and general recommendations. **To date, the government has neither compensated L.C. individually nor implemented the general compensation measures as the Therapeutic Abortion Protocol was passed but its implementation is still in progress. Additionally, on December 10** the Peruvian State published on "El Peruano" Gazette the L.C. decision, but public apologies and individual compensation is still pending.

### 3) Other cases

16. In addition to the K.L. and L.C. cases, there are examples of the obstacles found in the access to therapeutic abortion for adolescent victims of rape. In October of 2014, after the approval of the national guidelines on therapeutic abortion, a 12-year-old girl who was pregnant as the result of being repeatedly raped, requested a voluntary termination of pregnancy at the *Hospital de la Maternidad de Lima*. The girl was admitted in the health facility, where she was victimized once again, evaluated by a barrage of different health professionals;

---

<sup>31</sup> *K.L. v Peru*. Human Rights Commission Sess. 8517 October - 3 November 2005. U.N. Doc. CCPR/C/85/D/1153/2003, (2005) available at:

<http://reproductiverights.org/sites/crr.civicactions.net/files/documents/KL%20HRC%20final%20decision.pdf>

<sup>32</sup> Demus, THE JUDICIARY ADMITS KL CONSTITUTIONAL GUARANTEES CLAIM AGAINST THE MINISTRY OF HEALTH AND THE MINISTRY OF JUSTICE (2012) available at: <http://www.demus.org.pe/notihome/notihome01.php?noti=192>.

one of who gave her a bible. There were also efforts to block her access to a safe and legal termination of her pregnancy from within the judicial system. The girl's medical record shows an attempt to remove her from her mother's care, establish her parental abandonment and admit her to a State foster care center for children without parental protection in order to prevent the medical procedure from being provided. In the face of such harassment, the mother requested her daughter's discharge from the facility when the hospital failed to provide a legal therapeutic abortion within a reasonable time period, despite the fact that a psychiatric exam indicated the girl suffered from a mental disorder.

17. Such treatment violates the right of girls and adolescent girls to enjoy the highest standard of health, and makes clear that in Peru there is no guarantee that *"the systems and sanitary services may satisfy the needs of adolescents in the matter of sexual and reproductive health, even through family planning and abortion services in safe conditions."*<sup>33</sup> The Peruvian government is also in violation of Observation 4 of the Committee on Rights of the Child on health and development, which obligates states to: *create and carry out programs to provide access to sexual and reproductive health services, including family planning, contraceptives and abortive practices without risk when abortion is not prohibited by the law.*<sup>34</sup>
18. Abortion is the third leading cause of maternal mortality in Peru, accounting for 17.5% of deaths.<sup>35</sup> According to the MOH General Directorate of Epidemiology, from January 2014 to week 15 of 2015, there have been 504 maternal deaths in the country. Of these, 33.1% (167) are due to indirect causes, that is, by diseases that complicate pregnancy or are worsened by pregnancy and could have been prevented by therapeutic abortion. The regions with the highest number of cases are Lima, La Libertad and Junin; 18.8% of maternal deaths take place among women 15 to 19 years old.<sup>36</sup> As of this writing, a request to the Ministry of Health regarding the status of implementation of the Technical Guide on Therapeutic Abortion is still pending.<sup>37</sup>
19. One of the challenges to the effective implementation of the Therapeutic Abortion Protocol is the interpretation of what it means for therapeutic abortion to be "the only means to save the life of the pregnant woman or to avoid severe and permanent health complications." The CEDAW Committee stated that for the purpose of the approval of the Protocol, the State shall "ensure that in the application of the guidelines a wider interpretation be given to the right of physical, mental and social health". This is necessary to prevent clinical entities included in the Protocol from restricting the right to health of adolescents who have suffered from rape, and to ensure their access to a legal abortion and prevent further harm to their mental and physical health<sup>38</sup>.

---

<sup>33</sup> Committee on the Rights of the Child. General Comment No. 15 on the right of the child to enjoy the highest health standard possible. CRC/C/GC/15 – 2013

<sup>34</sup> General Comment No. 4 Committee on the Rights of the Child, health and the development of adolescents in the context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4 (2003).

<sup>35</sup> Working Group for the Fight against Poverty. *Neonatal Maternal Health*, Balance Sheet 2012

<sup>36</sup> The General Directorate of Epidemiology of the Ministry of Health Situation of the Ward from week 52 2014 to week 15 2015 Available at: [http://www.dge.gob.pe/portal/index.php?option=com\\_content&view=article&id=447](http://www.dge.gob.pe/portal/index.php?option=com_content&view=article&id=447) Reviewed for the last time on October 15, 2015.

<sup>37</sup> Letter sent by PROMSEX No. 445-2015 in November 2015.

<sup>38</sup> Even though grounds 11 of the protocol leaves open the possibility that women meet the criteria for a therapeutic abortion because of another maternal pathology; inadequate training of physicians results in narrowly restrictive interpretations of the exception, further examples of which have come to light since the LC case. This Committee has indicated that pregnancy after a rape can pose a "significant risk to health" and has given instructions to the States Parties to "offer... to adolescents [victims of sexual abuses] all required services". Consequently, States Parties have been repeatedly asked to permit abortion in cases of rape or incest. URL: <http://www.unfpa.org.pe/Legislacion/PDF/20140627-MINSA-Aprueban-Guia-Tecnica-Interrupcion-Voluntaria-Embarazo.pdf>

20. A number of human rights organizations have explained that when abortion is generally penalized, but is legal in some circumstances, States must take special measures to ensure the availability of abortion<sup>39</sup>. Inclusion of abortion in the Criminal Code can provoke an "incredible effect,"<sup>40</sup> particularly in the case of health care providers, who may be reluctant to carry out legal abortions due to uncertainty regarding the law and fear of legal sanctions. This is clearly a significant factor in Peru. In order to guarantee the protection of the rights of health service users by "mitigating this incredible effect," care protocols for legal abortions must have a minimum set of basic functions.<sup>41</sup> As this Committee and other human rights organizations have explained, the guidelines must first and foremost establish procedures for making decisions based on clear and timely information, while taking into account the woman's perspective and the particular facts of her situation.<sup>42</sup> Secondly, in the case of a disagreement between the patient and the physician, an appeal mechanism must exist; this should also be timely, and must provide for the patient a fair process and the opportunity to be heard.<sup>43</sup> Thirdly, the entity in charge of making decisions shall issue its decision in writing and explain the reasoning behind the decision.<sup>44</sup> These processes must be carried out rapidly, during the window of time in which the patient can undergo a safe abortion.<sup>45</sup> A protocol that only offers a reason for denying access to an abortion after a woman has given birth does not appropriately protect her human rights.<sup>46</sup> In the case of adolescents, in order to comply with Article 3, the States shall guarantee that protocols for providing reproductive health services do not require the consent of the parents if "the adolescent is sufficiently mature."<sup>47</sup> In keeping with the right to health framework, all protocols must respect the privacy and confidentiality of the patient at all times.<sup>48</sup>

21. In order to comply with its obligations assumed before this Convention, and to comply with the General Comments that the Committee has issued, the Peruvian State must take the necessary measures to effectively implement the Therapeutic Abortion Protocol. Its absence clearly violates Articles 6, 2, 3, 19, 24 and 37 of this Convention, which protect adolescent's rights to life and health. Specifically, Peru must:

---

<sup>39</sup> *Tysięc v. Poland*, No. 5410/03, 2007-IV Eur. Ct. H.R., paragraph. 116; Committee on the Rights of the Child, General Comment No. 4 *supra* note 1, paragraph 31.

<sup>40</sup> The European Court on Human Rights, for example, stated that when abortion is generally penalized but with exceptions, it may cause an "incredible effect" and the physicians can opt not to provide the service. Therefore, there is a significant need to have medical guidelines that shall be "formulated in a form that would alleviate" such incredible effect. *Tysięc v. Poland*, *supra* note 39, para. 116.

<sup>41</sup> *Ibid.*

<sup>42</sup> WHO has stressed that the law shall be clear. "It is essential for health professionals and others as police officers or court officials, as well as the public, to have precise information and to understand clearly what is permitted under the Abortion Law of their country." WHO, at 85. The European Court of Human Rights sustained that procedures must have in mind "the particular circumstances of each case" and has said that the individual shall participate "in a sufficient degree to provide... the required protection of its interests." *Tysięc v. Poland*, para. 113. Article 3 of this Agreement requires that the interest of the adolescent be of primary importance.

<sup>43</sup> If a woman and her physicians are in disagreement, there must be in place some form of "procedure before an independent body and with competence to examine the reasonability of the measures and pertinent evidence." As a minimum, such procedures "must guarantee for the pregnant woman at least a possibility of being heard personally and her opinions to be taken into account." *Tysięc v. Poland*, para. 117.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.* para. 118.

<sup>46</sup> The procedures shall guarantee that the decisions "be timely in order to limit or prevent damaging the woman's health, which could be caused by a late abortion", and it must not be *ex post. Id.*

<sup>47</sup> Committee on the Rights of the Child, General Comment No. 4, para. 32.

<sup>48</sup> Committee on the Rights of the Child, General Comment No. 4, para. 33.

1. Implement the Therapeutic Abortion Protocol to ensure a wide interpretation of the right to physical, mental and social health, as well as the adoption of measures to eliminate possible access barriers to legal abortion.
2. Train health care providers to apply the Protocol in a manner consistent with a comprehensive interpretation of the right to health.
3. Disseminate information relevant to therapeutic abortion and its reach for women.
4. Devote resources to improving the availability of sexual and reproductive health services.
5. Develop specific claim and penalization mechanisms for non-compliance with the obligation to provide access to therapeutic abortion.

**B) Prohibition of legal abortion in cases of rape threatens the rights of girls and adolescent to enjoy health, sexual and reproductive rights, material equality, and to live a life free of violence.**

22. Per Articles 114 and 120 of the Criminal Code abortion in Peru is criminalized in cases of rape.<sup>49</sup>As a result, victims of rape are forced to continue unwanted pregnancies or to resort to clandestine means to terminate the pregnancy. These practices are sometimes performed without the adequate professional support and under conditions insufficient to ensure the life and integrity of the patient.
23. The Human Rights Commission,<sup>50</sup> the Committee against Torture,<sup>51</sup> and the Committee on Social and Cultural Economic Rights<sup>52</sup> have stated their concern regarding the penalization of abortion in cases of rape in Peru. Similarly, in the opinion issued on the L.C. case against Peru, the CEDAW Committee recommended that Peru “*review its legislation in order to legalize abortions when the pregnancy is the result of rape or sexual abuse.*”<sup>53</sup> The Peruvian Congress, however, failed to comply with these recommendations in a timely manner, and on November 24, 2015, citizen’s initiative 3839/2014-IC (“*the Law legalizing abortion in cases of rape, artificial insemination and non-consented transfer of ovules, in the Constitution and Regulation Commission and the Justice and Human Rights Commission*”) was filed. It contended that one of the reasons that abortion had not been legalized in cases of rape was financial; providing women with access to these necessary services would require public expenditure.

---

<sup>49</sup> **Article 114.** The woman who causes her abortion, or allows someone else to practice it, shall be repressed with punishment which restricts freedom for not more than two years or to provide community service during fifty two to one hundred and four work periods.

**Article 120.** The abortion shall be repressed with punishment which restricts freedom for not more than three months:

1. When pregnancy is the result of rape outside marriage or non-consented artificial insemination and occurred outside of marriage, whenever the facts would have been reported or investigated, at least by the police; [...].

<sup>50</sup> The Committee, in its Final Observations to Peru of the year 2013 (CCPR/C/ PER/CO/5), stated as follows: “14. The Committee hereby expresses its concern for the high percentage of maternal deaths related to abortion; due to the fact that abortion in cases of rape or incest remains penalized [...] **recommends the State Party to: (a) Review its legislation on abortion and to issue measures to add the exceptions in cases of pregnancies resulting from rape or incest.**”

<sup>51</sup> *Final Observations to Peru of the year 2012* (CAT/C/PER/CO/6, on Reproductive and Health Rights): “15. [...] The State party should review its legislation in order to: a) **Modify the general prohibition of abortion in such a way to authorize [...] abortion in the cases in which pregnancy is the result of rape or incest, and to provide free medical services to the victims of rape; b) Legalize the distribution of emergency oral contraceptives to the victims of rape [...]**”

<sup>52</sup> *Final Observations to Peru of the year 2012* (E/C.12/PER/CO/2-4): “21. The Committee [...] Recommends that the **Criminal Code be modified to legalize [...], abortions in the cases of pregnancies resulting from rapes.**”

<sup>53</sup> Opinion CEDAW/C/50/D/22/2009 (Communication No. 22/2009)

24. The citizen's initiative was tabled due to opposition from conservative members of congress, many of whom had previously opposed other legislative measures to promote the protection and guarantee of sexual and reproductive rights, including the approval of the Therapeutic Abortion Protocol. This decision disregarded both the aforementioned recommendations from the United Nations human rights treaty monitoring bodies, and the 2014 CEDAW Committee supervision report, which explicitly recommended that Peru "extend legalization of abortion in the cases of rape."<sup>54</sup>
25. In October 2009, the Special Review Commission of the Criminal Code approved a bill that would establish a new Criminal Code, in which abortion would be legalized in cases of rape, artificial insemination or transfer of a fertilized ovule without consent, and fetal malformation. This bill too was tabled. At present, another proposal to modify the Criminal Code (this time approved by the Commission of Justice and Human Rights) is slated for discussion in a Plenary session of Congress; while it eliminates incarceration as a punishment for women who obtain an abortion subsequent to rape, this is replaced by a "symbolic" sanction of community service for 10 to 50 work periods. This change in the regulation does not improve the life and health of women and adolescents of Peru; as long as abortion is treated as a crime in the penal code, the State cannot provide termination of pregnancy services that are truly safe and free.
26. The grave concern over the penalization of abortion in cases of rape in Peru is further amplified by the prevalence of sexual violence. Approximately 12% of Peruvian women report that they been forced to have sexual relations at least one time.<sup>55,56</sup> Among women between the ages of 15 and 19, 4% report having been forced to have sexual relations. Peru is the country with the highest rate of rape reports (22.4) for every 100,000 inhabitants in countries of South America.<sup>57,58</sup> In 2014 alone, the Peruvian National Police (PNP) registered 4,043 cases of sexual abuse against girls, boys and adolescents.<sup>59</sup>
27. According to the Ministry of Women's Affairs, in the year 2010, 10% of girls aged 10-14 and 20% of girls aged 15-19 were pregnant as a result of rape<sup>60</sup> and, according to the Ministry of Women's Affairs and Vulnerable Populations (MIMP), during the year 2012, the Center "Emergencia Mujer" provided services to

---

<sup>54</sup> United Nations Committee for the Elimination of Discrimination against Women (CEDAW). Final Observations on the 7th and 8th combined periodic reports of Peru (58<sup>o</sup> period of sessions, 2014). CEDAW/C/PER/CO/7-8.Paragraph 36

<sup>55</sup> NATIONAL STATISTICS AND COMPUTER SCIENCE INSTITUTE *Family Demographic and Health Survey 2014*.

Lima: INEI, April 2015, p. 369, available at:

[http://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitales/Est/Lib1211/pdf/Libro.pdf](http://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1211/pdf/Libro.pdf)

<sup>56</sup> Situation, which generally took place among uneducated women, residents of the rural area, in the Sierra region and those women who live in homes belonging to the three first quintiles of wealth, according to the *Family Demographic and Health Survey (Endes) 2014*. p.369

<sup>57</sup> The rate in Bolivia is 20.8 for every 100 000 inhabitants, for Chile it is 20, for Ecuador 11.2, Argentina 8.4, Brazil 7.6, Uruguay 6.2, Paraguay 4 and Colombia 3.2.

<sup>58</sup> MUJICA, JARIS. *Rape in Peru 2000-2009, A report on the condition of the matter*. Lima: PROMSEX, 2011, p.53.

<sup>59</sup> MINISTRY OF WOMEN AND VULNERABLE POPULATIONS *SEXUAL ABUSE: Statistics for reflection and guidelines for prevention*. Lima: MIMP, 2012, p.5. Available at:

[http://www.mimp.gob.pe/files/programas\\_nacionales/pncvfs/libro\\_abusosexual.pdf](http://www.mimp.gob.pe/files/programas_nacionales/pncvfs/libro_abusosexual.pdf)

<sup>60</sup> UNFPA AND THE MINISTRY OF HEALTH (2012) To prevent adolescent pregnancies is to overcome barriers for development. Data Sheet No. 3 Available at: <http://www.unfpa.org.pe/publicaciones/publicacionesperu/UNFPA-AECID-Hoja-de-Datos-3.pdf>

333 adolescents between ages 12 and 18 who had become pregnant as a result of rape<sup>61</sup>. These statistics are even more troubling given the high degree of under-reporting.

28. Despite the States Parties obligation to adopt measures to reduce maternal morbidity and mortality in girls and adolescent girls as a result primarily of pregnancy and dangerous abortion practices,<sup>62</sup> girls and adolescent girls who are victims of sexual violence in Peru have access neither to freely distributed EOC or safe abortion services<sup>63</sup>. The prohibition of abortion in cases of rape is especially relevant given the prevalence of sexual violence in the daily life of Peruvian women. It violates the right of equality and non-discrimination of girls and adolescent girls, the main victims of sexual violence in Peru.
29. Given that this Committee has stated that pregnancy after rape may pose a “significant risk for health”<sup>64</sup> and instructed States Parties to “offer.... to adolescents [victims of sexual abuse] all required services”<sup>65</sup>, we respectfully request that the Committee insist that the Peruvian State permit abortion in cases of rape and incest for girls and adolescent girls.

**C) Legal regulations that violate the constitutional duty of keeping the professional secrecy, oblige physicians to report alleged commissions of abortion crimes and limit the provision of reproductive health services that prevent girls’ and adolescents’ access to obstetric attention even in cases of emergency for incomplete abortions.**

30. Article 30 of the General Health Law and Article 326 of the Criminal Code of Procedures<sup>66</sup> force health practitioners to report women and any other person involved in an alleged crime of abortion to the authorities. This has given rise to major issues for girls and adolescent girls. First, this allows doctors to abuse their authority and to harass parents, tutors or other guardians of girls and adolescent girls who have suffered spontaneous abortions or require care for complications of a clandestine abortion. Second, this discourages girls and adolescent girls from seeking obstetric care because of fear of lack of confidentiality.
31. In contradiction to these legal obligations, Articles 2, 38 and 138 of the Peruvian Political Constitution establish duty to maintain professional secrecy. This requires physicians to protect their patients’ right to

---

<sup>61</sup> MINISTRY OF WOMEN AND VULNERABLE POPULATIONS Ministerial Resolution No. 236 - 2014 -MIMP, dated July 21, 2014. Available at: [http://www.mimp.gob.pe/files/transparencia/resoluciones\\_ministeriales/rm\\_236\\_2014\\_mimp.pdf](http://www.mimp.gob.pe/files/transparencia/resoluciones_ministeriales/rm_236_2014_mimp.pdf)

<sup>62</sup> OG No. 4 CDN paragraph 31

<sup>63</sup> MINISTRY OF HEALTH *Situation of Reproductive and Sexual Health in Peru: Strategies*. Balance Sheet 2014 and Activities 2015. Submitted by Juan Daniel Aspilcueta MD (National Coordinator of the National Sanitary Strategy for Sexual and Reproductive Health).

<sup>64</sup> In General Observation No. 4, this Committee expressed its concern regarding the fact that adolescents victim of sexual abuse are “exposed to significant health risks, including... unwanted pregnancies, unsafe abortions and psychological anguish” Committee on the Rights of the Child, General Observation No. 4, para. 37.

<sup>65</sup> Committee on the Rights of the Child, General Comment No. 4, paragraph 22.

<sup>66</sup> Law 26842. General Health Act. Art.30. The physician providing medical care, is obliged, when there is evidence of criminal abortion to report the case to the competent authority. Legislative Decree 957. New Criminal Procedure Code Art. 326. Faculty and obligation to accuse: 1. Any persona may report the criminal facts before the respective authority, whenever the exercise of the criminal act to prosecute them is public. 2. Notwithstanding the foregoing, they should report a) Those who are obliged by express order of the Law. Especially the health professionals for the crimes they are aware of in the development of their activity, as well as educators for the crimes that would have taken place in the education center. [...]

privacy.<sup>67</sup> In the case of *De la Cruz Flores vs. Peru*, the Inter-American Court of Human Rights established the primacy of the Constitution over regular law, and stated that Peru had violated the legality principle by requiring that physicians report possible criminal conduct.<sup>68</sup> The Medical Association of Peru also denounced the unconstitutionality of the reporting obligation, and had already submitted Bill 3040/2008-CR, which would eliminate the reporting obligation in Articles 30 and 326 with the support of the medical community; however, to date there has been no change to the regulation.

32. The Convention on the Rights of the Child establishes the right to privacy of girls and adolescent girls, in Article 16, which reads “No child shall be the object of arbitrary or illegal interference in its private life, family, household or correspondence or illegal attacks on their honor and reputation.” This implies that “the child has the right to the protection of the law against these interferences or attacks.”
33. Respect for the confidential character of information regarding health is an essential principle of the legal systems of all signatories to the American Convention on Human Rights, including Peru. It is necessary not only to protect the private lives of the ill but also to maintain confidence in medical professionals and health services in general. In the absence of this protection, those who require medical care might fear that the intimate information required for proper diagnosis and treatment could be appropriated and consulted by another party; they might then hide such information, thereby threatening their life and health.<sup>69</sup>
34. The violation of professional secrecy has severe consequences for the entire health system because it undermines trust in health professionals. After an abortion, both adults and adolescents might seek to protect their privacy by delaying seeking care, not revealing all the information necessary for a diagnosis, self-medicating or seeking care from an unqualified provider.<sup>70</sup> Adolescents are the most vulnerable to this; if they are not guaranteed their privacy and confidentiality, they will refuse to seek medical care particularly if they do not have the economic resources or the information required to access a service where their rights will be respected. This is exacerbated by Peru’s restriction of legal abortion on therapeutic grounds, because safe and free services for girl and adolescent victims do not exist.
35. Numerous recommendations from supranational organisms have highlighted concern at the international level for the problems created by laws that impel health practitioners to violate professional secrecy and the right to privacy of all women (adults and adolescents) threatening their integrity, life and health by creating obstacles to access to health services. For its part, the **CEDAW Committee** has stated that *“lack of respect of the confidential character of information affects both women and men, but it can discourage women from getting assessment and treatment, and therefore, affects negatively their health and welfare. For this reason, women would be less prepared to obtain medical attention to treat any disease of the genitals, use contraceptive methods, or attend cases of incomplete abortions. In the cases in which they have been victim*

---

<sup>67</sup> Political Constitution of the Republic of Peru [C. P.] Art. 2: Every person has the right ... (18) to maintain reserve of their political, philosophic, religious convictions or of any other kind, as well as keeping the professional secrecy.

<sup>68</sup> *De la Cruz Flores v. Peru*, Fund, Repairs and Costs, Judgment, IDH Court (ser. C) No. 115, paragraph 101 (Nov. 18, 2004). “physicians have a right and a duty to keep the confidentiality over the information to which they have access in their condition as physicians.

<sup>69</sup> KEMELMAJER, Aida. Responsibility of the parents, professional secrecy and medical confidentiality, how are they combined to ensure the health of adolescents? Lima, 2013, p 46.

<sup>70</sup> McNaughton H, Padilla K, Hernández E, et al. 2004. Between the sword and the wall: professional secrecy and post abortion care. Managua, Ipas Central America

*of sexual or physical violence.*<sup>71</sup> The **Human Rights Commission** determined that: “Another environment in which the States do not respect the private life of the woman is related to their reproductive functions, as it occurs, for example (...) *when the States impose on physicians and other health officials the obligation of reporting the cases of women that have abortions.*”<sup>72</sup>

36. According to the Office of the Attorney General of Peru, in 2013, it received 296 reports of criminal abortion. In 2014, this increased to 359. Although therapeutic abortion is not penalized, in 2013 one legal abortion was reported as criminal (and is still under police investigation); two similar cases occurred in 2014 and are both in the preliminary stages of investigation. Similarly, a report issued by the Peruvian Police Force indicated that in 2013 it received 272 reports of criminal abortion and in 2014 it received 286.
37. A report from the Judicial Branch further illustrates the scope of the problem. During 2013 and 2014 there were a total of 523 accusations for different types of abortions and judgments for these crimes (172 accusations of and judgments against women for practicing abortions, 88 reported cases of consensual abortion; 181 of non-consensual abortions; 41 for aggravated abortion because of the quality of the abortifacient agent; one accusation of sentimental/eugenic abortion and 36 of unintentional abortions). While these data are not disaggregated proceedings that involve adolescents are subjected to a special legal process (and do not carry the penalty of imprisonment). On the one hand, women that have abortions are subject to judicial harassment. On the other hand, the lack of information broken down by age is not in compliance with the principle of active transparency necessary for the development of adequate public policies.<sup>73</sup>
38. This has a number of consequences for the reproductive rights of girls and adolescent girls, most notably:
- i) It violates the professional secrecy and respect for the intimacy of their patients established in the Constitution, violating women's right to privacy and thus their reproductive rights;
  - ii) it perpetuates the gender stereotype that women's main role is reproduction, thus violating women's right to substantive equality. This stigmatization leads to the unsubstantiated persecution of many women who go to hospitals with obstetric emergencies unrelated to induced abortions;
  - iii) It causes adolescents who require obstetric care to not seek it for fear of criminal prosecution, violating their right to access to quality health services;
  - iv) Restricted access to abortion in case of rape risks the life and health of Peruvian girls and adolescent girls.
39. For these reasons, we request that the Committee recommend that the State modify its legislation under Article 30 of the General Health Law and 326 of the Peruvian Criminal Code, with the purpose of protecting professional secrecy and the right to patient confidentiality, thus eliminating barriers to access to sexual and productive health services for adolescents.

---

<sup>71</sup> United Nations Committee for the Elimination of Discrimination against Women (CEDAW). GENERAL RECOMMENDATION No. 24. (20<sup>o</sup> period of sessions, 1999) Article 12 of the Convention on the elimination of all forms of discrimination against women - Woman and Health. Paragraph 12 d.

<sup>72</sup> United Nations Human Rights Commission. General Comment No. 28: Equality of rights between men and women (Article 3): 29/03/2000. CCPR/C/21/Rev.1/Add.10. Part. 20.

<sup>73</sup> This Committee has explained that "the gathering of systematic data is necessary so that the States Parties can supervise the health and growth of adolescents", and that the States must compile data "that can be broken down by gender, age, origin and socio-economic status" *General Comment No.4*, para. 13.

### 2.1.3. Failure to recognize adolescent's sexual and reproductive rights and its consequences

40. There are currently legal barriers in Peru that obstruct adolescents' access to sexual and reproductive health services and information. This results in low levels of usage of modern contraceptive methods, and an increase in pregnancies, sexually transmitted infections, maternal mortality, clandestine abortions, and suicide.
41. On December 12, 2012, the Constitutional Court recognized ownership of the right to sexual freedom for adolescents between the ages of 14 and 18 (Docket No. 00008-2012-PI/TC), a main implication being that the State must guarantee the rights to information, health and privacy necessary for its exercise<sup>74</sup>. Furthermore the "New Code of Children and Adolescents" (Bill No. 495/2011-CR), which is currently under consideration in the Congress of the Republic, proposes a number of amendments, including the recognition of the sexual and reproductive rights of adolescents between the ages of 14 and 18. However, after passing through two congressional commissions (Justice and Human Rights, and Women and Family) the bill has been modified to restrict access to sexual and reproductive health services for adolescents, violating their confidentiality, and their right to privacy and information.
42. On May 30, 2012, the Justice and Human Rights Commission approved a majority decision,<sup>75</sup> amending the bill to state that "*parents or guardians are primarily responsible and in charge of providing sexual and reproductive information and education to their children or adolescents under their care....*" In June of 2013, the Women and Family Commission approved a majority decision indicating that parents or guardians are responsible of guiding the sexual education of adolescents, relegating the State to a secondary role.
43. A further barrier to access for adolescent arises from interpretation and application of Article 4 of the General Health Law,<sup>76</sup> which states that no person may be subjected to medical or surgical treatment without their prior consent or that of the person legally entitled to give it in cases of incapacity. Civil laws regarding ability to consent for those under the age of 16 (Art. 43 of the Civil Code) and those aged 16 to 18 (Art. 44 of the Civil Code), have been interpreted to mean that adolescents must be accompanied by their parents in order to access sexual and reproductive health services. The discussion of a bill (2443/2012-CR) which would modify Article 4 of the General Health Law such that adolescents older than 14 years old can access sexual and reproductive health information and care without their parents or guardians is still pending, in the Health Commission of the Congress of the Republic.
44. The restriction of adolescent's sexual and reproductive rights of adolescents contradicts several public policies in Peru. These include:
  - i.) the National Plan of Action for Childhood and Adolescence 2012-2021, which aims to reduce adolescent motherhood by 20%;

---

<sup>74</sup> CONSTITUTIONAL COURT. DOCKET NO. 00008-2012-PI/TC, para. 22 (2012) "Regarding the ownership of the right to sexual freedom as part of their right to the free development of personality, the Constitutional Court considers that (...) minors between the ages of 14 and 18 can also own that right."

<sup>75</sup> The working commissions of the Congress of the Republic issue majority, minority and unanimity decisions on bills. Majority decisions require the signature of at least the majority of the Congress members present at the time the approval of the subject was discussed.

<sup>76</sup> Law 26842, published on July 20, 1997.

- ii.) the Multi-Sector Plan for the Prevention of Adolescent Pregnancy, a key component of Peru's efforts to meet the goals laid out in national and international regulations on the reduction of adolescent pregnancy, and which does not stipulate an age range for access to sexual and reproductive health services, information, or access to contraceptives; and
- iii.) (iii) standards in the health sector regarding access of adolescents to sexual and reproductive health services<sup>77</sup>.

45. The lack of services and information on sexual and reproductive health for adolescents has serious consequences for their lives and health. 46.7% of those adolescents who have initiated sexual activity had their first sexual intercourse before the age of 14. Among adolescents who have had sexual intercourse, only **64% used some contraceptive method at their last sexual intercourse**, which increases the possibility of pregnancy or the development of sexually transmitted infections<sup>78</sup>. Similarly, in 2014, only 63% of unmarried and sexually active adolescent girls used a contraceptive method and only 53% of unmarried and sexually active adolescent boys used condoms.<sup>79</sup>

46. While there are numerous Regional Decrees, Plans and Programs<sup>80</sup> aimed at ensuring access to sexual and reproductive health of adolescents in the region of Loreto<sup>81</sup>, but the most significant (Regional Decree No. 012-2009-GRL-CR) runs contrary to international standards on the rights of adolescents.<sup>82,83</sup> It encourages: "the state sectors involved (...) to promote actions favoring the comprehensive health care of adolescents from the age of 14 in counseling, diagnosis and treatment services with emphasis on STI, HIV and AIDS, violence, abuse and commercial sexual exploitation of children, and human trafficking, in every

---

<sup>77</sup> Ministry of Health of Peru (MINSa) Resolution No. 731-2003, Directive "Health Care System for antiretroviral therapy in children infected with the human immunodeficiency virus"; Ministry of Health of Peru (MINSa) Resolution No. 668-2004 National Guides of Comprehensive Sexual and Reproductive Health Care; Ministry of Health of Peru (MINSa) Resolution No. 107-2005 Adolescent Health Policy Guidelines; Ministry of Health of Peru (MINSa) Resolution No. 536-2005 Technical Standard of Family Planning; Ministry of Health of Peru (MINSa) Resolution No. 583-2005 Counseling Protocols for the Comprehensive Health Care of Adolescents; Ministry of Health of Peru (MINSa) Resolution No. 633-2005 Technical Standard for the Comprehensive Health Care of Adolescent Stage of Life; Ministry of Health of Peru (MINSa) Resolution No. 290-2006 Sexual and Reproductive Health Guidance and Counseling Manual; Ministry of Health of Peru (MINSa) Resolution No. 328-2006 Technical Document "Youth Development Centers, a Model of Comprehensive Health Care for Adolescents"; Ministry of Health of Peru (MINSa) Resolution No. 353-2006 Technical Document "Implementation of Local Multi-Sector Youth Development Networks"; Ministry of Health of Peru (MINSa) Resolution No. 1077-2006 Guidance for the Comprehensive Health Care of Adolescents at Primary-Care Level; Ministry of Health of Peru (MINSa) Resolution No. 278-2008 Technical Document "Cultural Adaptation of Guidance/Counseling on Sexual and Reproductive Health"; Ministry of Health of Peru (MINSa) Resolution No. 264-2009 Technical Document "STI/HIV and AIDS Counseling"; Ministry of Health of Peru (MINSa) Resolution No. 636-2009 Analysis of Adolescents' Health Status - Positioning them and us.

<sup>78</sup> MINISTRY OF HEALTH OF PERU (MINSa), General Directorate for Health Promotion. Results of the Global School Health Survey – Peru 2010, p. 47 (2011)

<sup>79</sup> UNFPA (2015) Information sheet about Adolescent pregnancy in Peru.

<sup>81</sup> Loreto is the largest Department of Peru, it is located in the north-eastern part of the country and takes up more than a quarter (28%) of the current Peruvian territory. Until 2015, it is estimated that in this region the population of children and adolescents under the age of 18 was 416 094, according to the National Institute of Statistics.

<sup>82</sup> Which declares as a priority in the region, the promotion of the right to health, education and life through actions related to prevention, promotion, recovery, rehabilitation and access for adolescents to sexual and reproductive health services, with emphasis on STI, HIV and AIDS, and with a focus on human rights, interculturality, territoriality, and equity.

<sup>83</sup> Available for review in: [http://www.regionloreto.gob.pe/sirvaes/Ordenanza12\\_2009.pdf](http://www.regionloreto.gob.pe/sirvaes/Ordenanza12_2009.pdf)

institution that provides health care, legal assistance, psycho-emotional care and recovery within of the region of Loreto, *with prior consent and authorization from their parents or legal representatives (...)*”.

47. The requirement of consent and authorization from third parties clearly restricts the autonomy of adolescents by making access to information, guidance and sexual and reproductive health services subject to the approval of the parents or legal representatives. This implies that the Peruvian government has failed to recognize the following: i) that adolescents are *subjects of rights* capable of making their own decisions, especially when these are related to their private lives and their sexual and reproductive health, ii) that the principles of equality and non-discrimination demand that States ensure that adolescents have access to accessible, timely, complete and accurate information on sexual and reproductive health, and iii) that this Committee has established that, in line with Articles 3, 17 and 24 of the Convention, Peru should facilitate adolescents’ access to sexual and reproductive information with or without the consent of their parents or guardians.<sup>84, 85</sup>
48. The full guarantee of the right to sexual and reproductive health depends on health care services that respect the confidentiality and privacy of children and adolescents. In this regard, the former UN Special Rapporteur on the Right of everyone to the enjoyment of the highest attainable standard of physical and mental health argued that States *should ensure that adolescents be able to receive information*, concerning family planning and contraceptives, the dangers of early pregnancy, and the prevention of sexually transmitted infections such as HIV and AIDS, and adequate sexual and reproductive health services<sup>86</sup>.
49. It is evident that health services in Peru ensure confidentiality and privacy for adolescents, as not to discourage them from seeking the care, information and guidance by requiring they obtain permission from their parents or guardians. In this respect, Peru should be urged to ensure that health care providers are trained on how to inform, guide and treat children and adolescents according to their ability to understand the treatments and options offered to them, and to eliminate all barriers, including regulatory barriers, that demand adolescents obtain prior authorization from any third party before accessing sexual and reproductive health information or services.

#### **A) Impact of adolescent pregnancy in the health of women**

50. Between 2000 and 2014, the percentage of 15-year-old mothers almost doubled from 1.0% to 1.9%, while the percentage of 16-year-old mothers also rose dramatically, (from 4.7% to 5.4%)<sup>87</sup>. This is alarming given that the physical, psychological and social development of girls of these ages is inappropriate for the initiation of motherhood.

---

<sup>84</sup> Committee on the Rights of the Child *General Recommendation No. 4 Adolescent health and development in the context of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/4 (2003).

<sup>85</sup> In this regard, General Comment No. 12 of the Committee on the Rights of the Child in relation to the right of the child to be heard - CRC/C/GC/12 - 1/7/2009, also states that: “It is necessary that the States adopt standards to ensure children’s access to confidential medical counseling and advice without the consent of their parents, regardless of the age of the child, in cases where it is necessary to protect the safety or well-being of the child”<sup>85</sup>

<sup>86</sup> United Nations, Report of the Special Rapporteur Paul Hunt, The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2004/49, February 16, 2004, para. 39

<sup>87</sup> INEI and UNFPA (2015) Statistical Digital Publication. Page 11. Available at:

[http://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitales/Est/Lib1251/Libro.pdf](http://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1251/Libro.pdf)

51. According to the Ministry of Health (MINSA), 41 births by 12-year-old girls were registered in 2013, with a high concentration in departments of Puno and Junin, (in Peru's Sierra region). In the same period, there were 192 births by girls of 13 years of age and 881 births to 14-year-olds with the highest incidence in Ucayali, Junin, San Martin and Loreto.<sup>88</sup> Furthermore between 2005 and 2013 at least 11,272 adolescents under the age of 15 became mothers; in many cases these pregnancies were caused by rape<sup>89</sup>.
52. Pregnancy becomes more common as the age of girls increases and it is inversely related to their degree of education and socioeconomic level. Among adolescent girls who only received elementary (primary) education, 34.9% are or have been pregnant, which falls to 4.5% among adolescent girls in Peru who have higher education levels<sup>90</sup>.
53. According to the National Institute of Statistics, in 2014 while at least 15% of adolescent girls between the ages of 15 and 19 were already mothers or were pregnant for the first time<sup>91</sup>, only 31% of these pregnancies were wanted. Furthermore, as a point of comparison, less than 1% of adolescent boys of the same age are parents<sup>92</sup>; this confirms that adolescent girls are impregnated by and large, by adult men. Motherhood is a momentous change that limits girls' personal development from a very early age, while boys of the same age do not suffer from any similar phenomenon.
54. While in urban areas one out of ten adolescents between the ages of 15 and 19 have already had at least one pregnancy, in the rural area, this ratio is two out of ten and in the Amazon region this average increases to three out of ten. The highest percentage of adolescent pregnancy occurs among the indigenous population, while Asháninka adolescent girls are the most affected, with an adolescent pregnancy rate of 44%.<sup>93</sup> The highest percentages of adolescents that were at some point pregnant are found in rural areas (22.0%) and in the rainforest (24.7%); the lower percentages are recorded in urban areas (12.2%) and in Metropolitan Lima (11.6%).<sup>94</sup> In terms of province of residence, we find that the highest percentages of girl and adolescent mothers are located in Loreto (25.6%), followed by San Martin (22.6%) and Amazonas (21.6%), while the percentages are lower in Moquegua (5.6%), Arequipa (6.3%) and Lambayeque (6.6%).<sup>95</sup>
55. Pregnancy is a destabilizing occurrence that has a negative impact on the mental and social health of adolescent girls - 13.7% of pregnant adolescent girls tried to terminate their pregnancy and 6.5% tried to commit suicide. 55% of adolescent girls who have been pregnant indicated that they suffered emotional problems during their pregnancy, the majority of which were related to depression. 25.2% of adolescent mothers stated they felt it was an "obligation" to care for their child. Pregnancy also causes physical problems for adolescents. 63.31% of pregnant adolescents suffered from complications during their pregnancy, including urinary tract infections, hypertensive disorders, anemia, and premature rupture of membranes. 23%

---

<sup>88</sup> INEI (2015): Charts made by INEI using the "Statistical Report of Live Births" from the Ministry of Health.

<sup>89</sup> Ibid

<sup>90</sup> UNICEF (2014) *Situation of girls and adolescent girls in rural schools in Peru*. page 3. Available at: [http://www.unicef.org/peru/spanish/LA\\_ESCUELA\\_DEL\\_SILENCIO.pdf](http://www.unicef.org/peru/spanish/LA_ESCUELA_DEL_SILENCIO.pdf)

<sup>91</sup> Op Cit. INEI and UNFPA page 11

<sup>92</sup> UNFPA (2015) Information sheet about adolescent pregnancy in Peru.

<sup>93</sup> Ibidem. page 3

<sup>94</sup> INEI. Demographic and Family Health Survey, ENDES 2014, Lima, Peru., page 130. Available at: [http://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitales/Est/Lib1211/pdf/Libro.pdf](http://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1211/pdf/Libro.pdf)

<sup>95</sup> INEI and UNFPA (2015) Statistical Digital Publication. Page 13. Available at :

[http://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitales/Est/Lib1251/Libro.pdf](http://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1251/Libro.pdf)

had postpartum complications, the most frequent being bleeding disorders and infections, both of which pose a high risk to the health and life of adolescent girls.<sup>96</sup>

56. Differences in the incidence of adolescent motherhood also arise along linguistic lines. The highest percentage of adolescent mothers that learnt another indigenous language in the childhood were (24.5%), followed by those whose first language is Quechua (14.4%), and Aymara (13.8%). Those whose first language is Spanish have the lowest percentage of adolescent mothers (11.3%).<sup>97</sup> This demonstrates that, among other factors, lack of information on sexual and reproductive health in languages other than Spanish is still a shortcoming of the Peruvian State and the implementation of its public policies.
57. According to the Demographic and Family Health Survey (ENDES), the regions that have the highest concentration of adolescent pregnancy are Loreto with 30.4%, San Martín with 24.1%, Madre de Dios with 24.4% and Piura with 16.7%.<sup>98</sup>
58. The Piura<sup>99</sup> region is of particular concern due to the increase in adolescent pregnancies associated with rural life. 11.9% of the population in the region is made up of adolescents between the ages of 12 and 17; of which 50.3% are male and 49.7% are female. Within this region, the provinces with the largest populations of adolescents are Piura, Sullana and Morropon,<sup>100</sup> and only 24.1% of the adolescents live in a rural area.<sup>101</sup> In this region, during 2013 and 2014, 6,147 adolescents became pregnant; the districts that registered the greatest percentage of pregnant adolescents in 2014 were: Paimas (18.5%), Amotape (17.9%) and Tamarindo (17.4%), all of which registered figures above the regional average. Although there is a technical standard for the implementation of differentiated services for adolescents in all levels of care, it is evident that it has not been put into place; of the 404 health facilities in the region, only 50 have differentiated services for adolescents.
59. Data from Piura in 2014 reflects the Ministry of Health has only provided integrated services to 4.8% of adolescents, an increase from 2012 when this was only 2.7%. In terms of counseling, evidence points to an increase in 2014 (30,164), from 2012 (9,948) and it is known this primarily adolescent girls who use these services. In Loreto, another region of concern in terms of the increase of adolescent pregnancy, the population between the ages of 12 and 17 is 130,395 (or 12.8% of the total population) – of these, 30.4% of adolescent girls are or were pregnant at some point.
60. According to Loreto's Regional Health Directorate (DIRESA), in 2012 22% were maternal deaths were among adolescents between the ages of 10 and 19; while in 2013 this figure was 7% , and in 2014 it was 28%. From 2012 to the first half of 2014, 51% of adolescents between the ages of 12 and 17 were covered by Peru's Comprehensive Health Insurance (SIS). In 2012, 45,822 (36%) were covered, in 2013, 16,813 (16%); and in 2014, 3,691 (6.7%).

---

<sup>96</sup> Távara, Luis et al. (2015) Promsex. Peru "Impact of pregnancy on the health of adolescent girls".

<sup>97</sup> Op cit. UNICEF. page 13

<sup>98</sup> Quoted by the Roundtable for the Fight Against Poverty. II International Congress of Obstetrics "Challenges in Sexual and Reproductive Health Care", Lima, June 26, 2015.

<sup>99</sup> Piura is a department of Peru located at the Northwest end of the country. This constituency borders to the West with the Pacific Ocean, to the South with the Department of Lambayeque, to the East with Cajamarca and to the North with, as well as to the Northeast with the Ecuadorian territory. According to projections from INEI for the year 2015, 666 538 of inhabitants are under the age of 18.

<sup>100</sup> With 88 850, 36 357 and 20 006 adolescents, respectively.

<sup>101</sup> According to INEI - 2015,

61. The General Directorate of Epidemiology of MINSA shows an increase in abortions among adolescents: 18.2% (2005), 17.6% (2006), 20.06% (2007), and 20.18% (2008). In 2010, more than 7,000 adolescents were treated for incomplete abortion, representing 16% of total treatments. Abortion is one of the main direct causes of maternal death in Peru and the second cause among adolescents.<sup>102</sup>
62. On the national level, maternal death in adolescents is increasing. In 2012, it represented 17.6% of maternal deaths; though it dropped to 9.3% in 2013; in 2014 it rose to 13.3%; and in the first six weeks of 2015, it was 28.9%.<sup>103</sup> The main direct causes of maternal deaths in adolescents are: pregnancy-induced hypertension (41%: 7 cases), abortion (29%: 5 cases), hemorrhage bleeding (18%: 3 cases), and infection (6%: 1 case). The main indirect cause of maternal deaths in adolescents is still suicide (56%: 5 cases).<sup>104</sup>
63. In Loreto, only 10% of the 376 health facilities (376) have implemented differentiated health services for adolescents. The last four years have shown only modest improvements: in 2010, there were four facilities; in 2011, 17; in 2012, 25; in 2013, 31; while in 2014, 37 facilities were offering differentiated services. However, the provision of sexual health care to adolescents has not increased with the increase in differentiated services: in 2012, 24% of the total population of adolescents between the ages of 12 and 17 were treated, in 2013, from a total amount of 30,628, only 23% were treated.
64. On the whole, information and access to sexual and reproductive health for adolescents in Loreto is still inefficient. This is demonstrated not only by the increased number of adolescent pregnancies, but also by the amount of adolescents with HIV. In 2012, out of 419 HIV cases detected in the region, 19 were in adolescents (5%); while in 2013, out of 333 cases, 8 were adolescents (2%); and in 2014, out of 94 cases, 3 were adolescents (3%). Access to family planning methods for adolescents provides another example of Loreto's failings: in 2013, the goal was for 3,176 adolescents to have access to condoms; however, only 195 accessed them effectively.

## **B) School Drop-out**

65. A study conducted in Peru confirms the adverse impact of pregnancy in adolescents, especially in the social component of their health, as 77% of pregnant adolescents dropped out of school due to pregnancy, and 94% carry out household chores. These findings, in addition to restricted financial support from their partners and family indicate the challenges posed by adolescent pregnancy to the social development of these young women, prolonging the cycle of poverty they live in.<sup>105</sup>
66. Although there is little information available on geographic area, education level, and poverty, data from the Inter-American Development Bank indicates that pregnancy is the main factor associated with school

---

<sup>102</sup> Roundtable for the Fight Against Poverty, which presents systemized information regarding the National Health Strategy on Sexual and Reproductive Health of MINSA, (2011) available at:

<http://www.unfpa.org.pe/publicaciones/publicacionesperu/UNFPA-AECID-Hoja-de-Datos-2.pdf>.

<sup>103</sup> MINSA. Regional Directorate of Epidemiology. 2015

<sup>104</sup> Maternal and Neo-natal Health Task Force. Summary Report of 2012. URL:

<http://www.midis.gob.pe/dgsye/data1/files/enic/eje1/documento-tecnico/MCLCPSeguimientoPPRSaludMatNeonl2012.pdf>

<sup>105</sup> Távara, Luis et al. (2015) Promsex. Peru "Impact of pregnancy on the health of adolescent girls".

desertion, which befalls 86% of adolescent mothers. This means that only 9.4% of adolescent mothers attend an educational institution, compared to 69.3% of their peers who have not been pregnant.<sup>106</sup>

67. Similarly governmental sources indicate that in 2013, 8 of every 10 adolescents that were or had been pregnant at some point did not attend an educational center (85.2%). Pregnancy or marriage (45.9%) were the most frequent motivations, followed by economic reasons (22.1%).<sup>107</sup>

68. In the region of Piura, overall school dropout has increased from 4.5% to 8.6%, while the dropout rate for secondary education is 20% (DREP - 2014). Furthermore, taking into account the adolescent population between the ages of 12 and 17 that should be studying at the secondary level, only 151,931 are enrolled, leaving a gap of 30.8% of adolescents that are not studying; 86.6% of adolescents enrolled live in urban areas and only 13.4% in the rural areas.

## 2.2. Article 3 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

### 2.2.1. Trafficking of Children and Adolescents for the Purpose of Sexual Exploitation, and the Impact on their Health: The Context of Illegal Gold Mining in Madre de Dios

69. Human trafficking is a crime per Article 153 of the Peruvian Criminal Code. In 2014, its classification<sup>108</sup> was changed by Law No. 30251<sup>109</sup> (Law that perfects the classification of the crime of human trafficking), to incorporate the definition from the Palermo Protocol. However, the Peruvian government's most important public policy is the National Action Plan Against Human Trafficking (PNAT)<sup>110</sup> that covers the period from 2011 – 2016. This Plan promotes the commitment to implement objectives and activities against human

---

<sup>106</sup> Giovagnoli and Vezza. (2009) Early Childbearing and Educational Outcomes: A Quantitative Assessment. Washington, DC: IADB.

<sup>107</sup> State of the Peruvian population INEI 2014

<sup>108</sup> In principle, the classification of this crime was established by Law No. 28950, of the year 2007, which prohibits human trafficking and trafficking of migrants.

<sup>109</sup> **Article 153. Human Trafficking**

1. Who through violence, threat, or other forms of coercion, deprivation of liberty, fraud, deception, abuse of power or of a situation of vulnerability, giving or receiving of payments or benefits; captures, transports, transfers, accommodates, receives or retains another, in the territory of the Republic or for their exit from or entry to the country for the purpose of exploitation shall be sentenced to not less than eight or more than fifteen years in prison.

2. For Subsection 1, the purposes of exploitation in human trafficking include, among others, the sale of children or adolescents, prostitution and any form of sexual exploitation, slavery or practices similar to slavery, any form of labor exploitation, begging, forced labor or services, servitude, extraction or trafficking of organs or somatic tissue or its human components, as well as any other similar form of exploitation.

3. Recruitment, transportation, transfer, accommodation, reception or retention of a child or adolescent for exploitation is considered human trafficking even if it is not done through any of the means referred to in Subsection 1.

4. Consent given by a victim of legal age to any form of exploitation has no legal effects when the agent resorts to any of the means set forth in Subsection 1.

5. The agent who promotes, encourages, finances, or facilitates the perpetration of the crime of human trafficking, is sentenced with the same sanction as prescribed to the author".

<sup>110</sup> In 2004, Supreme Decree No. 002-2004-IN established the Permanent Multi-Sector Task Force Against Human Trafficking, composed of governmental agencies, non-governmental organizations and international organizations, to be responsible for compliance with the goals set forth in the National Action Plan Against Human Trafficking in Peru 2011-2016.

trafficking in the executive, legislative and judicial branches, regional and local governments, and autonomous bodies; nonetheless, none of these sectors has shown substantial progress in the matter.

70. According to the Crime Observatory of the Office of the Attorney General<sup>111</sup>, in 2013, 458 accusations were filed for the crime of human trafficking; the departments with the largest amount of cases were Loreto (12.7%), Lima (11.4%) and Madre de Dios (6.8%) Similarly, from the 803 alleged victims of such crime, 53.9% were minors, most of whom were girls (79.9%). 33.3% of the victims were subjected to sexual exploitation and 18.8% to labor exploitation.
71. In 2014, the Office of the Attorney General reported<sup>112</sup> 501 cases of human trafficking with 782 victims, of which 41% of the 623 alleged female victims and 69% of the 150 alleged male victims were under the age of 17. Again, the highest incidence of this crime was recorded mainly in the regions of Lima, Loreto and Madre de Dios,<sup>113</sup> with the latter having the largest number of victims 34.9% of the alleged victims were subjected to sexual exploitation, including providing services in brothels, and serving as female escorts in bars or nightclubs.
72. In the first nine months of 2015 alone, 526 cases were reported and an increase over past years. Information on gender, age, and type of crime was not available. <sup>114</sup>
73. There is no data available linking missing persons to human trafficking; this is a matter of concern given the frequency of disappearances: six people disappear every day in Peru, and as of March, 457 allegations had been filed in 2015.<sup>115</sup>
74. Official data reveal that the majority of underage victims of human trafficking for the purposes of sexual exploitation are girls and adolescent girls. It is important to recognize, first of all, that gender-based violence and other forms of discrimination against women exacerbates their vulnerability and exposes them to specific and differentiated exploitation situations based on their gender. Secondly, we must consider the unique and disproportionate consequences that girl and adolescent victims of trafficking endure.
75. The Madre de Dios region is home to illegal mining, and a lack of governmental control or formal regulation and the presence of criminal activity prevail<sup>116</sup>. It is also one of the regions with the highest incidence of victims of the crime of human trafficking. According to information provided by the National Police of Peru (PNP), during 2013 alone there were 71 cases in the region, 65% of which involved sexual exploitation. 91% of victims were female, in large part girls and adolescent girls under the age of 18; all male victims were

---

<sup>111</sup> Crime Observatory of the Office of The Attorney General. Charges filed in the Office of The Attorney General January - December 2013. Available for review at:

<<http://portal.mpfm.gob.pe/descargas/observatorio/tratadepersonas/201407171153123.pdf>>

<sup>112</sup> Office of The Attorney General. Official Communication No. 685-2015-MP-FN-OBSERVATORIO Request to Access Public Information regarding human trafficking charges in the years 2013, 2014 and 2015 (2015)

<sup>113</sup> Lima has 108 cases and 161 victims; Loreto, 80 cases and 41 victims; and **Madre de Dios, 54 cases and 205 victims**. The latter presenting the larger number of victims in comparison with the rest of the districts.

<sup>114</sup> Office of The Attorney General. Official Communication No. 685-2015-MP-FN-OBSERVATORIO Request to Access Public Information regarding human trafficking charges in the years 2013, 2014 and 2015 (2015)

<sup>115</sup> Ibidem. Page 53

<sup>116</sup> Ibidem page 31

under the age of 18.<sup>117</sup> In 2014, 54 cases were reported, mostly for sexual exploitation (87%) and the victims were mainly females under the age of 18.

76. According to a study<sup>118 119</sup> conducted in the mining area “La Pampa”,<sup>120</sup> the only health facilities in this area only classified as *health stations*<sup>121 122</sup> where non-medical health personnel provide care. The health services provided by the State are precarious, lack trained professionals, and might not offer service in informal mining areas, despite the high risk and vulnerability that this context represents for the inhabitants of the area.

77. There are numerous other limitations regarding adequate and quality access and provision of health care services in the region of Madre de Dios, particularly in mining areas like “La Pampa”:

- In recent years, informal mining has caused human mobilization to be a constant and the significant increase of population in areas such as La Pampa. This has caused problems for the General Health Directorate (DIRESA) of Madre de Dios, because official population figures (1,831) rather than estimates of real inhabitants (approximately 14,000) are used in the planning of public expenditure on health. Health care is thus designed to serve less than one fifth of the total current population of La Pampa.<sup>123</sup>
- Infrastructure issues: not all health care facilities are of sufficient size to provide treatment.<sup>124</sup>
- Accessibility to health facilities from illegal mining areas: most of the population of La Pampa lives around the mining activity, at significant distances from health facilities, and lack of infrastructure makes the journey difficult.<sup>125</sup>
- Health initiative designs frequently overlook the areas that are inhabited by victims of human trafficking. Although the Ministry of Health developed the “Life Caravan” project, which provided treatment for victims or possible victims of human trafficking in Madre de Dios,<sup>126</sup> the project also has significant difficulties entering the area. According to project data, in 2013 the mobile hospital did not visit any of the informal mining areas (including La Pampa.)<sup>127</sup>
- Officials of the Regional Health Directorate (DIRESA) have failed to provide optimal care to trafficking victims; providers lack the necessary protocols for quality treatment and often do not know how to deal with or identify victims.

---

<sup>117</sup> PNP Executive Directorate of Information Technology and Communications. Official Communication No. 2630-2015-DIRETIC-PNP/SEC. Request to Access Public Information regarding human trafficking charges in the years 2013 and 2014. (2015)

<sup>118</sup> Mujica, Jaris *Comparative elements of the impact of human trafficking on the health of adolescent victims in the context of illegal gold mining in Madre de Dios*. 1st. ed. - Lima, Peru: Promsex, Anesvad, 2014

<sup>119</sup> Main objective of this research: Understanding the impact of trafficking on the health of the victims of trafficking for sexual and labor exploitation between the ages of 16 and 17 in the context of informal gold mining in La Pampa, Madre de Dios (and the resulting gaps in health care).

<sup>120</sup> La Pampa (an hour and a half drive from the city of Puerto Maldonado and a three-hour journey through the river), is located between kilometers 98 and 127 of the West Inter-oceanic Highway (heading to Inambari) and parallel to the Tambopata River.

<sup>121</sup> Ibidem page 42 and 43

<sup>122</sup> In other words, primary-level health care facilities that perform comprehensive low-complexity health care activities with emphasis on preventive and promotional aspects of health care.

<sup>123</sup> MUJICA Op. Cit. pp. 86

<sup>124</sup> MUJICA Op. Cit. pp. 86 and 87

<sup>125</sup> MUJICA Op. Cit. pp. 87 and 88

<sup>126</sup> CHS Alternativo Op. Cit. pp. 39,40

<sup>127</sup> MUJICA. Op.Cit, p. 93

78. In 2011, the Regional Government of Madre de Dios created a Regional Action Plan against Human Trafficking 2011-2016 in collaboration with the International Organization for Migration (IOM). The plan sets forth several specific objectives, including increasing awareness, proactive monitoring of trafficking, registering allegations of human trafficking, and protecting the rights of witnesses and victims of this crime. In practice, this Plan is not being implemented.
79. The Peruvian government's main line of action related to human trafficking is that of prevention having conducted awareness campaigns at different levels and coordinating preventive interventions and operations.
80. The Judicial Branch<sup>128</sup> has reported that to date there are 91 court dockets, with a total of 134 persons prosecuted, 82 underage victims and 88 adult victims.<sup>129</sup> The Office of the Attorney General has focused its efforts on increasing the number of Provincial Prosecutors' Offices specializing in human trafficking crimes. This proposal has been heeded by the Central Government,<sup>130</sup> which authorized the transfer of financial resources for the implementation of six Specialized Prosecutors' Offices in the districts of Lima, Madre de Dios, Tumbes, Loreto, Callao and Cusco in August 2015. Nevertheless, so far the only progress in implementation has been the approval for staffing of prosecutors and administrative personnel in these districts.<sup>131</sup>
81. In 2014, the Ministry of Internal Affairs conducted 187 operations, in which 620 victims were rescued; 602 (97.09%) victims were women and 18 (2.90%) men. These operations yielded, 39 cases of human trafficking, with 88 suspected traffickers apprehended and 280 victims (34 minors y 246 adults, 265 female and 15 male) discovered<sup>132</sup>. Of these operations, three were conducted in the area of La Pampa in Madre de Dios, where a total of 169 alleged victims were identified.<sup>133</sup>
82. According to the Ministry of Women's Affairs and Vulnerable Populations (MIMP), in 2014, the Directorate of Guardianship Investigation of the General Directorate for Children and Adolescents (DIT) treated 45 girls and 17 boys (of whom 24 girls and three boys between the ages of 12 and 17 had been subjected to sexual exploitation). Between the months of January and April 2015, 27 underage victims were treated; of these, eight girls had been subjected to sexual exploitation.<sup>134</sup>
83. The MIMP indicates that a Tripartite Interagency Cooperation Agreement<sup>135</sup> <sup>136</sup> was signed in 2014, for the operation of two reception areas, including a specialized Residential Care Center for victims of human

---

<sup>128</sup> The Judicial Branch is the public institution with lower compliance of the National Plan against Human Trafficking, mainly, due to deficiencies in relation to crime registration. For example, the statistical records do not provide information broken down by gender of the attendant, age of the victim, and other relevant information. Additionally, there is no training strategy that focuses on addressing the difficulties of legal operators in the qualification of the crime of human trafficking in persons and analysis of possible concurrence of crimes. (CHS Alternativo 2015 Third Report: Assessment from the Civil Society on the Situation of Human Trafficking in Peru 2014 – 2015. Page 76)

<sup>129</sup> CHS Alternativo Op. cit. Page 50

<sup>130</sup> Authorization granted by Supreme Decree No. 127-2015- EF

<sup>131</sup> CHS Alternativo Op. cit. Page 15

<sup>132</sup> CHS Alternativo Op. cit. Page 53

<sup>133</sup> CHS Alternativo Op. cit. Page 58

<sup>134</sup> CHS Alternativo Op. cit. Page 59

<sup>135</sup> Approved by Resolution of the Executive Directorate of INABIF No. 00189 March 2015.

<sup>136</sup> Between INABIF, PNCVFS, and nonprofit and educational services association Huarayo No. 23-2014/ INABIF

trafficking. This is not yet operational, as the resources necessary for start up have not yet been transferred.<sup>137</sup>

84. The Ministry of Foreign Trade and Tourism has obtained signatures on 1,171 codes of conduct on sexual exploitation of children and adolescents (ESNNA) by various tour operators. However, this sector does not monitor nor record the level of compliance with these codes.<sup>138</sup>

85. Notwithstanding these efforts to prevent human trafficking, very little has been achieved in the matter of treatment and protection of victims. A Sectorial Protocol would ensure care and assistance to victims, families and witnesses<sup>139</sup> has still not been implemented, and health (especially mental health) is the area that has shown the less progress. As reported by Ministry of Health (MINSA), in 2014 comprehensive health care services for victims of human trafficking were strengthened in the primary-care level, but there is no further information in this regard.<sup>140</sup>

86. Lastly, in the health sector there is no protocol for standardizing comprehensive health care for victims of human trafficking. Health care providers do not perform screenings to identify victims of trafficking and preventing further damage to their health and integrity. For that reason, it is imperative that the Peruvian government take action regarding health through the preparation, approval and implementation of a Protocol and allocation of a budget for the prevention of human trafficking for the purposes of sexual exploitation in the region of Madre de Dios.

## RECOMMENDATION OF QUESTIONS

87. Based on the information provided in this report, we hope the Committee will consider asking the following questions of the Peruvian Government:

- What measures are being implemented to ensure comprehensive health care for children and adolescents victims of sexual violence?
- What measures are being taken to ensure that all health facilities provide girl and adolescent victims of rape and sexual violence access to emergency contraception?
- What measures is the State taking to ensure adequate implementation throughout the national territory of the “National Technical Guide for the standardization of the comprehensive care procedure of pregnant women in the voluntary termination due to therapeutic indication of pregnancy of less than 22 weeks with informed consent”?
- What is the State’s position in terms of the expansion of legal abortion in cases of rape and incest in light of the high numbers of girls and adolescents who become pregnant as a result of sexual violence?
- What measures are being taken to make the constitutional and legal legislation for medical professional confidentiality compatible?
- What measures are being taken to comply with the National Plan of Action for Childhood and Adolescence 2012-2021 and the Multi-Sectorial Plan for the Prevention of Adolescent Pregnancy’s

---

<sup>137</sup> CHS Alternativo Op. cit. Page 61 and 62

<sup>138</sup> CHS Alternativo Op. cit. Page 73

<sup>139</sup> CHS Alternativo Op. cit. Page 74

<sup>140</sup> CHS Alternativo Op. cit. Page 64

stated goals (of increasing and guaranteeing access to adequate sexual and reproductive health information and services for adolescents and the reducing of adolescent pregnancy)?

- What measures are being taken to guarantee adolescents the exercise of their sexual and reproductive rights, per Constitutional Court Sentence Docket No. 00008-2012-PI/TC, as well as to amend any legislation, such as the General Health Law (Art. 4) that obstructs access to sexual and reproductive health services?
- What plan does the Government have to ensure the full realization of the right to sexual education based on scientific evidence for adolescents and girls in Peru? How does the Government plan to ensure that programs with these characteristics have the funding and resources needed to ensure their sustainability, and the human resources for their implementation?
- Why is it that to date, the Peruvian Government has failed to comply with the compensation for L.C. and what measures are being taken to comply with the individual and general recommendations of that decision?
- What measures is the State taking to provide comprehensive health care to victims of human trafficking for purposes of sexual exploitation, in which adolescent girls are the most affected?

## SUGGESTIONS FOR RECOMMENDATIONS

88. Based on the information provided herein, we respectfully request that the Committee on the Rights of the Child make the following recommendations to the Peruvian government during the next session:

- Adopt all legislative and regulatory measures that allow the provision of free emergency contraception in the public health system, especially to girls and adolescents that have been victims of sexual violence.
- Guarantee access to legal abortion for girls and adolescents, taking into account the harm to their physical, mental and social health that could result from pregnancy, through the proper implementation of the “*National Technical Guide for the standardization of the comprehensive care procedure of pregnant women in the voluntary termination due to therapeutic indication of pregnancy of less than 22 weeks with informed consent.*”
- Amend legislation and decriminalize abortion when pregnancy is the result of rape or non-consensual artificial insemination.
- Amend legislation such that constitutional obligations that protect medical professional confidentiality prevail and to prevent health care professionals from reporting women for the alleged crime of abortion.
- Ensure the implementation of comprehensive education on sexuality in all spaces to expand the prospects of girls and adolescents, and to empower them in the knowledge and usage of their sexual and reproductive rights.
- Address the problems arising from the failure to recognize adolescent’s sexual and reproductive rights (ex.: the high rates of adolescent pregnancy and its relation with sexual violence; limited access to contraceptive methods and its relationship to sexually transmitted infections, adolescent maternal mortality and its relationship to clandestine abortions).
- Ensure access to sexual and reproductive health information and services for adolescents, including access to modern contraceptive methods.

Sincerely,

Cordialmente



Susana Chavez  
Director  
Promsex



Cecilia Bustamante  
Director  
Cento Ideas- Piura



Ximena Casas  
Senior Advocacy Program Officer  
Latin American Program  
Planned Parenthood Federation of America