

# Independent information for Peru's Periodic Review scheduled for the 80<sup>th</sup>

## Fact sheet

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Session of the Committee on  
the Elimination of  
Discrimination against  
Women

## I. Peru's Restrictive Interpretation of its Abortion Law

### A. PERU INTERPRETS ITS ABORTION LAW NARROWLY, AND THERE ARE FEW CIRCUMSTANCES IN WHICH LEGAL THERAPEUTIC ABORTION IS AVAILABLE

Pursuant to Article 119 of the Peruvian Criminal Code, therapeutic abortion is only legal to save the life of a pregnant person or prevent serious and permanent damage to their health—all other forms of abortion are criminalized. Pregnant people who do not meet this criteria are forced to carry pregnancies to term, face the threat of being subjected to degrading and stigmatizing criminal penalties, or risk an illegal, unsafe abortion. While the Peruvian Criminal Code allows for legal abortion when the health of a pregnant person is in danger, healthcare providers interpret “health” narrowly: this exception only applies when the pregnant person’s life is in grave danger.

Although Peru’s National Technical Guide on Legal Abortion (hereinafter National Technical Guide) (2014) attempts to standardize access to therapeutic abortion, it also interprets therapeutic abortion restrictively and creates additional barriers. It establishes an arbitrary limit of 22 weeks for therapeutic abortion. The National Technical Guide also does not consider serious non-physical health impacts—even for victims of rape. The Supreme Court of Justice of Peru is currently examining a lawsuit that seeks to further restrict this interpretation or, worse, to declare the National Technical Guide unconstitutional. Moreover, healthcare providers generally lack clarity about the legality of therapeutic abortion and the applicability of the health/life exception, further restricting access to medically necessary legal abortions.

### B. PERU CRIMINALIZES WOMEN WHO RECEIVE AN ABORTION AND ABORTION PROVIDERS, FURTHER RESTRICT ITS ACCESS

The criminal penalty for undergoing an illegal abortion is up to two years of prison. Peru also criminalizes abortion in cases of rape and fetal malformations incompatible with extrauterine life. Article 120 of the Peruvian Criminal Code establishes a reduced three-month sentence in cases of extramarital rape, which is only applicable if the victim has filed a complaint with the police, creating additional burdens for the victim.

The threat of criminal prosecution and social stigmatization creates further barriers to access legal abortion, and encourages women to resort to clandestine abortions that involve serious risks to their life and health. Forcing women to endure criminal prosecution and possible conviction results in mental suffering and degrading social stigmatization.

Additionally, assisting a pregnant person to undergo an illegal abortion can result in being sentenced to up to four years of prison. In addition, healthcare providers may lose their professional licenses. These penalties further restrict access to legal therapeutic abortions.

Furthermore, healthcare providers are obligated, pursuant to Article 30 of the General Health Law, to report women with indications of a “criminal abortion” to authorities. This includes cases of miscarriages where sanitary personnel suspects and induced termination of pregnancy. This reporting requirement, in violation of the duty to preserve professional secrecy serves as a legal tool to discourage pregnant people from accessing abortion services or receiving care for obstetric complications and prevents medical personnel from assisting pregnant people for fear of being apprehended and facing criminal sanctions.

### **C. PERU'S RESTRICTIVE ABORTION LAWS FORCE PREGNANT PEOPLE TO SEEK ABORTIONS OUTSIDE THE MEDICAL SETTING OR CONTINUE WITH THEIR PREGNANCY, AT GREAT RISK TO THEIR HEALTH AND LIFE**

Unsafe abortions and their associated complications account for a quarter of maternal deaths in Peru.<sup>1</sup> Approximately 350,000 clandestine abortions are performed per year in predominantly unsanitary and dangerous conditions by less-skilled practitioners.<sup>2</sup> Annually, nearly 65,000 women are hospitalized, and 800 of them die, due to complications related to abortion.<sup>3</sup> Moreover, abortion is among the five leading causes of death among female adolescent and women aged from 15 to 19. This evidences the harsh consequences of the criminalization of abortion, its associated stigma, and the fear of healthcare providers to practice abortions related to the risk of being prosecuted.<sup>4</sup> Official data does not fully capture this dire situation.

### **D. THE IMPACT OF THE COVID-19: ENHANCED CONSTRAINTS ON ACCESS TO ABORTION**

Access to therapeutic abortion in Peru has become even more restricted during the pandemic. The Health Directive No. 217-2020-MINSA further limits the exception only to those circumstances where “the life of the pregnant woman infected with COVID-19 is at risk.” This entirely omits pregnant people who are not infected with COVID-19, regardless of whether their life or health is at risk.

The pandemic has also restricted access to proper medical care for women who experience complications because they undergo “illegal” abortions. Lack of public transportation, restrictions on movement, and other pandemic-related issues have made it more difficult for women to travel to health centers and purchase the necessary supplies. Lockdown rules have made access to Misoprostol more difficult. Difficulties in accessing Misoprostol are connected to an increase of unsafe abortions performed with household items or other unsafe means.

Peru's failure to protect women from the disproportionate detrimental impact of COVID-19 with respect to gender-based violence, sexual and reproductive health services and information, maternal healthcare, and access to abortion exacerbates the violations of Articles 2, 3 and, 12 of the Convention, and amounts to further violations of those same Articles and obligations.

#### **E. RECOMMENDATIONS**

- Eliminate barriers to access to therapeutic abortion related to the restrictive interpretation of the health/life exception under the current legal framework.
- Legalize abortion in cases of rape, incest, threats to the life and/or health of the pregnant woman or severe fetal impairment, and decriminalize it in all other cases.
- Guarantee access to therapeutic abortion for girls, without any form of discrimination, given the higher risk that pregnancy poses to their physical and mental health. This should be applied through an intersectional and life course approach.
- Cease criminal prosecutions against women for undergoing abortions and against medical professionals for performing abortions or, in the alternative, adopt measures to guarantee due process for women prosecuted for the crime of abortion, which entails guaranteeing impartiality in the justice system.

## Endnotes

Photo: Pg. 1, [Damas quechuas y un niño charlando en un antiguo muro inca, provincia de Cusco, Perú.](#) SL-Photography.

<sup>1</sup> Sarah A. Huff, *Abortion Crisis in Peru: Finding a Woman's Right to Obtain Safe and Legal Abortions in the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 B.C. INT'L & COMP. L. REV. 237 (2007), available at: <http://lawdigitalcommons.bc.edu/iclr/vol30/iss1/14>.

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

<sup>3</sup> Sarah A. Huff, *Abortion Crisis in Peru: Finding a Woman's Right to Obtain Safe and Legal Abortions in the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 B.C. INT'L & COMP. L. REV. 237, 240 (2007), available at: <http://lawdigitalcommons.bc.edu/iclr/vol30/iss1/14>; Alyssa Rayman-Read, *The Sound of Silence*, AM. PROSPECT, Sept. 24, 2001, at A21. See also Office of the Deputy Director, *Health Situation in the Americas: Basic Indicators*, PAN AM. HEALTH ORG., 2005, available at: <http://www.paho.org/English/DD/AIS/BI-brochure-2005> (estimating the maternal mortality rate in Peru at 185 deaths per 100,000 births and in the United States at 8.9 deaths per 100,000 births).

<sup>4</sup> Healthcare providers are hesitant to provide timely medical care for women presenting with complications from an "illegal" abortion even though the *Clinical Practice Guidelines for Obstetric Emergency Care* considers such complications as obstetric emergencies that can lead to maternal mortality, which should not be punished as the crime of providing or assisting with the provision of an illegal abortion. See Ministry of Health (MINSA), *Guía Técnica: Guías de Práctica Clínica para la Atención de Emergencias Obstétricas Según Nivel de Capacidad Resolutiva*, 2007, available at: [http://bvs.minsa.gob.pe/local/IMP/852\\_IMP198.pdf](http://bvs.minsa.gob.pe/local/IMP/852_IMP198.pdf).