

New York, November 16th, 2015

Secretariat of the Committee on the Rights of the Child
Office of the United Nations High Commissioner for Human Rights
Palais Wilson
52, rue des Pâquis
CH-1211 Geneva 10, Switzerland

Re: Supplementary information on Peru, scheduled for review by the Committee on the Rights of the Child during its 71st Session.

Distinguished Members of the Committee on the Rights of the Child (the “Committee”):

The Center for Reproductive Rights (the “Center”) is an independent non-governmental organization that works to promote women’s equality by guaranteeing reproductive rights as human rights. The Center seeks to contribute to the Committee’s work by providing independent information concerning Peru’s obligations to guarantee the rights protected under the Convention on the Rights of the Child (the “Convention”). In light of Peru’s upcoming review by the Committee under the Convention, this report will highlight Peru’s failure to comply with its obligations under the Convention to respect, protect and fulfill children’s right to life, survival and development, health, and equality and non-discrimination, by (1) criminalizing abortion in cases of sexual violence and (2) failing to provide access to affordable sexual and reproductive health services, including emergency contraception without discrimination.

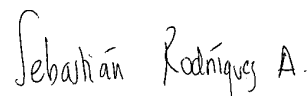
We want to thank you in advance for your prompt attention to this matter.

Respectfully,



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On the list of issues provided by the Committee in June 2015, Part I, Section 9, the Committee requested information on the situation of adolescent’s pregnancy and access to reproductive health care for girls and adolescents, including access to abortion services.ⁱⁱ Therefore, in light of Peru’s upcoming review by the Committee under the Convention, this letter will highlight Peru’s failure to comply with its obligations under the Convention to respect, protect and fulfill children’s rights to life, survival and development, health, and equality and non-discrimination by (1) criminalizing abortion in cases of sexual violence and (2) failing to provide access to affordable sexual and reproductive health services, including emergency contraception without discrimination.

This letter is divided into three parts. First, it examines the consequences of Peru’s restrictive access to abortion services for adolescent victims of sexual violence. Second, it examines the hardships faced by adolescents of lower socioeconomic status in accessing sexual and reproductive health services, including emergency contraception. Third, it argues that these restrictions violate numerous rights protected by the Convention.

I. The Right to Safe and Legal Abortion Services for Victims of Sexual Violence

1. The Peru Penal Code imposes prison sentences on victims of sexual violence who seek abortion services.

Abortion in Peru is criminalized under Article 119 of the Penal Code of 1924 (as amended, the “Penal Code”)ⁱⁱⁱ. The Penal Code provides a limited exception where abortion is necessary to

prevent death or serious injury (defined as “therapeutic abortion”), however no exception is available for pregnancies resulting from non-consensual sex or insemination, sexual violence or incest^{iv}. A woman who terminates a pregnancy through abortion may receive a prison sentence of up to two years^v. Since 1991, a reduced sentence of three months has been available for certain victims of rape, however in order to qualify for the reduced sentence the rape must be (1) outside of marriage and (2) reported to the police^{vi}. Women who experience marital rape or who, as is common, fail to report their rape to police, are subject to the full two year penalty under the Penal Code. Doctors who perform an illegal abortion, regardless of the circumstances, face a prison term of one to four years.^{vii}

2. Criminalizing abortion in cases of sexual violence creates significant health risks for women and girls.

The current Penal Code fails to recognize the epidemic levels of sexual violence in Peru and the serious health risks, including death, which can result from denying sexual assault victims access to safe and legal abortion services. These risks fall disproportionately on minors. Peru has the highest rate of sexual violence in South America, with 63,545 reported cases of rape between 2000 and 2009.^{viii} Eight in ten of those victims are minors.^{ix} According to information provided by the Ministry of Health and the United Nations Population Fund (“UNFPA”), approximately 34% of girls between 10 and 19 who are victims of sexual violence become pregnant as a result of the attack they experience.^x Because children who are victims of sexual violence cannot legally access safe abortion services (and because, as discussed in Section II below, they cannot access emergency contraception), these children must choose between having an unsafe clandestine abortion or the spectrum of health risks which accompany an adolescent pregnancy.

a. *Health risks from unsafe abortions.*

As repeatedly recognized by the World Health Organization (the “WHO”), criminalizing abortion does not reduce the demand for the procedure, but instead creates legal obstacles which force women and girls to resort to unsafe procedures.^{xi} According to a 2006 report, approximately 376,000 unsafe abortions are performed each year in Peru.^{xii} That is over 1000 abortions a day. The Committee has consistently upheld the link between illegal abortions and maternal mortality.^{xiii} Having an unsafe abortion is one of the five main causes of pregnancy-related death in Peru.^{xiv} In rural areas of Peru, almost half (44%) of women and girls who seek an abortion are at risk of complications, and for lower income women and girls in urban areas, almost two thirds (63%) are at risk.^{xv} Young women and minors are less likely to have access to the funding or health information necessary to find safe clandestine abortion services, making them a particularly high risk population. Other social factors, such as a desire to hide the pregnancy from their family and an initial period of denial, result in young women and minors often seeking termination at an advanced stage in the pregnancy when complications are more likely to occur.^{xvi} Approximately 26.3% of Peruvian women hospitalized for unsafe abortions are under 24 years old.^{xvii}

b. *Health risks from carrying a pregnancy to term.*

The health risks of unwanted pregnancies disproportionately affect minors, who are often not physically capable of carrying a pregnancy to term. The WHO reports that adolescent pregnancies pose significant physical health risks, including death.¹⁹ Complications from pregnancy and childbirth are the second most prevalent cause of death for 15 to 19-year-old girls globally^{xviii} and the risk of death from pregnancy-related complications is four to eight times greater for girls below age 15.²¹ In addition, “stillbirths and death in the first week of life are 50% higher among babies born to mothers younger than 20 years than among babies born to mothers 20–29 years old”^{xix}. Other negative health consequences include anemia, malaria, HIV and other sexually transmitted infections, postpartum hemorrhage and mental illness.^{xx} The Penal Code’s exception for therapeutic abortions is intended to allow a pregnancy to be terminated when the life of the mother is at risk. **However, the Penal Code sets a high bar, allowing therapeutic abortion only when “it is the only means to save the life of the woman or to avoid serious and permanent damage to her health.”^{xxi} In the case of minors, every pregnancy could potentially cause serious and permanent damage. These children should not be forced to wait until potentially life-threatening complications develop in order to access legal abortion services.**

3. A national movement towards legalization of abortion in cases of rape and sexual violence is gaining support in Peru.

Despite Peru’s long history of restrictive reproductive rights, there is a growing national movement that supports expanding access to abortions in cases of rape and sexual violence. In July 2014, the Peruvian government recognized the lack of access to safe therapeutic abortions despite their legality and enacted a national protocol in order to standardize accessibility and increase the quality of medical care.^{xxii} The government was spurred to take action by the case of L.C., a case presented before the Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) 13-year-old rape victim, who was left seriously disabled after state health officials denied her a potentially life-saving abortion.^{xxiii} In September 2014, Peruvian women’s rights groups collected 64,200 signatures and submitted a bill before the Peruvian Congress (the “Bill”) which would allow abortion in the case of sexual violence or artificial insemination without consent.^{xxiv} The President of Peru, Ollanta Humala, has expressed his support for decriminalizing abortion in cases of sexual violence, although he did not actively campaign for the Bill’s passage.^{xxv}

Due to the strong opposition by the Catholic Church and conservative politicians, the Bill was rejected by the Peruvian Congress in May, 2015. However, protests by women’s rights groups in Lima and non-governmental organizations, combined with political support from liberal members of the Peruvian Congress, have succeeded in pressuring the Peruvian Congress to reconsider the Bill in November, 2015.^{xxvi} **The upcoming consideration of the Bill by the Peruvian Congress is a significant opportunity to achieve meaningful change in the reproductive rights of Peruvian adolescents, particularly in cases of rape and sexual violence.**

II. The Right to Sexual and Reproductive Health Information and Services

1. Peruvian adolescents lack access to contraception, including emergency contraception.

Emergency contraception is the most effective contraceptive method in preventing pregnancy in cases of rape or sexual abuse.^{xxxvii} However, adolescents in Peru often lack access to the reproductive health information and services they need, resulting in high rates of unplanned pregnancies and increasing the likelihood that sexual violence will result in pregnancy. Peru has banned the free distribution of emergency contraception in the public healthcare system, resulting in limited access to this essential medicine,^{xxxviii} including in cases of rape. In addition to the levels of sexual violence discussed in Section I above, a 2009 study by ENDES found that more than a third (39.2%) of Peruvian adolescents under the age of 18 are sexually active.^{xxxix} Unplanned pregnancy rates for adolescents between the ages of 15 and 19 have steadily increased from 2000 to 2009. In 2009, 16.4% of adolescents had been pregnant or were pregnant for the first time and 11.1% were already mothers.^{xxx}

Disparate access to contraception is a driver of adolescent pregnancy.^{xxxi} In particular, access to emergency contraception is critical for adolescents, who may have difficulty negotiating condom use,^{xxxii} experience higher failure rates for other forms of contraception,^{xxxiii} and who suffer high rates of sexual violence. The harmful effects of restricted access to reproductive health information and contraception also disproportionately impact adolescents because they are more likely to have limited financial resources. While modern contraceptive methods, including emergency contraception, are increasingly available through private health care suppliers, the costs to a purchaser are significant, especially because over half of the population of Peru lives in poverty (almost a quarter lives in extreme poverty).^{xxxiv} It is no surprise then that at least 68% of contraceptive users are reliant on the public health system, which provides cheaper and less effective methods of birth control and which no longer distributes emergency contraception.

2. Peru is failing to meet its obligation to guarantee adolescents access to contraceptive information and services.

Peru's international human rights obligations require that adolescents be guaranteed the right to access contraception, particularly those who have experienced sexual violence. The Committee has urged states to "ensure universal access to a comprehensive package of sexual and reproductive health interventions,"^{xxxv} including condoms, hormonal contraceptives, and emergency contraception. The Committee further recognizes that pregnancy resulting from rape can be a "significant health risk"^{xxxvi} and has instructed states parties to "provide . . . adolescent [victims of sexual abuse] with all the necessary services."^{xxxvii} Because Peru does not allow abortion in cases of sexual violence, victims are reliant on access to emergency contraception if they are to avoid pregnancy and its related health risks.

Unfortunately, a series of contradictory actions by Peru’s Constitutional Court (the “Court”) and the Ministry of Health of Peru (“MINSA”) have put access to emergency contraception in jeopardy. In 2009, the Court declared the free distribution of emergency contraception to be unconstitutional as a violation of the right to life, based on the “reasonable doubt” that emergency contraception may work as an abortifacient.^{xxxviii} The 2009 decision contradicted a 2006 Court decision which had found the most prevalent emergency contraceptive drug to only have contraceptive effects, not abortive effects, and therefore be permissible.^{xxxix} The Pan-American Health Organization, the Peruvian Health College and the Peruvian Society of Obstetrics and Gynecology (among other domestic and international organizations) have all supported the classification of emergency contraception as a permitted form of contraception, not an abortifacient.^{xl}

The 2009 decision by the Court casts a shadow of legal uncertainty over the development of “Píldora del día siguiente,” a government program which had been designed to provide public health facilities with emergency contraception for free distribution. With the support of the Pan-American Health Organization, a 2010 report by the General Direction of Medicines, Supplies and Drugs, and a letter from the National Institute of Health, in early 2010 MINSA issued a resolution allowing the public distribution of emergency contraception.^{xli} However, despite the widespread consensus in support of emergency contraception among public health authorities in Peru, a petition was filed with the Court to halt the free distribution of emergency contraception by MINSA on the grounds that it violated the Court’s 2009 decision. The Court granted the petition and MINSA subsequently reversed its previous resolution and in September 2010 it prohibited the free distribution of emergency contraception.^{xlii} Emergency contraception is now substantially restricted to private health care suppliers, at prices which put it beyond the reach of most Peruvian women and girls of lower income. This legal framework constitutes a discriminatory regime that discriminates girls and adolescents on the basis of their socio-economic status.

The decision asserting that emergency contraception violated the right to life contravenes international human rights standards. In its ruling on the scope of the protection of the right to life in Article 4 of the American Convention in the *Artavia Murillo et al. v. Costa Rica* case, the Inter-American Court of Human Rights (“IACtHR”) concluded that the protection of the right to life begins with implantation and not fertilization of an embryo.^{xliii} The IACtHR also decided that for purposes of Article 4 of the American Convention, the embryo is not considered a person and as such is not subject to the right to life.^{xliv} Additionally, both the Committee on the Elimination of Discrimination against Women (CEDAW Committee) and the CRC have urged states parties to increase the availability of contraceptive services.^{xlv} In accordance with the standards set by the IACtHR and United Nations Treaty Monitoring Bodies (“UNTMBs”), the Peru’s Constitutional Court ruling is in clear contravention of international human rights law.

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

The United Nations has proclaimed that motherhood and childhood are entitled to special care and assistance.^{xlvi} The Convention recognizes particularly that children should be brought up in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.^{xlvii} The Convention proclaims that the best interests of the child shall be a primary concern in all actions concerning children,^{xlviii} and the Court has indicated that the best interests of the child is implicitly recognized in Article 4 of the Peruvian Constitution.^{xlix} As a State Party to the Convention, Peru has an obligation to review its actions for the impact they have on children, “in all health-related decisions concerning individual children or children as a group.”¹ Peru has the obligation to develop procedures and criteria to provide guidance to health workers for assessing the best interests of the child in the area of health, in addition to other formal, binding process that are in place for determining the child’s best interests.^{li}

UNTMBs recognize that restrictive abortion laws violate the rights to life and health, and that states must permit abortion, at a minimum, in cases of rape or incest and where pregnancy poses a risk to the woman or girl’s life or health. The Committee has recommended that States ensure that health systems can meet the specific sexual and reproductive health needs of adolescents,^{lii} including access to safe abortion and post-abortion care services, regardless of whether abortion itself is legal.^{liii} In accordance with standards set in the *L.C. v. Peru* decision from the CEDAW Committee, it was determined that the criminalization of abortion in cases of sexual violence violates women’s right to health without discrimination, and contravenes the obligations of the state to adopt measures to eliminate gender stereotypes and to guarantee women’s sexual and reproductive rights.^{liv} **By continuing to criminalize abortion in cases of rape or incest, Peru is falling short of its international human rights obligations. As examined below, Peru’s failure to guarantee reproductive rights has violated several rights under the Convention.**

1. Peruvian Children’s Right to Life, Survival and Development (Article 6).

UNTMBs have expressed concern about adolescents’ lack of access to sexual and reproductive health services and the impact that this has on their lives and development, including by urging states to ensure adequate access to such services to reduce adolescent pregnancy and maternal mortality.^{lv} As a State Party to the Convention, Peru is obligated to protect adolescents’ reproductive rights under the Convention. Article 6 of the Convention proclaims that State Parties have the obligation to “recognize that every child has the inherent right to life” and “ensure to the maximum extent possible the survival and development of the child.”^{lvi} The Committee interprets the right to development broadly to include their physical, mental, spiritual, moral, psychological and social development^{lvii} and has urged State Parties to take measures to achieve the optimal development of all children.^{lviii} This right is closely linked to the rights of the child to the enjoyment of the highest attainable standard of health, to health services and to an adequate standard of living.^{lix}

Guaranteeing adolescents’ access to sexual and reproductive health services enables them to prevent pregnancy, protect themselves against sexually transmitted infections, and make

informed decisions about their sexual and reproductive health. Where adolescents are unable to autonomously access these services, they may resort to unsafe methods to try to prevent pregnancy or to terminate an unwanted pregnancy, posing serious threats to their lives.^{lx} Adolescent women are a particularly vulnerable segment of Peru’s population. As described in Section II above, adolescent pregnancy of women between 15 and 19 years of age has increased from 2000 to 2009. Adolescent pregnancies are particularly risky, in part because there are obstacles to accessing reproductive healthcare services. The WHO has classified adolescent pregnancies as high-risk pregnancies, and has explicitly recommended empowering adolescents to delay pregnancy until 20 years of age due to the particularly harmful effects of early pregnancy.^{lxi}

In particular, access to sexual and reproductive health—including abortion and emergency contraception without discrimination—is imperative for victims of rape and sexual violence. The Committee has stated that pregnancy after rape can be a “significant health risk”.^{lxii} It has instructed states parties to provide adolescent victims of sexual abuse with all the necessary services.^{lxiii} Many UNTMBs, including the Committee, have also repeatedly urged State Parties like Peru to permit abortion in cases of rape and incest.^{lxiv} It recognizes that receiving unsafe abortions may lead to maternal mortality, in violation of adolescents’ right to life.^{lxv} Not only should Peru permit abortions in these cases, it also needs to guarantee access to sexual and reproductive health services that would enable adolescent girls to prevent high risk pregnancies, protect themselves against sexually transmitted diseases and make informed decisions about their sexual and reproductive health. If adolescent girls are unable to access these services, they may resort to unsafe methods that may result in death or serious injury. For example, with respect to Peru, the CEDAW Committee has noted, “with concern that illegal abortion remains one of the leading causes of the high maternal mortality rate and that the State’s party’s restrictive interpretation of therapeutic abortion, which is legal, may further lead women to seek unsafe and illegal abortions.”^{lxvi} **In order for Peru to protect Peruvian girls’ right to life, survival and development under Article 6 of the Convention, it needs to guarantee access to reproductive health services for them.**

2. Peruvian Children’s Right to Health (Articles 3(2), 17 and 24).

All children have the right to opportunities to survive, grow and develop, within the context of physical, emotional and social wellbeing, to each child’s full potential.^{lxvii} The Committee interprets children’s right to health as in defined in Article 24 as an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them attain the highest standard of health.^{lxviii} Under Article 24, Peru is to “pursue full implementation of this right” and to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”^{lxix} In evaluating the meaning of the “highest attainable standard of health”, the Committee recognizes that the children’s right to health contains a set of freedoms and entitlements, which includes the right to “control one’s health and body, including sexual and reproductive freedom to make responsible choices.”^{lxx} The Committee suggests that states should “consider allowing children to consent to certain medical treatments and interventions without the permission of a parent...such as sexual and reproductive

health services, including education and guidance on sexual health, contraception and safe abortion.”^{lxxi} Article 24 also recognizes that states like Peru are required to take appropriate measures to “develop ... family planning and education services,” and “ensure appropriate pre-natal and post-natal health care”.

In addition to the broad interpretation of Article 24, the Committee has stated that accountability is at the core of the children’s enjoyment of the right to health. Peru’s government authorities and service providers are held accountable for maintaining the highest possible standards of children’s health and health care until they reach 18 years of age.^{lxxii} Article 3(2) requires Peru to “undertake to ensure the child such protection and care as is necessary for his or her well-being” and “take all appropriate legislative and administrative procedures” to accomplish this goal.^{lxxiii} In particular, Peru has a duty to promote awareness to non-state actors’ responsibilities and ensure that they recognize, respect and fulfill their responsibilities to the child, applying due diligence procedures where necessary.^{lxxiv} **There are legal uncertainties and lack of enforcement of the law that endangers the health and lives of adolescents. For example, as discussed in Section II above, after the 2009 case that pronounced that the free distribution of emergency contraception is unconstitutional as a violation of the right to life, there is legal uncertainty as to whether Peruvian government-sponsored programs can dispense free contraception. This disproportionately impacts adolescent girls that are victims of sexual violence, as obtaining emergency contraception through private means may be prohibitively expensive and inaccessible for adolescents and girls of lower socioeconomic status.**

Article 17 requires Peru to “ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.”^{lxxv} General Comment 18 further establishes that “special attention is therefore needed to ensure that women and adolescents have access to accurate information about sexual and reproductive health and rights and on the impacts of harmful practices as well as access to adequate and confidential services.”^{lxxvi} For example, attention should be given to ensuring confidential, universal access to reproductive health goods and services for both married and unmarried female and male adolescents. **Peru should ensure that adolescents are not deprived of any sexual and reproductive health information or services due to a providers’ conscientious objections.**^{lxxvii} **Short-term contraceptive methods, including emergency contraception should be made easily and readily available, particularly in cases of rape and sexual violence, as described further in Section II above. Guaranteeing access to such reproductive health information would enable girls to protect themselves against sexually transmitted diseases and high risk pregnancies, as well as make informed decisions about their reproductive health.**

3. Peruvian Children’s Rights to Substantive Equality and Non-Discrimination (Article 2).

The rights guaranteed by the Convention are afforded to all children without exception. Article 2 of the Convention states that State Parties shall “respect and ensure the rights set forth in

the present Convention to each child within their jurisdiction without discrimination of any kind” and “take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment.”^{lxxxviii} State Parties are obligated to take affirmative measures to protect children’s right to non-discrimination and diminish or eliminate conditions that cause discrimination through measures such as legislative changes, changes in administration and resource allocation, and educational measures designed to change attitudes.^{lxxxix}

The Committee recognizes that in order to fully realize the right to health for all children, Peru has an obligation to ensure that children’s health is not undermined as a result of discrimination.^{lxxx} The Committee recognizes that children who are discriminated against “are more vulnerable to abuse, other types of violence and exploitation,” and their health and development are put at greater risk.^{lxxxix} Peru has to give attention to harmful gender-based practices and norms of behavior that are ingrained in traditions and customs and undermine the right to health of girls and boys.^{lxxxii} In addition, it has to recognize “equal rights related to sexual and reproductive health” and “equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence.”^{lxxxiii}

There are many examples of how Peru is violating girls’ rights to substantive equality and non-discrimination. **For one, the restrictive interpretation of the abortion law criminalizes it even in cases of rape and sexual violence, creating a discriminatory gender paradigm where the girl has little recourse and must bear and raise the child of the man who violated her. In another instance, Peruvian law generates inequalities in access to emergency contraception, including shortages in modern contraception.**^{lxxxiv} MINSA and EsSalud are government bodies directly responsible for providing modern contraceptives, as more than half of contraceptive users use the public health system.^{lxxxv} As there are often shortages, their failure to provide contraceptives directly affects the exercise of the right to reproductive health for poor adolescents who cannot afford to purchase contraceptives through the private healthcare system.^{lxxxvi} **The prohibition on providing free emergency contraceptives within the public healthcare system also predominately affects poor women. According to MINSA, most maternal deaths occurring in the public health system occur in the poorer regions of the country, such as Cajamarca and Puno.**^{lxxxvii} **A higher percentage of poor women who undergo an abortion are at risk of complications.**^{lxxxviii} **By not guaranteeing access to quality healthcare to the most vulnerable populations, including those in rural and low-income areas, Peru is violating those girls’ rights to substantive equality and non-discrimination.**

IV. Conclusion

We applaud the Committee on the Rights of the Child for its commitment to girls’ sexual and reproductive health and rights and the strong recommendations the committee has issued in the past, which stress the need to enact, implement, and monitor effective policies geared towards increasing these rights. We also applaud the great advancements the Peruvian Government has taken in the last years to protect reproductive rights. Particularly, we congratulate the Peruvian Government for introducing Ministerial Resolution No. 486-2014/MINSA to enact a national protocol that aims to standardize procedures for comprehensive care of pregnant women in cases

of therapeutic abortion. However, while the introduction of this resolution represents a significant step in the route towards achieving reproductive rights for all girls, the effects of this change of law has yet to be seen and there is more that can be done to protect adolescents who become pregnant through experiencing rape and sexual violence. In light of the information provided above, we hope that this Committee will consider addressing the following questions to the government of Peru:

With regard to sexual violence:

- Children and adolescents who have been victims of gender-based violence are more vulnerable to teenage pregnancy. What policies and/or programs are being taken by Peru to prevent sexual violence against adolescent girls?

With regard to abortion:

- What measures is Peru taking to protect girls from the risks of pregnancy, including the risks of unsafe abortions?
- What is the Peruvian government doing to ensure access to timely, quality and affordable post-abortion care and reproductive health counseling?

With regard to emergency contraception:

- What measures are being taken by Peru to address the lack of information about the legality of emergency contraception in the country?
- What measures is Peru undertaking or planning to undertake to provide contraceptive methods, information and services to vulnerable populations, including poor, rural, and adolescent women?

We believe that now more than ever, an explicit recommendation towards the decriminalization of abortion where women became pregnant from sexual violence is determinant for the recognition of the right to health without discrimination for adolescents. **We respectfully request the Committee on the Rights of the Child to consider addressing the following recommendations to the Peruvian government during the 71st Session:**

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

We appreciate this Committee's longstanding commitment to reproductive rights and to the eradication of discrimination in the access to reproductive health care. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.



Respectfully,

A handwritten signature in black ink that reads "Catalina Martínez Coral".

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- ⁱ Convention on the Rights of the Child, adopted Nov. 20, 1989, G.A. Res. 44/25, annex, UN GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990) [hereinafter Convention].
- ⁱⁱ Committee on the Rights of the Child, List of Issues, U.N. Doc. CRC/C/PER/Q/4-5. Para 9 (2015).
- ⁱⁱⁱ PERU, PENAL CODE (1991), Art.114, 115, 119 and 120.
- ^{iv} *Id.*
- ^v *Id.*, Art. 118.
- ^{vi} *Id.*, Art. 120.
- ^{vii} *Id.*, Art.114, 115, 119 and 120.
- ^{viii} JARIS MUJICA, VIOLACIONES SEXUALES EN EL PERU (SEXUAL VIOLENCE IN PERU) 2000-2009 78 (2011).
- ^{ix} *Id.*
- ^x MINSA & UNFPA. Hoja de Datos 3. Violencia contra mujeres adolescentes. Lima, [Violence against adolescent woman] MINSA & UNFPA, (2012), *available at* <http://www.unfpa.org.pe/publicaciones/publicacionesperu/UNFPA-AECID-Hoja-de-Datos-3.pdf>.
- ^{xi} WORLD HEALTH ORGANIZATION (WHO), UNSAFE ABORTION: GLOBAL AND REGIONAL ESTIMATES OF THE INCIDENCE OF UNSAFE ABORTION AND ASSOCIATED MORTALITY IN 2008 6-7 (Sixth Edition) (2011), *available at* http://apps.who.int/iris/bitstream/10665/44529/1/9789241501118_eng.pdf; WORLD HEALTH ORGANIZATION (WHO), *Unsafe Abortion: The Preventable Pandemic* 4 (2006), *available at* http://www.who.int/reproductivehealth/topics/unsafe_abortion/article_unsafe_abortion.pdf.
- ^{xii} DELICIA FERRANDO, EL ABORTO CLANDESTINO EN PERÚ [CLANDESTINE ABORTION IN PERU] 33 (2006), *available at* <http://www.inppares.org/sites/default/files/Aborto%20clandestino%20Peru.pdf>.
- ^{xiii} *See, e.g.*, CESCR, *Concluding Observations: Benin*, U.N. Doc. CESCR E/C.12/1/Add.78 (2002); *Brazil*, U.N. Doc. CESCR E/C.12/1/Add.87 (2003); *Cameroon*, U.N. Doc. CESCR E/C.12/1/Add.40 (1999); *Mauritius*, U.N. Doc. E/C.12/1994/8 (1994); *Mexico*, U.N. Doc. E/C.12/1/Add.41 (1999); U.N. Doc. E/C.12/MEX/CO/4 (2006); *Nepal*, U.N. Doc. E/C.12/1/Add.66 (2001); *Panama*, U.N. Doc. E/C.12/1/Add.64 (2001); *Paraguay*, U.N. Doc. E/C.12/PRY/CO/3 (2008); *Poland*, U.N. Doc. E/C.12/1/Add.26 (1998); *Russian Federation*, U.N. Doc. E/C.12/1/Add.94 (2003); *Senegal*, U.N. Doc. E/C.12/1/Add.62 (2001).
- ^{xiv} AMNESTY INTERNATIONAL (AI), FATAL FLAWS: BARRIERS TO MATERNAL HEALTH IN PERU 14 (2009), *available at*: <https://www.amnesty.org/en/documents/AMR46/008/2009/en/>.
- ^{xv} DELICIA FERRANDO, *supra* note 12, at 22.
- ^{xvi} Warriner IK and Shah IH, eds., *Preventing Unsafe Abortion and its Consequences: Priorities for Research and Action*, New York: Guttmacher Institute, 2006 at 196-197.
- ^{xvii} *Id.*, at 30.
- ^{xviii} WORLD HEALTH ORGANIZATION (WHO), *Adolescent Pregnancy, Fact Sheet No. 364* (Sept. 2014), *available at* <http://www.who.int/mediacentre/factsheets/fs364/en/>.
- ^{xix} *Id.*
- ^{xx} *Id.*; WORLD HEALTH ORGANIZATION (WHO), PREGNANT ADOLESCENTS: DELIVERING ON GLOBAL PROMISES OF HOPE 10 (2006).
- ^{xxi} PERU, PENAL CODE (1991), Art.119. [CRR unofficial translation].
- ^{xxii} MINSA, Resolución Ministerial No. 486-2014/MINSA, June 27, 2014.
- ^{xxiii} L.C. v. Peru, CEDAW Committee, Comm'n No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).
- ^{xxiv} Bill No. 3839/2014-IC (introduced September 24, 2014) *Proyecto de Ley que despenaliza el aborto en los casos de embarazos a consecuencia de una violación sexual, inseminación artificial o transferencia de óvulos no consentidas* (Bill to decriminalize abortion in cases of pregnancy resulting from a sexual violation, artificial insemination or transfer of eggs without consent).
- ^{xxv} *Humala a favor de la despenalización del aborto por violación sexual*, RADIOGRAMAS DEL PERU (RPP), August 30, 2015, *available at* <http://rpp.pe/politica/actualidad/humala-a-favor-de-la-despenalizacion-del-aborto-por-violacion-sexual-noticia-831338>.
- ^{xxvi} *Pleno vería despenalización de aborto por violación en 2 meses*, EL COMERCIO, September 19, 2015, *available at* http://elcomercio.pe/politica/congreso/pleno-veria-despenalizacion-aborto-violacion-2-meses-noticia-1842236?ref=flujo_tags_82162&ft=nota_1&e=titulo.
- ^{xxvii} WORLD HEALTH ORGANIZATION (WHO), *Emergency Contraception, Fact Sheet No. 244* (July 2012), *available at* <http://www.who.int/mediacentre/factsheets/fs244/en/>.
- ^{xxviii} WORLD HEALTH ORGANIZATION (WHO), MODEL LIST OF ESSENTIAL MEDICINES (19th ed.) (April 2015), *available at* <http://www.who.int/medicines/publications/essentialmedicines/en/>.
- ^{xxix} INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA [NATIONAL INSTITUTE OF STATISTICS AND INFORMATION] (INEI), ENCUESTA DEMOGRÁFICA Y DE SALUD FAMILIAR (ENDES CONTINUA 2009) INFORME PRINCIPAL [DEMOGRAPHIC AND FAMILY HEALTH SURVEY (ENDES CONTINUOUS 2009) MAIN REPORT] 270-271 (2010).
- ^{xxx} *Id.*

- xxxⁱ P. Gómez et al., *Factores relacionados con el embarazo y la maternidad en menores de 15 años*, PROMSEX-FLASOG (2011).
- xxxⁱⁱ UNITED NATIONS POPULATION FUND (UNFPA), *MOTHERHOOD IN CHILDHOOD* 38 (2013).
- xxxⁱⁱⁱ *Id.*
- xxx^{iv} AMNESTY INTERNATIONAL (AI), *FATAL FLAWS: BARRIERS TO MATERNAL HEALTH IN PERU* 14 (2009), available at <http://www.amnesty.org/en/library/asset/AMR46/008/2009/en/442a4678-9f6d-4f91-9045-3c47198144d7/amr460082009eng.pdf>.
- xxx^v Committee on the Rights of the Child, *General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health (Article 24)*, (62nd Sess., 2013), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, paras. 53-54, U.N. Doc. CRC/C/GC/15 (2013) [hereinafter Committee, *Gen. Comment No. 15*].
- xxx^{vi} In General Comment 4, this Committee expressed its concern that adolescent victims of sexual abuse are “exposed to significant health risks, including . . . unwanted pregnancies, unsafe abortions . . . and psychological distress.” Committee, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, (33rd Sess., 2003), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 37, U.N. Doc. HRI/GEN/1/Rev. 9 (Vol. II) (2008) [hereinafter Committee, *Gen. Comment No. 4*].
- xxx^{vii} *Id.* para. 22.
- xxx^{viii} *Id.*, para. 22.
- xxx^{viii} Martin Hevia, *The Legal Status of Emergency Contraception in Latin America*, INTERNATIONAL JOURNAL OF GYNECOLOGY AND OBSTETRICS, 2012, at 88, available at http://promdsr.org/clae/fichas/FICHA_24102014100923.pdf;
- Tribunal Constitucional de Perú [Constitutional Court of Peru], *Sentencia [Decision] No. 02005-2009-PA/TC*, available at <http://www.tc.gob.pe/jurisprudencia/2009/02005-2009-AA.html>.
- xxx^{ix} Martin Hevia, *supra* note 29; Tribunal Constitucional de Perú [Constitutional Court of Peru], *Sentencia [Decision] No. 7435-2006-PC/TC*, available at <http://www.tc.gob.pe/jurisprudencia/2006/07435-2006-AC.html>.
- xl Tribunal Constitucional de Perú [Constitutional Court of Peru], *Sentencia [Decision] No. 7435-2006-PC/TC*, available at <http://www.tc.gob.pe/jurisprudencia/2006/07435-2006-AC.html>.
- xli MINSa, Resolución Ministerial No. 167-2010/MINSa, March 8, 2010.
- xlii MINSa, Resolución Ministerial No. 652-2010/MINSa, August 19, 2010.
- xliii Inter-American Court of Human Rights, *Case of Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica*, (2012), http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf.
- xliv *Id.*, para. 264.
- lv See, e.g., CEDAW Committee, *Concluding Observations: Chile*, U.N. Doc. A/54/38 (1999); CEDAW Committee, *Concluding Observations: Mexico*, U.N. Doc. CEDAW/C/MEX/CO/6 (2006); CEDAW Committee, *Concluding Observations: Venezuela*, A/52/38/Rev.1 (1997); Committee on the Rights of the Child, *Concluding Observations: Argentina*, U.N. Doc. CRC/C/15/Add.35 (1995).
- lvi Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, art. 25(2), G.A. Res. 217A (III), U.N. Doc. A/810 (1948).
- lvii Convention, *supra* note i, Preamble.
- lviii *Id.* art. III, para. 1.
- lix *Examen de los informes presentados por los Estados partes en virtud del artículo 44 de la Convención sobre los Derechos del Niño*, Mar. 11, 2015, pp23, para 74.
- ¹ Committee, *Gen. Comment No. 15*, *supra* note xxxv, para. 12.
- li *Id.* para. 14.
- lii *Id.* para. 56.
- liii *Id.* para. 70.
- liv *L.C.*, No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009.
- lv See, e.g., Human Rights Committee, *Concluding Observations: Peru*, para. 14, U.N. Doc. CCPR/C/PER/CO/5 (2013).
- lvi Convention, *supra* note i, art VI.
- lvii Committee, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, (34th Sess., 2003), para. 12 U.N. Doc. CRC/GC/2003/5 [hereinafter Committee, *Gen. Comment No. 5*].
- lviii *Id.*
- lix UNITED NATIONS INTERNATIONAL CHILDREN’S EMERGENCY FUND (UNICEF), *THE STATE OF THE WORLD’S CHILDREN: CELEBRATING 20 YEARS OF THE CONVENTION ON THE RIGHTS OF THE CHILD* 9 (2009).
- lx UNITED NATIONS POPULATION FUND (UNFPA), *MOTHERHOOD IN CHILDHOOD: FACING THE CHALLENGE OF ADOLESCENT PREGNANCY* 26-28 (2013).
- lxi WORLD HEALTH ORGANIZATION (WHO), *WHO GUIDELINES ON PREVENTING EARLY PREGNANCY AND POOR REPRODUCTIVE OUTCOMES AMONG ADOLESCENTS IN DEVELOPING COUNTRIES* 3-4 (2011).
- lxii Committee, *Gen. Comment No. 4*, para. 37.
- lxiii *Id.* para. 22.

- ^{lxiv} See, e.g., CEDAW Committee, Concluding Observations: Pakistan, para. 32(d), U.N. Doc. CEDAW/C/PAK/CO/4 (2013) (urging the state to “review its abortion legislation with a view to expanding the grounds under which abortion is permitted, for example, cases of rape and incest”); Human Rights Committee, Concluding Observations: Dominican Republic, para. 15, U.N. Doc. CCPR/C/DOM/CO/5 (2012) (“The Committee recommends that the State party should review its legislation on abortion and make provision for exceptions to the general prohibition of abortion for therapeutic reasons and in cases of pregnancy resulting from rape or incest”); Committee against Torture, Concluding Observations: Peru, para. 15(a), U.N. Doc. CAT/C/PER/CO/5-6 (2013) (“The State party should review its legislation with a view to: Amending the general prohibition for cases of therapeutic abortion and pregnancy resulting from rape and incest and provide free health coverage in cases of rape”); Committee, Concluding Observations: Costa Rica, para. 64(d), U.N. Doc. CRC/C/CRI/CO/4 (urging the State to “expand legal abortion in cases of rape and intra-family sexual violence”).
- ^{lxv} Committee, *Gen. Comment No. 15*, *supra* note xxxv, para. 56.
- ^{lxvi} Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Peru*, para 24, U.N. Doc. CEDAW C/PER/CO/6 (2007).
- ^{lxvii} Committee, *Gen. Comment No. 15.*, *supra* note xxxv, para. 1.
- ^{lxviii} *Id.* para. 2.
- ^{lxix} Convention, *supra* note i, art XXIV.
- ^{lxx} Committee, *Gen. Comment No. 15.*, *supra* note xxxv, para. 24.
- ^{lxxi} *Id.* para. 31.
- ^{lxxii} *Id.* para. 90.
- ^{lxxiii} Convention, *supra* note i, art III, para. 2.
- ^{lxxiv} Committee, *Gen. Comment No. 15*, *supra* note xxxv, para. 76.
- ^{lxxv} Convention, *supra* note i, art XVII.
- ^{lxxvi} CEDAW Committee and Committee, *Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices (2014)*, para. 67 U.N. Doc CRC/C/GC/18.
- ^{lxxvii} Committee, *Gen. Comment No. 15*, *supra* note xxxv, para. 69.
- ^{lxxviii} Convention, *supra* note i, art ii.
- ^{lxxix} Committee, *Gen. Comment No. 5*, *supra* note lvii, para. 12.
- ^{lxxx} Committee, *Gen. Comment No. 15*, *supra* note xxxv, para. 8.
- ^{lxxxi} Committee, *Gen. Comment No. 4*, *supra* note xxxvi, para. 6.
- ^{lxxxii} Committee, *Gen. Comment No. 15*, *supra* note xxxv, para. 9.
- ^{lxxxiii} *Id.* para. 10.
- ^{lxxxiv} Defensoria del Pueblo (Office of the Ombudsman), Informe de Adjuntia No. 001-2009-DP/ADDM (Ombudsman Report No. 001-2009), at 166-192 (2009), *available at* <http://www.defensoria.gob.pe/inform-varios.php>.
- ^{lxxxv} Karra, Mahesh, Suneeta Sharma, and Manuel Vargas, *Fostering Public-Private Partnerships to Reduce Health Inequities in Peru*, 14 (2010), Washington, DC: Futures Group, Health Policy Initiative, Task Order I, *available at* http://pdf.usaid.gov/pdf_docs/Pnadx906.pdf.
- ^{lxxxvi} Dayaratna, Varuni, Nora Quesada, Jay Gribble, Wendy Abramson, David Sarley, Carlos Lamadrid, Nadia Olson, and Verónica Siman Betancourt, *Contraceptive Procurement Policies, Practices, and Options: Peru*, 3 (2006), Arlington, VA: DELIVER, and Washington, DC: USAID, Health Policy Initiative TO1, for the U.S. Agency for International Development, *available at* http://www.healthpolicyinitiative.com/Publications/Documents/437_1_437_1_Peru_ContraceptiveProcurementOptions_acc.pdf.
- ^{lxxxvii} Ministerio de Salud del Perú, La Mortalidad Materna en el Perú, 2002-2011, 13 (2013), *available at* <http://www.unfpa.org.pe/publicaciones/publicacionesperu/MINSA-Mortalidad-Materna-Peru.pdf>.
- ^{lxxxviii} DELICIA FERRANDO, *supra* note 6, at 20 (44% of poor, rural, women who undergo an abortion are at risk of complications and 27% of urban poor are at risk; 24% of rural, non-poor, women are at risk and only 5% of urban women who are not poor run this risk).