

United Nations Committee Against Torture
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10
Switzerland

October 12, 2012

Re: Supplementary information on Peru, scheduled for review by the U.N. Committee against Torture during its 49th session (November 2012)

Honorable Committee Members:

This letter is intended to assist the U.N. Committee against Torture (the “Committee”) in its review of the periodic report submitted by Peru, which is scheduled for review during the 49th session in November 2012. The Center for Reproductive Rights (“the Center”), a global independent non-governmental organization, DEMUS a Peruvian independent non-governmental organization and CLADEM a regional independent women’s rights network, hope to further the work of the Committee by providing independent information concerning the rights protected in the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”). This letter highlights the systemic problems concerning access to legal abortion in Peru, the resulting impact on women’s human rights and the need to implement medical and legal protocols in order to guarantee access to legal abortion.

Access to legal abortion is fundamental to girls’ and women’s right to be free from torture and cruel, inhuman and degrading treatment (“CIDT”). Access to abortion, particularly in instances when the health or life of the women is at risk and in cases of pregnancy resulting from incest and rape, are fundamental to girls’ and women’s right to be free from CIDT. The rights enshrined in the CAT are non-derogable and of immediate effect; thus it is critical that the State’s failure to uphold these rights is addressed. This submission will examine Peru’s failure to guarantee access to safe, legal abortion services, particularly emphasizing its failure to implement policies and protocols to guarantee the right to safe abortion. This submission will also examine the State’s failure to guarantee the right to an abortion when the pregnancy threatens the mental health of the women and in cases of rape, incest and fetal anomalies. We hope the Committee will urge the State to prioritize these issues, as they are central to women in Peru’s full exercise of their human rights, as enshrined in the CAT.

I. Peru's failure to guarantee access to safe, legal abortion services subject women to violate article 16 of the CAT Convention (obligation to prevent CIDT).

In Peru, girls and women face significant human rights violations due to the minimal exceptions to the law criminalizing abortion. Abortion is only legal in Peru when the life or the health of the woman is in danger.¹ However, despite this law, women are frequently unable to access or are outright denied access to abortions even under these specific circumstances due to a lack of legal and medical protocols in place. In many instances, physicians and medical service providers lack knowledge of the law and do not know whether they are allowed to perform abortions which leads to the denial of legal abortion services for fear of punishment.

Therapeutic abortions result from a number of pregnancies that occur in women with prior health conditions, which are aggravated by the gestation of a fetus and, thus, pose a threat to women (such is the case for women undergoing dialysis, or women with severe neurological lesions that worsen with pregnancy or malignant neoplasms that require surgery, radiation therapy or chemotherapy). The same occurs in cases in which the illness begins during the gestation of a fetus, thus causing complications throughout the gestational period and posing a risk to the woman's life as well as her physical and mental health (such is the case with treatment-resistant hyperemesis gravidarum, chorioamnionitis, and anencephaly). These types of illnesses, combined with lack of access to legal abortion, contribute to the elevated maternal mortality rate observed in Peru. According to the Ministry of Health, in 2009, 29% of maternal deaths resulted from indirect causes –mainly illnesses that complicate pregnancies or are aggravated by the gestation of a fetus.² The Medical Board of Peru (*Colegio Médico del Perú*) has indicated that 200 Peruvian women die each year from lack of access to therapeutic abortion services.³

The lack of clarity in terms of the legal and administrative framework to access legal therapeutic abortion often leads women to seek clandestine, illegal, and unsafe abortions. Unsafe abortion is one of the five main causes of pregnancy-related deaths in Peru,⁴ where

¹ Article 119 of the present penal code, states, “(A)bstention practiced by a physician with the consent of the pregnant woman or her legal representative, if applicable, is not punishable when it is the only means to save the life of the woman or to avoid serious and permanent damage to her health.” CÓDIGO PENAL DE PERÚ [CÓD. PEN.] art. 119.

² Ministry of Health, Peru, *Domestic Sexual and Reproductive Health Strategy, Situation of maternal mortality* [slide].

³ *Muertes maternas son por negligencia*, PERÚ21.PE, Nov. 10, 2011, <http://peru21.pe/noticia/1331333/muertes-maternas-son-negligencia>.

⁴ GENERAL DEPARTMENT OF HEALTH, MINISTRY OF HEALTH, PERU, DOMESTIC SEXUAL AND REPRODUCTIVE HEALTH STRATEGY, STRATEGIC NATIONAL PLAN FOR THE REDUCTION OF MATERNAL AND PERINATAL MORTALITY 2009-2015 [ESTRATEGIA SANITARIA NACIONAL DE SALUD SEXUAL Y REPRODUCTIVA, PLAN

one in every five women who undergoes an abortion is later hospitalized because of abortion-related complications.⁵ According to the World Health Organization (WHO), unsafe abortion is “a procedure for terminating an unintended pregnancy carried out either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.”⁶ In Peru, by 2000, the official estimate for maternal deaths was 85 for every 100,000 live births,⁷ of which –researchers found– 16% was attributable to unsafe abortions.⁸ By 2009, the official estimates had grown to 103 for every 100,000 live births,⁹ even though, according to the WHO, by 2010 the rate was actually 240.¹⁰ However, due to the clandestine nature of abortions, the proportion of maternal deaths resulting from unsafe abortion is difficult to accurately gauge;¹¹ therefore, the actual percentage may be higher.

A 2006 survey of Peruvian physicians about legal abortion demonstrates that it is critical that the State implements and disseminates a medical protocol on legal abortion. 14% of doctors surveyed did not know that abortion was legal when the pregnancy endangers a woman's life. Even more alarming, less than 50% knew that abortion was legal when necessary to protect a woman's health.¹² Lack of knowledge by physicians and medical professions concerning what qualifies as a legal abortion results in the unwillingness to perform abortions for fear of punishment leading to unsafe illegal abortions. An investigation of abortion cases in four hospitals throughout Lima from 2007 to 2009 found that out of a total of 22,427 cases of abortion, 87 could be deemed therapeutic abortions, representing 0.39% of the total number of abortions. However, only 35 of these cases indicated with any precision the actual health grounds used for the termination of the

ESTRATÉGICO NACIONAL PARA LA REDUCCIÓN DE LA MORTALIDAD MATERNA Y PERINATAL 2009-2015], 27 (2009), available at

http://www.minsa.gob.pe/servicios/serums/2009/normas/1_penrmm.pdf.

⁵ DELICIA FERRANDO, EL ABORTO CLANDESTINO EN EL PERÚ, HECHOS Y CIFRAS 24 (2002).

⁶ WORLD HEALTH ORGANIZATION (WHO), UNSAFE ABORTION: GLOBAL AND REGIONAL ESTIMATES OF THE INCIDENCE OF UNSAFE ABORTION AND ASSOCIATED MORTALITY IN 2008, 2 (6th ed., 2011), available at http://whqlibdoc.who.int/publications/2011/9789241501118_eng.pdf.

⁷ INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA, ENCUESTA DEMOGRÁFICA Y DE SALUD FAMILIAR, 2009, 166 (2010) [hereinafter ENCUESTA DEMOGRÁFICA Y DE SALUD FAMILIAR, 2009].

⁸ Luis Távara et al., *Current state of maternal mortality in Peru (Estado actual de la mortalidad maternal en Peru)*, 45(1) GYNECOLOGY AND OBSTETRICS 38-42 (1999).

⁹ ENCUESTA DEMOGRÁFICA Y DE SALUD FAMILIAR, 2009, *supra* note 7, at 166.

¹⁰ WHO, WORLD HEALTH STATISTICS 2010, 26 (2010), available at http://www.who.int/whosis/whostat/EN_WHS10_Full.pdf.

¹¹ HUMAN RIGHTS WATCH, MY RIGHTS, AND MY RIGHT TO KNOW: LACK OF ACCESS TO THERAPEUTIC ABORTION IN PERU 7 (2008), available at http://www.hrw.org/sites/default/files/reports/peru0708_1.pdf [hereinafter HRW, LACK OF ACCESS TO THERAPEUTIC ABORTION IN PERU].

¹² L. Pace, D. Grossman, S. Chávez, L. Távara, D. Lara, R. Guerrero-Vásquez, *Legal abortion in Peru: knowledge, attitudes and practices among a group of physician leaders*, 142(2) GAC MED MEX 91-94 (2006).

pregnancy, while there was no mention of these grounds in the remaining 52 cases.¹³ Statistics from the Ministry of Health show that in the Lima metropolitan area, the number of therapeutic abortions had steadily risen in the 5 years from 2002-2006 from 26 to 699;¹⁴ unfortunately, this increase is based on the measurement's inclusion of emergency abortion complication procedures and an enhancement in data collection, and not to an actual clarification of the law and effective access to this essential medical service.

The following cases demonstrate the impact of physicians' lack of knowledge about legal abortion services and the State's failure to effectuate this right. There have been two cases against Peru adjudicated by U.N. treaty monitoring bodies that exemplify Peru's failure to ensure access to legal abortion services. In both of these cases, young women who were in critical need of medically-necessary and legally-permissible health services were denied such services due to Peru's failure to adequately implement its abortion laws.

In *K.L. v. Peru*, a pregnant minor carrying a fetus with anencephaly, a fatal disorder causing the fetus to be unable to survive outside the womb, was denied access to an abortion. As a result, she was forced to carry the pregnancy to term and breastfeed the baby for the four days that it survived outside the womb. The Human Rights Committee determined that the denial of access to a legal abortion in the case of *K.L. v. Peru* constituted a violation of the right to be free from cruel, inhuman and degrading treatment, the right to privacy, amongst other rights. The Human Rights Committee has pointed out in its General Comment No. 20 addressing article 7 that it relates not only to physical pain but also mental suffering, and that the protection is particularly important in the case of minors.¹⁵ In the case, the Human Rights Committee also emphasized that Peru should provide the petitioner with an effective remedy, and also ensure that similar violations do not occur in the future.¹⁶ Peru has not complied with any of these recommendations.

In the case *L.C. v. Peru*¹⁷ decided by the CEDAW Committee in 2011, a 13 year old who became pregnant as a result of rape attempted suicide by jumping off of her roof. When she was subsequently hospitalized, the hospital staff refused to perform urgent, necessary spinal surgery on her due to their concerns that it may endanger her pregnancy. It was not until

¹³ Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), *INTERRUPCIÓN TERAPÉUTICA DEL EMBARAZO POR CAUSALES DE SALUD 21-25* (2009), available at

<http://www.promsex.org/docs/Publicaciones/interrupcionterapeutica-causalesTavara.pdf>.

¹⁴ HRW, *LACK OF ACCESS TO THERAPEUTIC ABORTION IN PERU*, *supra* note 11, at 8.

¹⁵ Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, (44th Sess., 1992), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 200, paras. 2, 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008).

¹⁶ *K.L. v. Peru*, Human Rights Committee, Commc'n No. 1153/2003, para. 8, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

¹⁷ *L.C. v. Peru*, CEDAW Committee, Commc'n No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

L.C. suffered a miscarriage several months later, which was likely induced by her injury, that she was able to receive the surgery. The CEDAW Committee condemned Peru's denial of a lawful abortion for L.C., and determined that this violated a number of her human rights. The Committee found that the State violated the rights of L.C. to be free from discrimination, her right to health and that the state had violated its obligation to eliminate gender stereotypes, amongst others.

The CEDAW Committee urged Peru to establish a system that ensures legal abortion services are truly accessible. The Committee recommended that the State Party: 1) provide reparation including compensation for material and moral damages, rehabilitation, commensurate with the gravity of the violation of her rights and the condition other health in order to ensure that she enjoys the best quality of life;¹⁸ 2) review its laws and establish a mechanism for effective access to therapeutic abortion under conditions that protect women's physical and mental health and prevent further violations in the future;¹⁹ 3) Ensure that all relevant provisions of the Convention and the Committee's general recommendation No. 24 with regard to reproductive rights are known and observed in all health care facilities through education, training, guidelines, and protocols;²⁰ 4) review its legislation and decriminalize abortion when the pregnancy results from rape or sexual abuse;²¹ 5) review its strict interpretation of therapeutic abortion in line with the Committee's general recommendation No. 24 and the Beijing Declaration and Platform for Action.²²

Despite these treaty monitoring body views and their clear recommendations concerning access to legal abortion, Peru has not yet put in place a system that would ensure women access to legal abortion. As a result, women continue to be denied access to medical

¹⁸ *Id.* para. 9(a).

¹⁹ *Id.* para. 9(b)(i).

²⁰ *Id.* para. 9(b)(ii). *Cfr* Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 358, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008). The CEDAW Committee, affirming that access to health care, including reproductive health, is a basic right under the Convention on the Elimination of All Forms of Discrimination against Women, decided at its twentieth session, pursuant to article 21, to elaborate a general recommendation on article 12 of the Convention.

²¹ *L.C.*, No. 22/2009, para. 9(b)(iii).

²² *Id.* para. 9(b)(iv). *Cfr* *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, paras. 105-109, U.N. Doc. A/CONF.177/20 (1996). Strategic objective C.1. Increase women's access throughout the life cycle to appropriate, affordable and quality health care, information and related services. Actions to be taken. Strategic objective C.2. Strengthen preventive programmes that promote women's health. Actions to be taken. Strategic objective C.3. Undertake gender-sensitive initiatives that address sexually transmitted diseases, HIV/AIDS, and sexual and reproductive health issues. Actions to be taken. Strategic objective C.4. Promote research and disseminate information on women's health. Actions to be taken Strategic objective C.5. Increase resources and monitor follow-up for women's health. Actions to be taken.

services to which they are legally entitled under Peruvian law. In late 2010, another case was reported in the Peruvian media of a woman who was denied therapeutic abortion despite needing radiation therapy to treat. The woman was forced to undergo chemotherapy while she remained pregnant and then carry the pregnancy to term. Denial of abortion affected her health as it aggravated her clinical condition and the radiation resulted in malformations to the baby.²³ Additionally, in early March 2012, there were reports of a woman with neurological lesion who was ultimately provided a therapeutic abortion at a public hospital only after receiving inadequate treatment at another healthcare facility where she was initially evaluated and subjected to unnecessary administrative procedures that threatened her life and health.²⁴ As these cases demonstrate, there are systemic issues that prevent and deny women access to these medically-necessary and legal services with extremely dire consequences for women's lives and health.

A. Failure to guarantee access to legal abortion services amounts to cruel, inhuman and degrading treatment and a violation under article 16 of the CAT Convention.

While there is not an international definition of CIDT, it is a derivative of and distinguished from torture in Article 1 of the CAT. Four threshold requirements must be met to demonstrate torture under the CAT: 1) intentional infliction of 2) pain and suffering (physical or mental) 3) for a specific purpose, such as discrimination and 4) involving a public official or person acting in an official capacity.²⁵ In fulfilling the third element, the Special Rapporteur on Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (Special Rapporteur on Torture) has confirmed that the "purpose element is always fulfilled, if the acts can be shown to be gender-specific," in accordance with the explicit reference in Article 1 of the CAT to discrimination.²⁶ Gender-specific violence is any violence "aimed at 'correcting' behavior perceived as non-consonant with gender roles and stereotypes or at asserting or perpetuating male domination over women."²⁷ This includes gender stereotyping a woman's role as that of a child bearer and inhibiting women's right to terminate a pregnancy in perpetuation of this role. Once it is demonstrated

²³ Claudia Toro, *Me negaron aborto terapéutico*, LA REPUBLICA, Oct. 10, 2010, <http://www.larepublica.pe/impresas/me-negaron-aborto-terapeutico-2010-10-09>.

²⁴ *Protocolo que no Espera*, CARETAS, <http://www.caretas.com.pe/Main.asp?T=3082&S=&id=12&idE=1004&idSTo=0&idA=57425>.

²⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, art. 1, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987).

²⁶ Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, *Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Manfred Nowak: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, para. 30, U.N. Doc. A/HRC/7/3 (2008) [hereinafter Special Rapporteur on Torture, *Promotion and Protection of All Human Rights 2008*].

²⁷ *Id.*

that the act has a specific purpose, the Special Rapporteur has stated that intent can be implied.²⁸ CIDT requires evidence of severe pain or suffering²⁹ and can be either intentional or negligent with or without a specific purpose.³⁰ For degrading treatment, the act only need to be aimed at humiliating the victim regardless of whether severe pain was inflicted.³¹ Additionally, the CAT Committee has found that there is no need to prove an act was committed for an impermissible purpose in order to establish CIDT.³²

In regards to the fourth element, the CAT Committee has recognized that it is the State's obligation to prevent, punish, and redress torture and ill-treatment in State venues and other venues where they have custody or control, including in hospitals and health care facilities. In addition, the State is responsible for human rights violations committed by non-state actors when the State does not take all reasonable measures to prevent harm to individuals' fundamental rights and when it does not take effective action to punish and redress such harms³³ or where failure to intervene encourages or enhances the danger of privately inflicted harm.³⁴

The CAT Committee and the Inter-American Court of Human Rights have confirmed that States have a heightened obligation to protect vulnerable and marginalized individuals³⁵ and the Special Rapporteur on Torture has stated that the torture and CIDT framework

²⁸ *Id.*

²⁹ See Memorandum from Matthew Goodro, Law and Health Initiative, Open Society Institute to Jonathan Cohen and Tamar Ezer, Law and Health Initiative, Open Society Institute, *Health Care and the Prohibition Against Torture and Cruel, Inhuman, and Degrading Treatment or Punishment* 7-8 (May 12, 2009) (on file with the Center). Prohibitions of torture and CIDT are non-derogable under both the ICCPR and the CAT, which does not permit derogation for any of its provisions. See Manfred Nowak, *Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Civil and Political Rights, Including Questions of Torture and Detention*, para. 36, U.N. Doc. E/CN.4/2006/6 (2005) (citing ICCPR Article 7 (concerning torture and CIDT) and Article 4(2) (concerning derogation during states of emergency)) [hereinafter Special Rapporteur on Torture, *Civil and Political Rights* 2005].

³⁰ Special Rapporteur on Torture, *Civil and Political Rights* 2005, *supra* note 29, para. 35.

³¹ *Id.*

³² Committee against Torture (CAT Committee), *General Comment No. 2: Implementation of article 2 by States parties*, (39th Sess., 2007), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 376, para. 10, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CAT Committee, *General Comment No. 2*].

³³ *Ximenes Lopes v. Brazil*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149, paras. 85-86 (July 4, 2006).

³⁴ "IV. Scope of State obligations and responsibility. . . . Accordingly, each State Party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where **the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.**" CAT Committee, *General Comment No. 2*, *supra* note 32, para. 15.

³⁵ *Id.* paras. 20-24. See also *Furlan and Family v. Argentina*, Preliminary Exceptions, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, para. 134 (Aug. 31, 2012).

should be applied “in a gender-inclusive manner with a view to strengthening the protection of women from torture.”³⁶ Within these contexts, CAT requires states to take effective legislative, administrative, judicial, and other measures to prevent, punish, and redress acts of torture and CIDT.³⁷ The aforementioned legal framework applies to reproductive rights since women are especially vulnerable when seeking reproductive health services.

Therefore, because therapeutic abortion is a medical service that only women need, banning it not only nullifies women’s choice to have children, but immediately places the life and health of women in danger in the name of prioritizing the development of prenatal life, enforcing the gender stereotype that conceives women’s worth in society primarily as child bearers. In consequence, tremendous physical, mental and emotional harm is caused to women. Moreover, because this harm is suffered as a consequence of a State action, and it is gender specific, it amounts to cruel, inhuman and degrading treatment against women, an act for which the State should be hold accountable.

The CAT Committee has previously addressed Peru’s abortion laws in prior periodic reviews. In May 2006, the CAT Committee stated that the laws severely restricted access to abortion by not providing an exception for rape, which led to the unnecessary deaths of women, and expressed concern over situations where medical personnel denied access to legal abortions resulting in women seeking illegal abortions and putting their lives at risk. This Honorable Committee also noted the failure of the government to take steps to prevent these issues, noting that as a result the state had placed women’s physical and mental health at risk, amounting to CIDT.³⁸ The Committee urged Peru to take “whatever legal and other measures” necessary to prevent the situations resulting in the risk to women’s health and live. They specifically mention providing “required medical treatment, strengthening family planning programmes, and better access to information and reproductive health services.”³⁹ To date, this has not yet been achieved and the risk to women’s health and lives still persists.

Exceptions to criminal abortion laws are not effective without a procedure in place to enforce them. The CAT Committee has previously recognized that, “the absence of an effective and accessible domestic procedure in the State party for establishing whether some pregnancies pose a real and substantial medical risk to the life of the mother, which

³⁶ Special Rapporteur on Torture, *Promotion and Protection of All Human Rights 2008*, *supra* note 26, para. 26; *see also* CENTER FOR REPRODUCTIVE RIGHTS, REPRODUCTIVE RIGHTS VIOLATIONS AS TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT: A CRITICAL HUMAN RIGHTS ANALYSIS 9 (2011).

³⁷ CAT Committee, *General Comment No. 2*, *supra* note 32, paras. 8-15, 27.

³⁸ CAT Committee, *Concluding Observations: Peru*, para. 23, U.N. Doc. CAT/C/PER/CO/4 (2006).

³⁹ *Id.*

leads to uncertainty for women and their medical doctors, who are also at risk of criminal investigation or punishment if their advice or treatment is deemed illegal”.⁴⁰

II. Peru’s criminalization of abortion in cases of rape violates article 16 of the CAT Convention

Peru’s abortion laws criminalize abortion in cases of rape despite different treaty monitoring body decisions and recommendations requesting the State to consider creating such an exception. Criminalization of abortion that obligates women and girls to carry to term pregnancies resulted from rape constitute CIDT.

The CAT Committee has noted the need for abortion exceptions in cases of rape and incest. The Committee has stated that these pregnancies are caused by gender violence and not allowing for an exception in these cases “entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression.”⁴¹ After suffering these horrible violations to their bodies, women are then refused treatment because there is no exception to the abortion laws for rape or incest, and medical professionals fear punishment or imprisonment. This Honorable Committee has noted that this could constitute cruel and inhuman treatment.⁴²

In the *L.C. v. Peru* case mentioned above, the CEDAW Committee urged Peru to revise its laws to decriminalize abortion in cases of rape. Peru has failed to implement such recommendation as well as the recommendations given by varying treaty monitoring bodies, including the CAT Committee,⁴³ CEDAW Committee,⁴⁴ and Human Rights Committee,⁴⁵ calling on the State to revise criminalization of abortion in cases of rape and incest and to incorporate the 2012 WHO abortion guidelines into their laws which include recommendations for providing access to abortion in cases of rape and incest.⁴⁶ The State’s failure to expand the exceptions to the criminalization of abortion to include rape and incest has also resulted in the infliction of CIDT on women and girls.

⁴⁰ CAT Committee, *Concluding Observations: Ireland*, para. 26, U.N. Doc. CAT/C/ORL/CO/1 (2011).

⁴¹ CAT Committee, *Concluding Observations: Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); *Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CP/4-6 (2011).

⁴² CAT Committee, *Concluding Observations: Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CP/4-6 (2011).

⁴³ CAT Committee, *Concluding Observations: Peru*, para. 49, U.N. Doc. CAT/C/PER/CO/4 (2006).

⁴⁴ CEDAW Committee, *Concluding Observations: Peru*, paras. 24-25, U.N. Doc. CEDAW/C/PER/CO/6 (2007); *Peru*, paras. 446-447, U.N. Doc. A/50/38 (1996); *Peru*, para. 482, U.N. Doc. A/57/38 part III (2002).

⁴⁵ Human Rights Committee, *Concluding Observations: Peru*, para. 20, U.N. Doc. CCPR/CO/70/PER (2000).

⁴⁶ WHO, SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 63, 69, 87-88, 92 (2nd ed., 2012).

III. Questions and Recommendations for Peru

We hope the Committee will consider addressing the following questions to the Peruvian government:

1. More precisely, what current or future measures is the Peruvian State adopting to guarantee therapeutic abortion as established by law? Particularly, what current measures have been adopted for issuing a domestic protocol for legal abortion care that includes clear mechanisms for access to the procedure, in a way that is consistent with a broader interpretation of its scope in terms of protecting both the physical as well as mental health of women?
2. What current or future measures is the Peruvian State adopting to ensure compliance with the recommendations set forth, inter alia, in the cases of *K.L. v. Peru* and *L.C. v. Peru*?
3. Has Peru taken any steps to follow up on this Committee's previous recommendations to revise its legislation penalizing abortions in order to allow for a new exception in cases of rape and incest?

We hope the Committee will consider addressing the following recommendations to the Peruvian government:

1. Urge the Peruvian State to adopt the national guidelines of attention for cases of legal abortion.
2. Urge the Peruvian State to adequately institute and fund a series of interventions and policies for ensuring the accessibility, availability, pertinence, and quality of therapeutic abortion services.
3. Urge the Peruvian state to provide reparations in the cases of *K.L. v Peru* and *L.C. v. Peru* particularly and to adopt general measures that will ensure reparation for reparations in cases of CIDT.
4. Urge the Peruvian state to revise its legislation to decriminalize abortion in cases of rape and incest.
5. Urge the Peruvian State to advance toward the creation of a comprehensive sexual and reproductive service system with national coverage that ensures access to quality and culturally pertinent care for the entire population, free from all forms of

cruel, inhuman and degrading treatment, including comprehensive therapeutic abortion services that cover abortion in cases of rape and incest.

We appreciate this Committee's consistent commitment toward the eradication of cruel, inhuman and degrading treatment in the area of reproductive health. We are at your disposal for additional information.

Sincerely,



Jeannette LLaja
DEMUS



Gabriela Filoni
CLADEM



Monica Arango
Center for Reproductive Rights