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**PERU**

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## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Cooperation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Peru should continue to respect the right to life of all human beings, including the unborn, and why it should resist calls to liberalize access to abortion, due to the fact that there is no international human right to abortion.

### (a) Abortion and Maternal Health

3. Abortion is illegal in Peru except in cases in which a pregnancy endangers the life of the mother or when it is deemed necessary to protect a woman’s health. Penalties include imprisonment of up to two years in the case of a woman who consents to undergo an illegal abortion, and imprisonment of one to six years in the case of a person who performs such a procedure.<sup>1</sup>
4. In 2005, the Human Rights Committee concluded in its communication on *KL v. Peru* that a 17 year-old woman pregnant in 2001 with an anencephalic child had had her human rights under the ICCPR to freedom from cruel, inhuman, and degrading treatment (Article 7), to privacy (Article 17), and to special protection of the rights of a minor (Article 24) violated by the fact that she had been denied an abortion by Peruvian public health officials.
5. The complaint alleged that the pregnancy severely endangered the physical and psychological health of the mother, and that the denial of an abortion during the second half of her pregnancy in the case where the law permitted it was a violation of international standards prohibiting violence against women and torture. Following the communication of the opinion by the Committee, the Peruvian government agreed to pay compensation to the complainant in line with the recommendations of the Committee.
6. The presumption in Peru nevertheless remains that abortion is illegal, and this is reflected in the views and values of the Peruvian people, with recent attempts to liberalize abortion being met with a lack of public support and rejected by lawmakers.<sup>2</sup> Some NGOs and “health experts” have claimed, however, that further legalization is necessary, under the false claim that international law requires it.

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<sup>1</sup> United Nations Population Division, Department of Economic and Social Affairs, Abortion Policies – A Global Review, Peru, <http://www.un.org/esa/population/publications/abortion/doc/peru.doc>.

<sup>2</sup> Pew Research Center, Religion in Latin America – Chapter 5: Social Attitudes, <http://www.pewforum.org/2014/11/13/chapter-5-social-attitudes/>.

*The right to life in international law*

7. A so-called international “right to abortion” is incompatible with various provisions of international human rights treaties, particularly provisions on the right to life. Article 6(1) of the ICCPR states, “Every human being has the inherent right to life.” The ICCPR’s prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn.
8. Although the ICCPR allows for the death penalty to be imposed on both adult men and women, it explicitly prohibits applying the death penalty to pregnant women. Article 6(5) states that a “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” This clause must be understood as recognizing the unborn child’s distinct identity from the mother and protecting the unborn child’s right to life.
9. The travaux préparatoires of the ICCPR explicitly state that “the principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.”<sup>3</sup> Similarly, other early UN texts note that the intention of the paragraph “was inspired by humanitarian considerations and by consideration for the interests of the unborn child.”<sup>4</sup>
10. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”
11. Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of “child” attaches. Moreover, Article 6 of the CRC holds that “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition and protection of unborn life.

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<sup>3</sup> A/C.3/SR.819, para. 17 & para. 33; In accordance with the Article 32 of the Vienna Convention, the travaux préparatoires are considered to be a “supplementary means of interpretation.”

<sup>4</sup> Commission on Human Rights, 5<sup>th</sup> Session (1949), 6<sup>th</sup> Session (1950), 8<sup>th</sup> Session (1952), A/2929, Chapter VI, Article 10.

## *Maternal health*

12. The maternal mortality ratio in Peru was 68 maternal deaths per 100,000 live births in 2015, which is a very high rate in light of its status as a middle-income country.<sup>5</sup> Every maternal death is a tragedy. It devastates the woman's family, in particular the woman's children, and affects the entire community socially and economically. The high number of maternal deaths in Peru must be seen as an urgent human rights priority.
13. A 2007 report from the Peruvian Ministry of Health has claimed that maternal death in Peru has five main causes: haemorrhage, pre-eclampsia, infection, complications following abortion, and obstructed birth. The report also states that lack of access to emergency obstetric care is not the only cause of death, but also lack of access to general maternal health information and to health-care professionals who are able to speak Indigenous languages.<sup>6</sup>
14. Despite recent high levels of investment in the health-care sector and decreased mortality rates overall, there is a clear disparity between the richer and poorer sections of Peruvian society, as well as between Indigenous and non-Indigenous communities. Women in rural areas with higher concentrations of Indigenous people often face difficulties in being transported to health facilities, leading to high levels of unattended births at home, and even in the case of the minority of Indigenous Peoples who have access to health facilities, many such facilities are only equipped to provide basic first aid and care.<sup>7</sup>
15. These issues must be remedied, but frequent calls to increase legal abortion access as a necessary precondition are misguided. Legalizing abortion does not make it safe. Poor medical infrastructure means that women who receive abortions will still face poor conditions, the same ones faced by women who give birth and deal with similar complications, such as bleeding and infection.
16. Providing more access to abortion will mean more women will suffer from abortion complications. Almost all maternal deaths are preventable,<sup>8</sup> particularly when skilled birth attendants are present to manage complications and the necessary medication is available, such as oxytocin (to prevent haemorrhage) and magnesium sulphate (to treat pre-eclampsia). Problems include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.

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<sup>5</sup> World Bank, Maternal mortality ratio (modeled estimate, per 100,000 live births), 2015, <http://data.worldbank.org/indicator/SH.STA.MMRT>.

<sup>6</sup> Mothers Monument, PERU: Maternal Deaths Are Decreasing Except in Rural Areas, 2015, <http://mothersmonument.org/2015/02/20/peru-maternal-death/>.

<sup>7</sup> Ibid.

<sup>8</sup> World Health Organization, Fact Sheet No. 348, Maternal mortality, <http://www.who.int/mediacentre/factsheets/fs348/en/>

17. In line with paragraph 8.25 of the ICPD, Peru must focus on introducing measures to avoid recourse to abortion by way of investing in social and economic development and by providing women with support throughout and after pregnancy.

**(b) Recommendations**

18. Given the international pressure on Peru to liberalize its abortion laws, as well as the unavailability of good health care for all women, ADF International recommends the following:

- a. Recognize that the liberalization of abortion laws is not required under international law, and that international law in fact requires the protection of the right to life of unborn children;
- b. Recognize that the legalization of abortion does not make pregnancy and childbirth any safer, and resist pressure to legalize abortion;
- c. Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health, with a focus on safely getting mothers and babies through pregnancy and childbirth, with special focus on ameliorating these issues for women from poor, rural, or Indigenous backgrounds.
- d. Refrain from accepting the conclusions of the Human Rights Committee in the communication of *KL v. Peru*, as this opinion is not compatible with international law and the right to life on the part of unborn children;



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