

**FOR JUSTICE AND REPARATION FREE OF ALL FORMS OF DISCRIMINATION
AGAINST WOMEN IN RELATION TO SEXUAL HEALTH AND SEXUAL
VIOLENCE DURING THE ARMED CONFLICT**

**Alternative Report on the Implementation of the
UN Convention on the Elimination of Discrimination
against Women (CEDAW) by Peru**

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ALTERNATIVE REPORT TO THE SIXTH REPORT OF THE PERUVIAN STATE TO THE CEDAW COMMITTEE

OBLIGATION TO DEVELOP A POLICY DIRECTED AT ELIMINATING DISCRIMINATION AGAINST WOMEN (ARTICLE 2 CEDAW)

Legalization of abortion

PROBLEM: The Peruvian State has not taken any measures to legalize abortion, not even to extend the number of hypotheses for legal abortion in the country, including abortion in rape cases.

1. The current criminal norms in Peru penalizes abortion whatever the circumstances, except therapeutic abortion. According to article 119 of the Criminal Code, abortion practiced by a doctor with the consent of the pregnant women or legal representative, if she has one, is not sanctioned, when this is the only means available to save the mother's life or to avoid serious or permanent health damage.
2. The Committee on the Elimination of Discrimination against Women has called the attention of the Peruvian government on the penalization of abortion, in its examination of periodic reports in 1995¹ and 1998². Likewise, the Human Rights Committee, in its examination of Peru's fourth periodic report, stated its concerns regarding abortion being subject to criminal sanctions even when the pregnancy is the result of rape, and recommended the amendment of this law to establish exceptions and sanction for abortion.³
3. However, the sixth report from the Peruvian government remains silent with respect to abortion as a public policy linked to women and its relation to non discrimination in access to services. So, due to the inaction of the State, via the Ministry of Health, the Ministry of Justice and the Congress, nothing has been done regarding this matter, not only with respect to the legalization of abortion, but also, with respect to the implementation of therapeutic abortion, which is currently the only lawful type of abortion.
4. This goes against the 24th General Resolution (1999) of the Committee on the Elimination of Discrimination against Women, that established in paragraph 11:
It is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.

¹ COMMITTEE FOR ELIMINATION OF DISCRIMINATION AGAINST WOMEN, Concluding Comments: Peru, May 31st, 1995, A/50/38, para. 446 y 447.

² COMMITTEE FOR ELIMINATION OF DISCRIMINATION AGAINST WOMEN, Concluding Comments: Peru, July 8th, 1998, A/53/38/Rev.1, para.. 292

³ HUMAN RIGHTS COMMITTEE, Concluding Comments: Peru. CCPR/CO/70/PER, November 15th, 2000, para. 20.

Implementation of therapeutic abortion as type of of lawful abortion in Peru

PROBLEM: The Peruvian State has not implemented the right to therapeutic abortion as the only lawful kind for abortion, this right not being available in practice due to prejudices and restrictive interpretations on the part of public officials.

5. Although therapeutic abortion is lawful in Peru, the legislative framework necessary to implement the right is insufficient, so in practice this right is not enforced due to prejudices and restrictive interpretations on the part of public officials in charge of applying the norm.

State Responsibility: Health Ministry

6. In this sense **the State, via the Ministry of Health, has not fulfilled its obligation to make therapeutic abortion a lawful form of abortion.** Although the former Minister of Health, Mrs. Pilar Mazzetti (February 2004 – July 2006) was willing to take action, finally protocols, applicable to all public hospitals in the country for legal interruption of pregnancy couldn't be approved. This is due to the pressure exercised by some conservative parliamentary groups⁴, who sent a letter to the Minister rejecting the concept of “serious and permanent harm” applied to any medical situation, denying the fact that health comprises two dimensions: physical and mental.
7. Some religious groups did not waste time and defamed Minister Mazzetti and the organizations working on the issue which were summoned to elaborate the protocol for legal abortion,⁵ through mass media. With this women are denied access to services of legal abortion established by law, especially by those poorer and marginalized who attend the public hospitals.
8. This way, **the State is obliged to issue the regulating frame, at national level about the attention to legal abortion.** This frame must be part of the General Plan of National Strategy of Sexual Health and Reproductive Health (2004-2006), or of the norms which substitute them, and must adjust to the recommendations made by the World Health Organization through their Technical and Policy Guide for Health Systems: Abortion without risk.

State Responsibility: Justice Ministry

9. **The State, through the Justice Ministry, has neither fulfilled with the implementation of therapeutic abortion by not implementing the norms and national policies the Ruling 1153/2003 of the UN Human Rights Committee about the case K.L1 v. Peru, November 22nd, 2005.** This case is about a young adolescent who got pregnant in 2001. The public hospital Arzobispo Loayza denied her possibility of having a therapeutic abortion because she was carrying an brainless fetus.
10. This pregnancy was complicated, due to the youth and weak health condition of this girl.

⁴ Among them Elvira de la Puente, Judith de la Matta, Luis Santa María Calderón, Carmen Hoyos Vargas, Luis Gasco Bravo and Víctor Manuel Noriega Toledo.

⁵ Among them representatives from the hospitals: Daniel Alcides Carrión, Dos de Mayo, Arzobispo Loayza and the Instituto Especializado Materno Perinatal. On behalf of civil society, participated: Sociedad Peruana de Ginecología y Obstetricia, PROMSEX and the Observatorio por el Derecho a la Salud.

She was running risks for her physical and mental health, for having to carry a baby that was not viable. She recognized this fact in a letter:

*I fell in total depression, I cried everyday. I was destroyed Psychologically, I had no mental health. My world was reduced waiting for the birth of a baby girl that would not survive.*⁶

11. In the ruling, The Human Rights Committee found that this negation constituted a violation to her rights, not been out forward to cruel, inhuman and degrading treatment; and not receiving arbitrary interferences in her private life, and a special attention for her being under age; and not counting with the proper resort; all contained in the International Pact for Civilian and Political Rights. Likewise, Peru was ordered not only to give K.L1 an effective resort, which included an indemnification, but also, in the term of ninety days after the ruling, the establishment of measures which would allow the fulfillment of the ruling.
12. However, the State did not manifest in those ninety days. On the contrary, afterwards the Justice Ministry, in relation with the ruling, presented a technical report issued by the Executive Commission of Human Rights from the Justice Ministry, presided by Mr. Jose Burneo Labrín, stating that:

-The Peruvian State has no intention of fulfilling the Ruling from the Human Rights Committee, up to date they have not executed any of their provisions.

-The Peruvian State questions Committee's decision, by reaffirming the same argument of the Arzobispo Loayza Hospital: that this was not a case of therapeutic abortion, but eugenic. With this, the State discusses the Ruling and denies violating the right by not suffering cruel, inhuman and degrading treatment.

-Also, affirms that women like K.L1 should turn to the Judicial Power, and present a habeas corpus, so they decide if the abortion proceeds or not, being the habeas corpus the "proper resort" that K.L1 did not have. As it was proven before the Committee, **the habeas corpus in Peru is not a proper action for these cases**; it takes too long and does not give a proper and timely solution to the situation. With this, Peru denies to implement the "proper resort" ordered by the Ruling.

13. **With the negative acceptance of its responsibility, the State is legitimating human rights violations suffered by K.L1. Even worse, this way the State indicates their will of leaving thousands of women unprotected, that in these conditions, are not well informed or are denied the right to have a legal abortion. Women are obliged to turn to insecure abortions, that can eventually seriously damage their health or life, or to continue the pregnancy until the birth, with all the physical and psychological impact it implies.**
14. Likewise, the Justice Ministry filed the Memo 787/03/2005-DGSP/MINSA, from the Health Ministry. This memo contained a technical report where the Ministry recognized that the pregnancy due to brainless fetus not only constitutes a risk for the mother's physical health, but causes moral and psychological damage. Also, it affirms that the therapeutic abortion would have avoided the serious psychological damage that K.L1 suffered, who had to attend psychiatric treatment after the birth due to the serious depression she suffered. This memo was finally directed to the UN Human Rights Comité. With this attitude the Justice

⁶ K.L1.'s letter presented before the Ethic Tribunal for Women's Economic, Social and Cultural Rights. Lima, 2nd of June 2005.

Ministry shows its will of hindering the implementation of the Human Rights Committee's ruling about the case K.L1 vs. Peru and contributes to leave thousands of women unprotected that, having the right to a therapeutic abortion, are not allowed to have it due to the restricted interpretation of public officials.

State Responsibility: Congress of the Republic

- 15. The Peruvian State, through Congress, has not fulfilled with their obligation of implementing the decision of the Human Rights Committee, or any other regulation which implements the rendering of therapeutic abortion in health public services.**
16. On the contrary, some congressmen sent a letter to the Health Ministry to oppose the elaboration of protocols for assistance of legal abortion, applied to any medical situation. At the same time, there was an important group of members of congress from conservative catholic groups like Opus Dei and Sodalicio, who still have important influence on Congress when issues linked to sexual and reproductive health of women and legal abortion are debated. Their action also goes against paragraph 11 of the 24th General Recommendation pointed out before, regarding the impossibility of offering comprehensive health services for women due to conscience motives.
17. These catholic conservative groups still maintain their power in the current Congress, and their action consolidates a legislative pattern for leaving women unprotected, given that they do not regulate and either do not let others regulate on therapeutic abortion in Peru, but also block any debate on this issue and others linked to sexual rights and reproductive rights of women.

OBLIGATION TO GUARANTEE WOMEN THE EXERCISE AND ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOM IN EQUAL CONDITIONS WITH MEN (ARTICLE 3 CEDAW)

Sexual violence post armed conflict

*Yes, they did us sex, did us abuse, and gave us pills,
so we would not say gave us pills, sour made us drink
when we wouldn't also, with kicks, they kicked us to do...
(M.Q., Ccorisotocc)*

*...I would say Miss that to me also psychologically, and all
of my study, all (the rape) made my disgrace, and I had all
so he go to jail that's it Miss, because I was underage, although
I said before with my own will wasn't, he got me badly,
when I was screaming he held my mouth, covered it,
then nothing's going to happen, just a little while he said, I
couldn't speak he covered my mouth.
(M.C., Manta⁷)*

1. Sexual violence was a regrettable behaviour frequent during the Peruvian internal armed conflict (1980-2000), affecting mostly poor and marginated women in the country. According to the Final Report of the Truth and Reconciliation Commission (TRC), published in 2003, the main victims of sexual violation were mostly Quechua speaking women (75% of the cases), rural origin (83%), peasants (33%) or housewives (30%).

This high proportion shows the States incapacity to guarantee the exercise and enjoyment of womens rights in equal conditions with men. If in a conlict context the rights of men and women were damaged in many ways, women were attacked systematically in some cases and generally in others. The investigation developed by the TRC allows to conclude that sexual violence occurred but not exclusively in the following contexts of raids on behalf of the military and police, in communities; state facilities (military bases, police facilities, penitentiary institutions); as a power practice used by perpetrators. Sexual violence was used in determined cases as a torture method to obtain information or selfaccusing confesions.

2. **In spite of the seriousness of facts, the State does not mention, in its sixth report, any concrete measure neither public policy focused on women victims of sexual violence during the internal armed conflict.** The 19th General Recommendation (1992) of the Committee for the Elimination of Discrimination against Women (CEDAW) established in point 1 that **violence against women is a form of discrimination** that seriously hinders the fulfillment of rights and freedom equally with men.
3. The CEDAW Committee has already stated, in its Report on Peru in 1995, its concern for the situation of women victims of sexual violence in the “emergency zones” and during detention.⁸

State's Responsibility

⁷ Testimonies from Huancavelica northern cone by DEMUS.

⁸ COMMITTEE FOR ELIMINATION OF DISCRIMINATION AGAINST WOMEN Final Observations: Peru, May 31st, 1995, A/50/38, parr. 413-14 y 438.

PROBLEM: The State does not guarantee neither promotes justice for victims of sexual violence during the internal armed conflict.

4. **The Public Ministry does not fulfill reporting the cases presented.** Despite that the TRC presented before the Public Ministry documented cases of sexual violence during the armed conflict, like the cases in peasant communities of Manta and Vilca, the rape of Georgina Gamboa, Magdalena Monteza however, after three years of prosecuting investigation **there are no charges against those responsible in these cases.**
5. There are investigations concerning sexual violations against women in military bases in Apurimac department and in Chanchamayo zone; however these investigations were not successful because of the refusal of the Defense Ministry of providing to prosecuting authority the list of military appointed in these bases when violations occurred, so impunity was guaranteed for the violators.
6. **Congress does not approve the reform of the Criminal Code, adapting it to the Rome Statute that creates the International Criminal Court, ratified by Peru in November 2001.** A Special Commission exists in the Congress to Review the Criminal Code, in charge of modifying the Code and including a III Book, referred to Crimes against International Law of Human Rights and International Humanitarian Law. This is necessary because the current ongoing norm is completely inadequate and lacks of gender perspective. Currently, the Criminal Code from 1998 states as crimes against humanity the forced disappearing and torture, so it does not apply to facts occurred in previous years. Note that the judicial power has been applying prescription terms to torture facts, adducing lack of specification of the crime in the Criminal Code, circumstance that obliges to open a criminal action for injury crime and to apply prescription regulation in name of the legality principle.
7. The debate of including the III Book, has taken three years until now, there is a proposal ready to receive the approving decision from the respective Commission then to be discussed in session in Congress. However, the decision is delayed on purpose; there is no will to initiate the discussion. The Commission's composition influences because some congressmen belong to political parties linked to human rights violations during this period. The APRA, whose leader, Alan García, was president of Peru during 1985-1990, who in the investigations is attributed of being responsible for the cases: Fronton (120 victims of extra judicial executions and forced disappearing), Accomarca (69 extra judicial executions) , Cayara (36 forced disappearing), like the creation of a para military commando responsible for dozens of extra judicial executions and forces disappearing.
 - UPP, whose leader, Ollanta Humala, has been denounced for violations to human rights during his command in a military base in Madre Mia in 1992, and
 - Unidad Nacional, whose leader is Lourdes Flores from the Partido Popular Cristiano group that co-governed the period from 1980 to 1985 where the highest peaks of forced disappearing occurred, have stated in favor of the amnesty for the military.
8. **The judges and prosecutors do not apply international law in their verdicts.** All be for ignorance or fear of retaliation, the judges and prosecutors belonging to first instances do not apply to treaties of human rights ratified or supported by Peru, and that form part of national law in accordance to article 55 of our Constitution. The application of international law of human rights is very important to obtain justice for women victims of sexual violence in this period, in these treaties and international jurisprudence mayor progress has been done in the treatment of sexual violence in armed conflicts.

Many judges and public prosecutors in provinces do not dare to apply these norms with fear of receiving admonitions or reprimands that will affect their judicial career; or even worse, threats.

Unfortunately this is possible, due to the interference level existing in the judicial activity, on behalf of other entities of the Executive Power. Let us remember that, when the Special Prosecutor for Human Rights in Ayacucho, Cristina Olazábal, when reporting about violations to human rights occurred in Accomarca community, included the President of the Republic as responsible, Alan Garcia, the Executive Commission of the Judicial Power through an Directive 01-2005-P-SPN, on April the 13th stated to derive to Lima all cases of human rights violations with three or more victims. This meant that the cases were to be sent to Lima, making the provincial public prosecutor interested in investigating these crimes against humanity very difficult, who had to move to Lima to attend the proceedings and abandon other investigations, on the contrary support should be requested from Lima Public Prosecutors that without any knowledge of the investigation had to take part in a judicial process unknown to them.

9. **The criminal action is not sensitive to rural womens experiences that suffered sexual violence in the armed conflict.** The Criminal action of sexual violence in armed conflict suffered many problems that discourage women to press charges, among them:

- **Courts and public prosecutors offices in rural zones are very far away**, where most victims are. For example, in Huancavelica, victims are obliged to travel to the capital of the department, or to Huancayo, capital of Junin department, every time they have proceedings. This constitutes a very long trip (three hours from Huancavelica and six from Huancayo) it demands a whole day to complete the proceedings. This discourages many women, who are heads of their households or mothers of small children and can not leave their households alone. Also, in the case it implies more than three or more victims, they must travel to Lima, which is much longer and very tiring.
- **Application of inadequate medical tests.** In the investigations carried out in Manta, Huancavelica, the Public Ministry stipulated legal medical exams for women who suffered sexual violence during the peak of the violence, between 1984 and 1992. This is clearly inadequate due to the time passed after the sexual violation.
- **Application of inadequate psychological expertise.** Equally, the psychological expertise is not oriented to determine what kind of marks sexual violence left, but which is the current psychological affection of the victim, without making a connection with traumatic past of sexual violence in the armed conflict.

10. The Peruvian State decided to guarantee the defense of all the military and police denounced, but has not initiated the same actions for the victims, especially victims of sexual violence. By the Supreme Decree 061-2006-PCM issued on September 22nd, 2006, judicial defense is granted to all military and police who face charges of human rights violations during the internal armed conflict, we must point out that the judicial defense all citizen faces in a judicial action is guaranteed by the State, so this decree is authorizing the Defense Ministry to hire private defense. According to this decree, the norm only adds a benefit public officials and public servants already had, but the Armed Forces neither the National Police had, and seeks the right to due process for those charged, that supposedly do not count with judicial defense. This way the State is applying a discriminatory treatment, they guarantee the right to judicial defense for perpetrators, while they do not apply the same emphasis in the guarantee of this same right to the victims, specially those who suffered sexual violence. According to the People Ombudsman, from the 1512 victims included in 47 cases proposed by the TRC, only 364 had legal representation.⁹ This means that close to 76% of the victims had none legal counseling to file an action and obtain justice in their cases.

11. This way the protection of the perpetrators rights worked against the victims rights, the State only perpetuates the idea that the exercise and fulfillment of these rights belong to a

⁹ PEOPLE'S OMBUDSMAN. Two years after the Final Report of the Truth and Reconciliation Commission. Defense Report N° 97. Lima: People's Ombudsman, 2005, p. 307

few. Although the possibility of excluding this protection was discussed for those who did commit sexual violence crimes in the Peruvian internal armed conflict, until now no norm has been issued whatsoever. This means that, to this moment, whoever is reported for sexual violation or other sexual violation crimes counts with judicial defense granted by the State, who is in charge of paying for the fees required by the defense.

12. In conclusion, the Peruvian State has not shown any political will to guarantee the right to justice of women victims of sexual violence. They have not adapted their Criminal Code to penalize these facts properly; hiding information to prosecuting offices in charge of investigations; not pressing charges in cases of sexual violations already filed and documented after three years; not applying norms of international humans rights law through judges and public prosecutors; not guaranteeing neither offering protection to judges and public prosecutors who have applied for it; not offering the victims resources to have proper legal representation when their perpetrators do have this right; they are promoting a discriminatory and marginal treatment regarding other actors of the armed conflict.

PROBLEM: The State's Plan for Integral Reparation lacks of gender perspective and has discriminatory effects regarding victims of other human rights violations and regarding other women victims.

13. On July the 29th, Law 28592 was issued, it creates the Plan for Integral Reparation (PIR), the Regulations for the norm were issued in July the 6th, 2006. Although these norms make the reparation system for victims of violations of human rights operational, it has provisions that are discriminatory among women victims of sexual violence.
14. **Reparation will only be granted to those cases where rape occurred.** Of all the forms of sexual violence found in the TRC Final Report, only rape is included in the PIR, in the articles 3 of the Law and 45 of the Regulation. This means that other sexual violence crimes such as sexual slavery, forced pregnancies, forced prostitution or forced unions, will be excluded from reparation. With this the right to reparation of those women who suffered different kinds of sexual abuses, ignoring their experience and varying impact violence had on them.
15. **Also excluded from the reparation right are those who participated in subversive movements.** This way women that were obliged to take part in these groups are marginized, like those who enlisted in a voluntary manner and were victims of abuses both from the subversive movements as well as from the army and police, during their detention and legal procedures. If the law in this case saves the right of those excluded to go for a higher judicial instance, the slowness and corruption in the system makes this via the less desirable option for those left out of the PIR. With this attitude the Peruvian State does not protect these women, but sends an impunity message for sexual violence behaviour against women considered as suspects of having committed a crime.
16. There are no specific provisions to the gender of the victims when they register in the Unified Register of Victims (URV). Regarding the victims of sexual violence, the URV presents problems. On the one hand, the Regulation does not specify how the principle of confidentiality of the information registered will be applied, as article 10 of the Law specifies. This is essential in cases of victims of sexual violence, considering the fear of being stigmatized and the shame, who prefer to conceal the violence suffered.
17. The basic requirements established to register in the URV were not made thinking on the victims of sexual violence during the Peruvian internal armed conflict. There are some requirements, like the DNI or other identity document, or the precise detail of the facts

occurred and the year they occurred, that is very difficult to fulfill by the victims. We can not forget that according to the TRC, 98% of the victims of sexual violations during the Peruvian internal armed conflict were women, while 85% came from rural areas. The women with this profile, unfortunately do not have any identity document, the paper work is expensive and troublesome, and so they are legally non-existent for the State.¹⁰ Additionally, many victims of the killings, forced disappearings and extra-judicial executions did not count with this document, so there will be a problem with their identification. This is not the case of the men, who at least have an identity document.

- 18.** It is clear that **the State is not fulfilling its obligation to guarantee the exercise and fulfillment of their rights in equal conditions as men, especially in reference to the right to reparation. Not only segregating the cases of sexual violence by the type of crime and excluding an important number of victims, but making their registration in the URV difficult due to the established requirements and non-defined principles. Instead of eliminating exclusions, they are reinforced to maintain rural women marginalized and the crimes committed against them impune.**

¹⁰ About this issue, see VELAZQUEZ, Tesania (2004). *Vivencias Diferentes. La Indocumentación entre las Mujeres Rurales del Perú*. Lima: DEMUS, OXFAM y DFID. According to this study, according to INEI numbers, 312 000 Peruvian women do not have any identity document, while 5.2% women at national level between 16 and 49 years of age lack any kind of documentation.

OBLIGATION OF ADOPTING ALL THE PROPER MEASURES TO ELIMINATE DISCRIMINATION AGAINST WOMEN REGARDING MEDICAL ATTENTION: FAMILY PLANNING AND PROPER SERVICES RELATED TO PREGNANCY AND THE PERIOD AFTER BIRTH (ART.12 CEDAW)

V Recommendation and V Periodical Report of the Peruvian State to the CEDAW Committee

“The Committee urges the State party to consider the possibility to renew the Program Women, Health and Development. The Committee recommends the State party to examine the situation of the adolescent population urgently. Also urges to adopt measures to strengthen the Program of Family Planning and to guarantee access to sexual and reproductive health services, with especial attention to information needs of the population, in particular of adolescents, including the application of programs and policies oriented to increase knowledge on different contraception means and their availability, understanding that family planning is the responsibility of both integral parts of the couple. Also, urge the State party to foster sexual education of all the population, including adolescents, with especial attention to HIV/AIDS prevention among women and young girls, and to strengthen dissemination of information regarding risks and ways of transmission”.

List of issues and questions relative to the exam of the periodical reports CEDAW/C/PER/Q/6, 8 August, 2006

Health

20. according to the report, abortion occupies the fourth place in Health Ministry establishments as cause of death reported by women (parr.160). In the exam regarding the fourth periodical report, the Human Rights Committee expressed their concern regarding that abortion continues restrained to criminal sanctions even when the pregnancy is produced by rape and recommended the review of this law to establish exceptions and sanctions for abortion (see CCPR/CO/70/PER, parr.20). Please state what actions have been taken to review the legislation and the detailed calendar.

[...]

22. According to the report, the health sector has not implemented the legal provision that authorizes the sale of the emergency contraception pills with a medical prescription (parr.147). Identify the obstacles that hinder the implementation of this provision and plans in the short run to overcome them.

PROBLEM: The Peruvian State has not fulfilled adopting all the proper measures to eliminate discrimination against women regarding medical attention for family planning, pregnancy and pre and post birth attention.

1. The Peruvian State has not fulfilled adopting the proper measures to eliminate discrimination against women regarding medical attention and regarding family planning, pregnancy and pre and post birth attention. According to point 17 of the 24th General Recommendation (1999) of CEDAW, studies put forward the high world rate of mortality and morbidity derived from maternity and the great number of couples who wish to limit their amount of children but do not have access to any type of contraceptive methods or do not use them, constitutes an important indicator for the States of the possible violation of their obligations.

2. Regarding pregnancy, the State does not implement the figure of the therapeutic abortion, only the figure of legal abortion. In Peru, approximately, one of every three maternal deaths is due to complications of unsecure abortions, being the septic abortion the

second cause of maternal death in our country.¹¹ As we saw in the part referred to the legalization of abortion, Peruvian women are abstained of turning to the only existing figure of legal abortion in Peru, the therapeutic abortion, although they fulfill with the established requirements in the Criminal Code, namely that the pregnancy that risks a mother's life or produces a serious and permanent damage to her health. With this violating the 24th General Recommendation (1999) of CEDAW, which establishes in point 14, that **the State parties should abstain of placing obstacles for women reaching their objectives regarding health.** When interfering with the decision of thousands of women that, like K.L1, opt for therapeutic abortion when confronting a risky pregnancy and it is denied, the State is allowing their officials to place obstacles in the exercise of the legal decision these women have taken. Likewise, as established in the K-L1 vs. Peru case presented before the Human Rights Committee, the State fails to fulfill their obligation of providing underage mothers adequate health services for their pregnancy, birth and post birth period. This subduing K.L1 to mistreatment, making her feel responsible of the brainless fetus she carried in her womb, but also for not providing psychological accompaniment during her pregnancy.

¹¹ Cruz M. Proyecto Maternidad sin Riesgo: Estrategia Parto Limpio. XI Congreso Peruano de Obstetricia y Ginecología, Lima, 1991.

*List of issues and questions relative to the exam of periodical reports
CEDAW/C/PER/Q/6, 8 August, 2006*

Health

22. According the report, the health sector still has not implemented the legal provision that authorizes the sale of emergency contraception pills with a medical prescription (parr. 147). Indicate the obstacles that hinder the implementation of this provision and plans in the short run to overcome them.

PROBLEM: The Peruvian State does not fulfill, due to concience and religion motives of some officials, with the distribution of the emergency contraceptive pill (ECP) to public health centers in the country.

3. **Currently there are two judicial actions linked to the distribution of the emergency contraceptive pill (ECP) in Peru.** The first was a fulfillment action presented in the year 2001 by many women human rights organizations against the Health Minister, then Fernando Carbone, to distribute ECP in public health centers, available for women who attend these services. The Ministry's negative was based in their supposed abortive character, given that Peruvian legal system extends protection to the conceived child. However, this did not hinder the Minister to authorize its sale in the country, being at reach of women with better economic resources. This action won in the first court instance but was reverted in the second court instance and now is discussed in the Constitutional Tribunal, the highest national instance. However, until the Constitutional Tribunal rules on this, the distribution of ECP is suspended.
4. The second action consisted in an appeal for legal protection presented in the year 2004 by a group called ALAS Sin Componenta that managed to avoid the Health Ministry, under the direction of Minister Pilar Mazzetti, to distribute ECP in public health facilities, also arguing their alleged abortive character. The same as the first action, the distribution of ECP also depends on the final answer of both actions.
5. **The case of ECP shows that the State does not adopt all the measures to avoid the discrimination about family planning, because the ECP is available in any drug store for all women who have a medical prescription and economic resources can buy it. On the other hand, its distribution is limited to poorer and marginalized women, users of public health facilities, and cannot count with it in case of emergency, like the failure of the family planning method or a rape. The supposed abortive character of ECP, denied by the WHO and many studies presented before national instances, is only a pretext to maintain this marginalization system of poorest and most vulnerable women in the country.**
6. **It also inflicts the 24th General Recommendation (1999) of CEDAW,** that establishes that States should inform about how to interpret the form in which policies and measures about medical attention approach women's rights in health matters from a view point of the needs and proper interests of women. As seen in the measures quoted, women's needs are not the central object of state regulation, but personal convictions of officials that are in charge of public posts linked to public health and legislation, like the Judicial Power's inefficiency to serve justice in cases where women were discriminated when accessing medical services.

*X Recommendation to the V Periodical Report of the Peruvian State
To the CEDAW Committee:*

To adopt necessary measures to continue guaranteeing the surgical sterilization as a free choice for women regarding their reproductive health, after being dully informed of the medical characteristics and consequences of the operation and having expressed their consentment. The Committee also recommends in the future to avoid the repetition of these events. Equally they recommend to continue the efforts to judge before courts the responsible people of this violation of the right to health.

PROBLEM: The Peruvian State does not foster investigation, sanction and reparation in the cases of forced sterilization presented between 1995 and 2000.

7. **The Peruvian State has not investigated, judged neither sanctioned those responsible of the family planning campaigns that ended in forced sterilization actions against women, most of them rural and poor.** These sterilizations not only constitute an act of sexual violation against women, with characteristics of crimes against humanity in some provinces as they were systematic and planned. They also constituted acts that covered a permanent discrimination, both in gender as in socio economic condition (poverty and extreme poverty), in origin, in racial condition and/or ethno-linguistic. Among the most affected departments we can mention Huancavelica, Piura (Huancabamba), Cusco (Anta, Espinar, Chumbivilcas, etc.), Ayacucho and Junin, which are the poorest zones, with a majority of rural population the most excluded from State protection.
8. In spite of the existing evidence that this practice constituted a crime against humanity due to state planning and participation in it, after two years the Specialized Attorney on Human Rights has not made the respective charges. The Public Prosecutors do not count with resources neither state support to carry out the investigations, needing economic contribution from women organizations for transportation to the provinces to take testimonies from the victims, accused and witnesses. DEMUS and MAM Fundacional, two organizations from the civil society, had to collaborate so two public prosecutors could travel to Cusco to question the victims.
9. **The Peruvian State still has pending the total fulfillment of the Friendly Settlement in the case of María Mamérita Mestanza Chávez,** a young mother from Cajamarca who died due to causes of forced sterilization. Their case reached the Inter American Commission of Human Rights, after it was filed in the internal national instance. Before the IACHR, the Peruvian State accepted their responsibility in an agreement a friendly settlement, signed on August 26th, 2003, and committed to repair the Mestanza family and order an investigation and sanction the facts. **However, the reparation measures established in the Friendly Settlement delayed in arriving most of the part being fulfilled in December 2005, namely, two and a half years after the signature of the Agreement, after the Justice Vice Minister demanded the victim's husband to renounce to the interests for the delay in the payment of his indemnizations.** The psychological counseling for Mrs Mestanza's widower Jacinto Salazar is still pending, as well as for his children, like justice for them, to this day there have not been any charges from the attorney neither any detainment for these facts.
10. Not investigating and sanctioning these facts leaves them impune, and also allows it to happen again in the future. This way, it confirms women were unprotected before the misuse of family planning campaigns, where instead of informing women they found

coercion, lies and an irreversible change in their physical health of which they were not informed.

OBLIGATION OF DEVELOPING A POLICY DIRECTED TO ELIMINATE DISCRIMINATION AGAINST WOMEN (ARTICLE 2 CEDAW)

FF Recommendation to the V Periodical Report to the Peruvian State to the CEDAW Committee:

“The Committee resquests the State to design and implement global programs in the educational ambit and which urges mass media to promote cultural changes in publicity and the entertainment programming relating roles and responsibilities of women and men, according with the previewed in article 5 of the Convention.

Likewise, the Committee recommends to develop policies and to implement programs which guarantee the elimination of stereotypes associated to traditional roles in the family, jobs, politics and society”.

List of issues and relative questions to the exam of the periodical reports CEDAW/C/PER/Q/6, 8 August 2006

Stereotypes

4. Indicate if there are any specific initiatives foreseen to eliminate the stereotypes and discrimination against women in mass media.

PROBLEM: The Peruvian State does not fulfill urging mass media to promote cultural changes in publicity and entertainment programs related to roles and responsibilities of men and women.

1. The Peruvian Report concentrates in highlighting educational actions linked to gender equity, equal opportunities in school educational aspect, in a general form. It mentions changes in the the school curricula, but does not inform about indicators that show any efectivity in these changes. Neither does it mention any action taken specifically with the issue of the mass media, neither regarding sexist publicity nor television programs that reproduce gender sterotypes.

State Responsibility: INDECOPI

2. The Institute for the Defense of Competition and Intelctual Property – INDECOPI, through their Commission for Repression of Disloyal Competition, an administrative body incharge of sanctioning companies and advertisers when publicity fosters or promotes discrimination. This body counts with a document called Guidelines on Disloyal Competition and Commercial Publicity, approved by Resolucion N° 001-2001-LIN-CCD/INDECOPI, JULY 5th, 2001, still in force. This is important, considering that publicity in Peru is known to be sexist and racist, showing women as sexual objects and based on housewives roles or delicate and submissive ones.

3. However, this document contains guidelines that allow the use of sexist publicity. For INDECOPI,

...the norm does not forbid the dissemination of some phrase or image that can be considered discriminatory and offensive. The Law does not forbid publicity that presents antisocial, criminal or illegal behaviour, but only those which have the effect or result of “favoring or stimulating” determined types of

discriminations and offenses: racial, sexual, social, political or religious. The terms “favor or stimulate”, imply the most objectively possible examination if the advertisement generates negative behaviour of the nature mentioned before.¹²

4. This “objective study” almost always has concluded that the advertisement shows a fantasy world, and it is very improbable that the consumer adopts determined behaviours for believing what he sees in the advertisement. An example are the denunciations made by DEMUS presented before INDECOPI in the last twelve years for cases of sexist publicity and that were rejected by this body for similar reasons. Curiously, in these cases the authority (INDECOPI) and not the advertising company was reluctant in recognizing when the advertisement contained degrading messages against women.¹³
5. An example of this included in the lineament document, where it states that:

Another case was found in a Chips advertisement where after a superficial analysis it was established that, a reasonable consumer would notice that the character “Tarzan” was giving up “Jane” in exchange of a bag of Jack’s Chips a Chimpanzee had, was humorous and imaginative, showing fiction characters – Tarzan, Jane and Chita – with the end of disseminating the message that the mentioned chips were irresistible. Both the Commission as well as the Court concluded that a reasonable consumer would not be stimulated by the advertisement in causing an offense or sexual discrimination action against women in the real world.¹⁴
6. **In conclusion, INDECOPI historically has not fulfilled their task of watching so advertisements do not contain elements which degrade women, present them as possible objects of desire, violence, or in stereotyped roles. This because, instead of fulfilling a prevention and caution role, its waiting for a concrete case where a consumer attempts against women guided by the advertisement.**

State Responsibility – Judicial Power

7. The Judicial Power is the instance before which the annulment of resolutions of the INDECOPI Tribunal are requested, which constitutes the highest administrative instance. The Judicial Power has responded positively in one case,¹⁵ where the Supreme Court declared a resolution from INDECOPI null and ordered it to declare again because and it

¹² INDECOPI. *Lineamientos sobre Competencia Desleal y Publicidad Comercial*. Resolución N° 001-2001-LIN-CCD/INDECOPI, approved on the 5th of July 2001, p. 55.

¹³ Since 1994, DEMUS has presented 17 charges of advertising fostering sexism and/or the violence before the Commission for Repression of Disloyal Competition of INDECOPI. From these denunciations, 6 were solved by conciliation agreements with the companies and publicity agencies denounced, which acceded to remove the advertisement and modify it. The rest (11), in 10 cases INDECOPI declared unfounded the denunciation and in one case declared it founded, but not due to the use of women as objects, but for fostering violence and illegal behavior (the advertisement showed a football player kicking a vending machine with the intent of not paying). Curiously, in this case, the authority and not the advertiser, was reluctant to recognize when an advertisement contained degrading messages for women.

¹⁴ *Ibid.*, p. 56. Refers to a denunciation presented by DEMUS against Savoy Brands Peru SA and McCann Erickson Corporation Publicidad SA, where the denunciation was declared unfounded in both instances.

¹⁵ Denunciation presented by DEMUS against Jeans McGregor before INDECOPI, 1994. The advertisement showed a police detention of a young man for having assaulting a woman. Surprisingly, when this occurs, the woman asks the police agent not to detain the aggressor and even gets him to give her his telephone number.

oblige it “to fulfill with their duty of protecting the right of citizenship to consume publicity without antisocial nor discriminatory messages”. However, the sentence of the Supreme Court arrived in 2002, namely, eight years after the denunciation before INDECOPI, so it turns into a long and slow process when intending to generate a change in the advertisement. This currently has not changed.

8. **In conclusion, the State does not fulfill urging mass media to promote cultural changes in publicity and entertainment programs regarding roles and responsibilities of men and women.** The State does not have policies oriented to seek changes in advertising and television programs about the stereotyped presentation of women. The State entities which have the administrative and judicial control do not respond charges from the civil society, whether for lack of gender perspective of public servants, or bureaucracy.

RECOMMENDATIONS -**on the issue of sexual violence during the armed conflict:****For the Congress**

1. To include sexual violation committed with investigative, punitive or intimidating purposes in the context of a systematic practice as a crime against humanity.
2. Modification of article 170 of the Criminal Code to specify the crime of sexual violation, expressly sanctioning the behavior which implies the invasion of the “body of a person by a behavior which has caused penetration, mindless the insignificance of it, of any part of the victims body with an object or another body part”, adapting to the Rome Statute and taking as base the proposal given by the Special Revising Commission of the Criminal Code and that Peru will ratify the Agreement of privileges and immunity of the International Criminal Court.
3. The non approval of any amnesty that can result discriminatory in cases of violence and sexual abuse and crimes against humanity, adopting as reference sentences of the Inter American Court that annul amnesty laws issued during the dictatorship time.

For the Public Ministry

4. Arrange the initiation of the public’s defense investigation in cases of sexual violence without having pressed charges (art. 1 Law 27115 and arts 9 y 11 of Legislative Decree 52, Organic Law of the Public Ministry).

For the Judicial Power

5. Strengthen the subsystem of human rights, destined to judges in zones where political violence caused more victims.
6. That judges in charge of this type of investigations be trained in the procedures
7. That Magistrates put their jurisdiction into effect and demand the Defense Ministry to inform the names and current whereabouts of officers and sub officers accused of alleged torture crimes respecting sexual violence.

For the Executive Power**a. Defense Ministry**

8. To fulfill with the obligation of putting at the disposal of the Public Ministry and the Judicial Power the officers and sub officers from the Armed Forces who were involved in acts of sexual violence.
9. To exclude those accused for abuse and sexual violence of the defense benefit the State provides to the military and the police accused or investigated for violation of human rights crimes.

b. Prime Minister

10. Assure access to reparation to all victims of sexual violence, independent of their juridical condition.

11. The State must review the Plan for Integral Reparation and provide it with a gender perspective in order to give sexual abuse and violence victims a proper treatment.

12. Modify the Law that creates the Plan for Integral Reparation due to that it only considers persons who suffered torture and not those who suffered cruel, inhuman and marginating treatments. Equally it only considers those who suffered rape and not those who suffered sexual violence. The fact that it only refers to these two concepts implies the insufficient recognition of the whole of the violations and damages that women suffered.

13. Likewise, assure that the referred Plan does not include excluding requirements (identity document, for example) that hinders, especially women to access the possible benefits.

14. Fulfill the Law in the sense of sanctioning the behavior of a public servant or official who conceal or deny information to clarify facts and determine the responsibility of supposed responsible persons for actions that imply serious violations to the international law of human rights.

c. Justice Ministry

15. Assure programs that will allow all victims of violence and sexual abuse to count with good quality legal defense and counseling. Currently there is no guarantee for public defense.

16. Fulfill the sentence of the Inter American Court in the case of the killings at the Castro Castro Penitentiary, where 42 persons were killed, among them 8 women and to investigate and sanction the denunciations about violence and sexual abused committed during this operation.

17. Provide the National Plan for Human Rights of a gender perspective to, the State being the frame in this subject, non discriminate women of their full enjoyment of their rights in equal conditions as men.

On the issue of sexual and reproductive health:

1. Recommendation J of the CEDAW Committee in response to V regular report from Peru, Ministry for Women, Social Development, and Gender Issues.

Peru has not complied with the recommendation to improve the role of the Ministry for Women and Social Development regarding gender equality and has not incorporated a gender perspective in all sectors of government. It would be interesting to find out whether the idea of transforming this Ministry into a Ministry for Family is on the government agenda. It would be also interesting to know the reasons for not incorporating and effectively implementing a gender perspective. We recommend that the concept of gender equality not be reduced to equal opportunities between men and women, as currently envisioned by the government of Peru, but rather include a substantive approach that takes into account sexual, gender, and cultural differences.

2. The Law and Plan for Equal Opportunities (Recommendation L. 1, V report from Peru).

The legislature of Peru (Congress) has yet to adopt the law on equal opportunities and gender equity. We would like to know why this is so, since draft laws to this effect have been introduced already. We believe that among the reasons is the rejection of the concept of gender equality and of the recognition of sexual and reproductive rights.

If the government of Peru complied with recommendation L.1 and elaborated the New Plan on Equal Opportunities between Men and Women 2006-2007 in a participatory way, we recommend that the government of Peru communicate the related annual goals, performance indicators, and necessary budget. We would also like to be made aware of the measures planned to guarantee gender equality in the field of sexual and reproductive rights.

3. New Plan to Combat Violence against Women (General Recommendation 19, Article 3, CEDAW)

The new national plan to combat violence against women (2007-2012) should be elaborated in a collaborative way, expanding its approach to include recognition, prevention, and protection against the killing of women, trafficking, sex work/prostitution, forced pregnancy and forced abortion, hate crimes, and sexual violence in military conflicts. The government of Peru should determine annual goals for each ministry, performance indicators, and necessary budget to allow for appropriate monitoring and impact. Numbers indicate that violence has neither stopped nor been reduced. The Public Ministry/Prosecutors as well as the Judiciary should develop strategies and implement measures against impunity.

4. National Human Rights Plan

The government of Peru must urgently improve and then implement the National Human Rights Plan according to international human rights standards, particularly those concerning women. The government should reintroduce the 15 measures to combat sexual orientation and gender identity discrimination, which were eliminated from the draft plan under pressure from the Military and the Episcopalian Conference and should remove the two discriminatory restrictions newly introduced in relation to sexual orientation and gender identity.

5. CEDAW Article 12, Recommendation V and Recommendation X to the V report form Peru.

The government of Peru has not complied with the fifth recommendation of the Committee on the decriminalization of abortion, has not expanded the number of situations in which abortion is legal, including rape, and has not approved national regulations for access to legal abortion.

It should be asked, why certain recommendations of treaty bodies are not complied with, given that unsafe abortion is a cause of maternal mortality? Further it should be asked, why the government has not followed the decision of the Human Rights Committee in the case of *Karen Llantoy v Peru* (2005), an adolescent who was denied access to a therapeutic abortion? Why national regulations/protocols are not adopted for both women and health care personnel in relation to abortions in the case of women whose health is threatened by going through with a pregnancy? Why forced pregnancy is not recognized as discrimination?

Relating to the inquiry of the CEDAW Committee on compliance with the provision of emergency oral contraception, the Constitutional Court decided that the government has to provide it. However the government has not taken action to remove prejudice and misinformation.

