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Threats to Sexual and Reproductive Rights Emerge in Peru

by LADB Staff

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For more than two months, a heated debate has been waged in Peru regarding a woman's right to freely make decisions regarding her sexuality and her reproductive life. The debate began in early October, when the congressional penal-code-revisory committee (Comision Especial Revisora delCodigo Penal) created in 2006 and made up of legislators, representatives from the Ministerio de Justicia, the Colegio de Abogados, the Defensoria del Pueblo, and universities approved the decriminalization of abortion when the fetus has severe physical or mental defects, in the case of rape, or when artificial insemination has occurred without the woman's consent.

The last two instances require a legal complaint to have been filed. Those instances in which abortion would no longer be illegal would be in addition to therapeutic abortion termination of a pregnancy for preventive and/or curative reasons when the life or health of the mother is at risk which has been legal in Peru since 1924. The Oct. 6 decision was supported by women's rights organizations but set off an outcry from the Catholic Church and exposed strong differences within the Cabinet.

Ten days later, on Oct. 18, the Tribunal Constitucional (TC) added more fuel to the fire when it banned the Ministerio de Salud's free distribution of the morning-after pill, saying it had not been shown that the pill was not abortive.

Conflicting opinions

The congressional changes to the Codigo Penal are "an important step," since thousands of women in Peru are forced to resort to a clandestine abortion, putting their lives at risk because of the unsanitary conditions in which such procedures are carried out, Gina Yanez, director of the nongovernmental organization (NGO) Movimiento Manuela Ramos, told La Republica newspaper.

The NGO Estudio para la Defensa y los Derechos de la Mujer (DEMUS) says that 352,000 clandestine abortions are performed each year in Peru, and, what is worse, this practice is the third-leading cause of maternal death.

The DEMUS report, *Clandestine Abortion in Peru (El aborto clandestino en el Peru)*, by anthropologist Delicia Fernandez, says that, for each hospital abortion, seven are performed outside a hospital, putting the life of the mother at serious risk. Fernandez says that, although abortion is illegal, "induced abortion is used frequently in the country as an extreme means of ending unwanted pregnancies."

Statements to La Republica showed enormous inequalities in the circumstances surrounding the practice of abortion in Peru that unfavorably affect poor and rural women. "We're not talking about promoting abortion because thousands occur every day. We're talking about an act of justice for the life and rights of women," Patricia Zanabria of Movimiento Manuela Ramos told La Republica.

In an Oct. 22 press release, the Conferencia Episcopal Peruana (CEP) expressed regret at the committee's decision and said, "We consider the agreement a latent threat to the right to life of defenseless and innocent persons." Jose Antonio Eguren, archbishop of Piura, said, "The Comision Revisora del Codigo Penal has acted badly because the right of every innocent human individual to life is not subordinated either to those persons or to the parents; it is likewise not a concession of society or the state because this right is part of human nature and inherent to the person."

Cardinal Juan Luis Cipriani, a member of Opus Dei, said that he was waiting for a correction. "No to abortion, we [the church] are responsible for and we see how to protect that life, not to make death easy," Cipriani told the press. Pastor Humberto Lay said in a public statement that the Constitution establishes that every person has the right to life, which cannot be taken away from the moment of conception.

The decision has pitted Defense Minister Rafael Rey Rey, also of Opus Dei, who criticized those who defend abortion even for the aforementioned exceptions, against Health Minister Oscar Ugarte, who while backing the measure says, "First, we favor family planning." Meanwhile, Julio Castro, dean of the Colegio Medico del Peru (CMP), said that abortion should be legalized in cases of rape, incest, and fetal deformities.

The Ministerio de Justicia asked the congressional committee to reconsider decriminalizing eugenic and ethical or sentimental abortion. However, on Oct. 20, the committee affirmed its position supporting the modification to allow unviable pregnancies to be terminated as well as those resulting from sexual abuse. Thus, the modification will go to the full Congress for debate in December. Nearly 60% of respondents to a Universidad de Lima poll in Lima and Callao favored decriminalizing abortion when the life of the mother was at risk, and 51% approved eugenic abortion. In the case of pregnancy resulting from rape, 45.5% favored the victim's right to seek an abortion.

Criminal-law expert Luis Lamas Puccio said that it is important to specify the time frame during which an abortion can be performed. Miguel Gutierrez of the CMP said that according to international norms pregnancy termination is considered abortion only before the 22nd week of pregnancy.

Morning-after-pill decision called discriminatory

Four organizations openly linked to the Catholic Church reported that the TC magistrates ordered the Ministerio de Salud to suspend distribution of the emergency oral contraceptive pill (EOCP), known as the morning-after pill, because it has not been proven that the pill does not have an abortive effect. In November 2006, however, the TC had ruled that the EOCP was not abortive and asked the Ministerio de Salud to distribute the pill without cost.

The NGO Accion de Lucha Anticorrupcion sin Componenda (a conservative Catholic umbrella group) had filed a motion in 2004 against the Ministerio de Salud to block EOCP distribution. The TC ignored the opinion of the World Health Organization (WHO) and the CMP that the EOCP is a safe and reliable contraceptive and was instead guided by the opinion of the Alianza

Latinoamericana para la Familia, the Population Research Institute, the Coordinadora Nacional por la Vida y la Familia, and the Asociacion Nacional de Medicos Catolicos who hold that the EOCB can be abortive.

"The TC decision is contrary to medical science and discriminatory, since 14 different brands of the EOCB are sold openly in pharmacies to women who can pay for it," said a La Republica editorial on Oct. 24. "However, to deny free access to patients in state family-planning programs closes the doors on thousands of rape victims whose only option, if they are poor, is a clandestine abortion."

Minister of Women's Affairs Nidia Vilchez said, "If men took the EOCB, it would be welcome." While President Alan Garcia said that he would respect the TC decision, Defensora del Pueblo Beatriz Merino said the decision restricts women's reproductive rights. CMP Dean Castro said that his organization would appeal to the Inter-American Court of Human Rights (IACHR) for a ruling calling on the TC to correct its decision. In the region "Peru is the country with the largest number of abortions in the region, followed by Brazil and Argentina.

However, the real number of abortions could be even higher than the estimated 400,000, since many cases are recorded not as abortions but as abortion complications such as hemorrhaging and infections, which bring many women to the hospital," said lawyer Rosa Mavila, a member of the committee, to La Republica.

Obstetrician-gynecologist Luis Tavera Orozco, a member of the International Federation of Gynecology and Obstetrics (FIGO) Prevention of Unsafe Abortion initiative, told La Republica that in Peru nearly 1,000 infants a year die shortly after birth as a result of serious birth defects and that approximately 10% of the 7 million women of child-bearing age are raped, 10% of whom become pregnant.

"For humanitarian reasons, these women require qualified care rather than being put at risk through a clandestine procedure," said Tavera. Only a few countries in the world still ban all abortions. Abortion under any circumstance has been illegal in Nicaragua since 2006, including therapeutic abortion, which had been legal since 1893 (see NotiCen, 2009-08-06).

In the Dominican Republic, the Congress approved a new Constitution on Oct. 22 that bans abortion in all cases, including rape, incest, and to save the life of the mother. In Chile, all abortion is illegal, although therapeutic abortion was allowed from 1931 to 1989, when the military dictatorship eliminated this exception.

Therapeutic abortion is legal in Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, and Guatemala. Abortion is allowed in Panama, Trinidad and Tobago, and Uruguay in the case of serious and incurable fetal illness. It is permitted in pregnancies resulting from rape in Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, and Uruguay. Latin American feminist and women's organizations have been fighting for decades for the right to legal and safe abortion. However, it is clear that laws alone are not enough to ensure women access to legal abortions.

"The reality in our country demonstrates that the existence of a law permitting access to legal abortion is not enough, for it is still very restricted, partly because of the lack of regulations that specify who can submit to that intervention and under what procedures, as well as because of the scarce information available to women, who do not know that this right exists," says Movimiento Manuela Ramos on its Web site.

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