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Citizen Bill Calls for Easing Peru’s Abortion Ban in Rape Cases

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After a months-long delay, Congress finally turned its attention to a citizen-sponsored bill calling for the decriminalization of abortion in rape cases that was signed by more than 60,000 Peruvian men and women. The unicameral legislature failed, however, to reach a final decision on the initiative, opting instead to set the matter aside until at least August.

The origins of the bill date back to 2012, when leading feminist groups, through the campaign Déjala decidir (Let Her Decide), began collecting signatures in favor of easing the country’s abortion laws. The organizations launched the campaign on the International Day of Action for Decriminalization of Abortion, Sept. 28.

In March 2014, organizers submitted the tens of thousands of signatures for verification by the Jurado Nacional de Elecciones (JNE), Peru’s election-oversight body. Five months later, the JNE certified 64,261 signatures, recognizing in a formal resolution (2021-2014-JNE) that 0.3% of the country’s eligible voters support the proposal.

In accordance with the Ley de Participación Ciudadana (citizen-participation law), the JNE then sent the proposal to Congress as a bill (3839-2014-IC), which was officially filed on Sept. 26, 2014, and dispatched to a pair of congressional committees that were supposed to debate the matter within a period of 120 days.

"This initiative underscores the obligation, by the Peruvian state, to submit to public debate one of the most critical problems affecting women, who as it stands now are forced to carry pregnancies resulting from rape to term without any possibility of exercising their right to decide," María Elena Reyes, director of the Movimiento Manuela Ramos, one of the groups behind the initiative, said at the time.

During the next 120 days, however, neither the Movimiento Manuela Ramos nor the bill’s other sponsors—the Centro de la Mujer Peruana Flora Tristán, CLADEM Perú, Demus, Católicas por el Derecho a Decidir, and the Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX)—were called before Congress to present their arguments.

Alarmong numbers

The bill calls for amending Articles 119 and 120 of the Código Penal so as to legalize abortion in cases of rape. It also proposes that the state offer rape victims comprehensive services that include, should a specific request be made, helping women interrupt their pregnancies. In addition, the bill proposes decriminalizing abortion in cases where women, without their consent, are artificially inseminated or have their ova transferred.

Between January 2014 and April 2015, according to the Ministerio de la Mujer y Poblaciones Vulnerables, more than 3,000 children and adolescents, especially in the 12 to 17 age range, were raped and thus exposed (in the case of female victims) to the risk of pregnancy.
In 70% of the rapes reported to the Centros de Atención Mujer (CEM) during that period, the victims were minors. So far this year (as of May), 71% of the 1,327 rape cases reported involved children and adolescents. The Instituto Nacional Materno Perinatal, furthermore, estimates that at least 14% of the adolescent pregnancies it handles result from rape, often by blood relatives.

Public support for allowing abortion in rape cases, according to a survey published late last month by the polling firm Ipsos-Perú, stands at 52% in Lima, the capital, and 41% nationally.

Clash of ideas

After putting it off for months, the legislature’s Justice and Human Rights Committee, on April 21, finally began debating the bill. Participants in the discussion included members of the judiciary, the Catholic Church, and social organizations.

As expected, the debate produced sharply contrasting opinions. Reyes, from the Manuela Ramos organization, said the legislation is needed to help address the widespread problem of dangerous and clandestine abortions. By some estimates, more than 470,000 abortions, 90% of which are done clandestinely, occur every year in Peru.

Former president of the Consejo de Ministros (2002-2003) Luis Solari, on the other hand, called the bill "a mechanism for killing children" and said it should be rejected. Solari, a medical doctor, added that the legislation, if approved, would make it harder to prosecute rapists.

The legal representative for the Archdiocese of Arequipa also rejected the law. "Distinguishing between a child that’s born and one that’s unborn represents an act of discrimination," he said. "Recognizing the right to an abortion means denying the right to life."

Judicial authorities and the Ministerio Público, Peru’s public prosecutor’s office, support the bill. "Giving women the freedom to decide whether to carry to term a pregnancy resulting from rape ensures to a greater degree gender equality, which is a duty for society and the state and is guaranteed under the constitutional rule of law," Lucy Zare, representing the judiciary, said April 30 during a second round of discussions in Congress.

Wait-and-see approach

The debate has extended beyond the walls of Congress as well. Activists, especially women, have held various street demonstrations and rallies demanding that the legislation be approved. The bill’s opponents, in the meantime, have held their own events, including a Marcha por Vida (march for life), led by Juan Luis Cardinal Cipriani, archbishop of Lima.

And yet, on May 25, the Justice and Human Rights Committee decided to shelve the bill. Committee president Juan Carlos Eguren of the right-wing Partido Popular Cristiano (PPC) said the decision was the result of a democratic vote—five votes to one. The sole vote in favor of the legislation came from congresswoman Verónica Mendoza.

Eguren, who voted against it, said that, while authorities ought to punish rapists with the full weight of the law and do what they can to help female victims, "the death of unborn children shouldn’t be the way to compensate for the crime."

Mendoza, during one of the debates, argued otherwise. "Criminalization hasn’t reduced nor will it reduce the number of abortions," she said. "Criminalization doesn’t reduce violence. The only effect
it has is that women who decide to abort will continue doing so in clandestine conditions, putting their health at risk."

In Peru, abortion is outlawed in all cases—and punishable with two years in jail—except in therapeutic circumstances, when the life or health of the mother is at risk.

Various sectors challenged the decision in Congress to shelve the bill. "This decision goes in the face of the national legal order and [the country’s] obligations with respect to international human rights treaties. And it ignores the favorable technical opinions issued by various state bodies, medical societies, and specialized health institutions," the organization CLADEM said in a statement released May 28, International Day of Action for Women’s Health.

"Ethical/legal dilemma"

Two weeks later, on June 10, the Constitutional Committee, the other legislative body tasked with debating the matter, convened a special session to take its own look at the controversial bill.

Congressman Eguren, president of the Justice and Human Rights Committee, said during the gathering that in rape that "takes place in the street, as part of a mugging, the possibility of it resulting in a pregnancy is highly unlikely—that’s what science, what statistics tells us." His statements were widely criticized, forcing him to apologize in case "anyone felt offended."

Brenda Alvarez, a legal representative for PROMSEX, called Eguern’s comments "irresponsible" and said they were offensive to all Peruvian women. "Data published in 2010 by the Ministerio de la Mujer and the Ministerio de Salud show that 34% of girls and adolescents who are raped end up pregnant," she said.

On June 11, the Constitutional Committee decided to put the debate on hold until the next session of Congress begins in August. At that point, lawmakers will have an opportunity to consider an analysis put forth by the Defensoría del Pueblo, the ombud’s office, which argues that the right to life for the unborn and the rights of women are both legal assets enshrined in the Constitution.

"The problem stems from the ethical/legal dilemma that occurs when a pregnancy results from a rape. ... In that case, it should be the victim of the attack, not the state, who decides whether to continue or interrupt the pregnancy," the report reads. "The decriminalization of abortion in rape cases is a limited, exceptional, proportional, and constitutionally adequate response that is also in accordance with things that have been established in the framework of international human rights law."

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