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Peru Debates Death Penalty as Punishment for Sexual Crimes Against Children

by Elsa Chanduví Jaña

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The rape and murder of 11-year-old Jimena Vellaneda in Lima on Feb. 1 opened the debate on the death penalty in Peru, where the maximum punishment for someone who sexually abuses and kills children is life imprisonment.

On Feb. 8, more than 4,000 people participated in the “March for safety, justice and peace for our children,” referred on social media as the #JimenaRenace (Jimena is Reborn) march. The march went through Lima’s main downtown streets. Thousands of others marched in the cities in the departments of Ica, Arequipa, Trujillo, Huancayo, and Pucallpa.

“I didn’t think we’d have so much support,” said Jorge Vellaneda, Jimena’s father, when he spoke about the march organized in his daughter’s memory.

After meeting with the girl’s parents, Mercedes Aráoz, head of President Pedro Pablo Kuczynski’s Cabinet, told reporters, “We are going to support this family so their case does not go unpunished. We are going to be in contact to cover every necessity. This man, this criminal, must receive the maximum punishment; he should get life imprisonment. We will back this family so that this man ends up in prison and rots there.”

On Feb. 11, the Justice Department issued a nine-month preventive detention order for César Alva Mendoza, the man who had confessed to kidnaping, raping, killing, and trying to burn Jimena in the San Juan de Lurigancho neighborhood of Lima. The Prosecutor’s Office has 120 days to investigate and begin proceedings against the defendant.

Jimena, who was attending a vacation program in a local police station, was kidnapped as she left the building. The director of the national police, Gustavo Hananel, decided on Feb. 7 to change all 150 officers at his station after he found out that his staff had not responded adequately when the girl’s parents reported her disappearance and asked them to help search for her.

The Ombudsman’s Office demanded the cancellation of all summer workshops and other youth activities held at police stations, saying those places aren’t appropriate spaces. On Feb. 12, Interior Minister Vicente Romero complied.

“Vacation workshops will no longer take place in police station facilities,” he said.

According to data from the organization that runs Peru’s penal system, the Instituto Nacional Penitenciario (INPE), 8,097 people were incarcerated on sexual assault charges in Peru in November 2017. Article 173 of the penal code establishes life in prison if the victim is a minor and dies as a consequence of a rape.

Statistics from the Public Prosecutor’s Office Crime Observatory show that 52 sexual assaults of boys and girls are reported every day in Peru.

Disappearances and early pregnancies

The National Police said that 2,654 complaints of missing minors were filed in 2017—72% were girls and 28% boys. Of those, 10% turned out to be kidnappings or murders. In the 2013-2017 period, 90% of the victims of sexual abuse were women, and 76% of those were minors between the ages of 13 and 17.

Because of what happened to Jimena, Romero, the interior minister, announced the country would implement an Amber Alert system to locate missing children and teenagers quickly. This program sets up an immediate search via the media and involves the general public in the effort.

Similarly, the Interior Ministry has launched the #TeEstamosBuscando (we're looking for you) campaign, which uses social media sites to issue alerts from its investigations department. Some 11 minors have been found that way in Lima, but 27 alerts are still unresolved.

Another alarming fact in Peru is the number of underage girls who become mothers. Comprehensive Health Department statistics reveal that between 2012 and 2017, government hospitals attended 151,009 pregnant girls between the ages of 9 and 17. Of those, 716 were younger than 12, indicating situations that, according to the law, could be considered rape, because the girls were so young.

The government ministry that focuses on women and vulnerable populations (Ministerio de la Mujer y Poblaciones Vulnerables) said it has a registry of 3,117 sexual violation cases that took place in 2017 involving minors under the age of 17 (some as young as a few months old).

Death penalty debated

Since the current penal code took effect in 1991, Article 173 has been modified several times to address the punishment for raping a child under the age of seven. The punishment went from five-to-15 years of prison in 1991 to 25-to-30 years in 1994. Life imprisonment was established as a punishment for the first time in 1998, but it was rolled back in 2001, to the punishment established in 1994. It was modified again to life in prison in 2006 when the victim was younger than 10 or the aggressor was a relative of the victim.

Current legislation establishes sentences of up to 35 years in prison when the victim is between the ages of 10 and 14. If the victim is between 14 and 18, Article 179 sets punishment at up to 18 years behind bars.

Like Peru, Chile punishes violations of minors with life in prison, but only if the victim dies. In other Latin American countries, punishments vary: Brazil sets sentencing at 30 years; Ecuador at 26; México at 21; and Colombia, Argentina, and Venezuela at 20.

"There never was a quantitative or qualitative analysis," Luis Lamas Puccio, an expert on penal rights, told the daily *El Comercio*. "The penal code was changed with a numeric and impulsive focus." Lamas Puccio said that the deterrent effect of tougher punishments has not been proven.

Mario Amoretti, a criminal lawyer, told the same newspaper, "It's extraordinary that ever since 1991, Peru has responded to the situation by increasing the punishment for sexual abuse. Twenty or 35 years of prison do not make the difference, but public policies focused on prevention could."

At least 15 bills now in Congress propose increasing prison sentences for the crime of rape or prohibiting any modification of the original sentence for the crime. Two of these initiatives propose a constitutional amendment to make child abusers face the death penalty.

Article 140 of the 1993 Constitution states, "The death penalty can only be applied for the crime of treason in times of war, and for terrorism, in accordance with the laws and treaties to which Peru is a party." The last time the death penalty was applied in Peru was in 1979.

According to the San José Agreement ratified by Peru 39 years ago, "in countries that have not abolished the death penalty, it can only be applied in the most serious crimes, in compliance with an enforceable judgment of a competent court, and in accordance with a law that establishes such a penalty issued prior to the commission of the crime. Its application will not be extended to crimes to which it is not currently applied."

In January, Congressman Modesto Figueroa and other members of Fuerza Popular (FP) presented a bill that proposes the application of the death penalty for those who sexually abuse children under the age of seven, thus modifying Article 140 of the Constitution. Other FP in congressmen supported the proposal.

Last November, FP Congresswoman Karla Schaefer presented a similar bill. The only difference was that the death penalty would be applied to criminals who abused children younger than 7 "when death followed."

Congressman Daniel Salaverry, also from the FP, maintains Peru should review the death penalty. "It's necessary to evaluate this possibility [to apply the death penalty]; these deplorable people don't even deserve jail," he said in a conversation with RPP Noticias. "I think this possibility should be analyzed carefully, and that would also lead us to leaving the San José Agreement and the Inter-American Court of Human Rights. The only thing they accomplish is to free terrorists and compensate them." His colleague, Héctor Becerril, expressed similar sentiments.

The AP is also known as the Fujimorista Party, because its members are followers of the former dictator Alberto Fujimori (1990-2000).

Unlike the Fujimoristas, leftist members of Congress—María Elena Foronda of the Frente Amplio and Indira Huilca of Nuevo Perú are two examples—oppose the death penalty for child abusers.

"There should be hard, punitive punishments such as life in prison and forced labor," Foronda told RPP Noticias. "However, I'm against this measure because I defend human rights."

Also speaking to RPP Noticias, Huilca said, "The death penalty doesn't solve the problem of child abuse." However, she added that these crimes should not go unpunished.

Alva who had confessed to violating and killing Jimena, worked as a police informant at the San Juan de Lurigancho station. Earlier complaints of sexual violence against him involved a 17-year-old victim who had been raped in 2014 and a mother, raped in 2016. Neither case was handled adequately by authorities, and the crimes went unpunished. Recently, after learning of the crime committed against Jimena, the joint provincial prosecutor of San Juan de Lurigancho, Raúl Solís, charged Alva with the rape of a 28-year-old mother—a year and two months after the aggression was committed.

“The impunity these sexual predators enjoy in our country is the best ally for sexual violence,” Laura Balbuena, director of Observatorio de Género Perú, wrote in *El Comercio*. Observatorio de Género is a collective of people from different disciplines who are trying to respond to gender violence with research and citizen oversight.

On Feb. 13, the congressional justice commission adjourned, for lack of a quorum, an extraordinary session called to debate the bills regarding punishment for the rape of a child. The proposed legislation includes two bills from Nuevo Peru representatives. The first calls for the abolition of the statute of limitations for these crimes, an increase in the length of prison sentences, and the removal of all prison benefits for those convicted of sexual crimes. The second calls for harder sentences for violators and civil reparations for the victims.

Salvador Heresi, a congressman from the ruling party, *Peruanos por el Cambio*, and president of the justice commission, announced that Congress would convene in March to debate the issue.

The debate about the death penalty for perpetrators of sexual crimes against minors comes up at the same time as President Kuczynski’s pardon of Alberto Fujimori is being reevaluated ([NotiSur, Jan 26, 2018](#)) by the Inter-American Court of Human Rights, and there is a possibility that the pardon could be overturned. Peru would have to leave the court in order to approve the death penalty as a punishment for sexual crimes against minors.

Salomón Lerner Febres, a philosopher and university professor who was president of the Commission on Truth and Reconciliation that investigated the events occurring during the years of political violence in Peru between 1980 and 2000, said the topic of sexual crimes against minors has become politicized.

“We hear the usual enemies of the human rights cause affirming that it is time to adopt the death penalty and repudiate all our international commitments, beginning with a withdrawal from the jurisdiction of the Inter-American Court of Human Rights. ... The demagogic use of the tragedies exemplifies the worst of our political life: deception of the population, disregard for legality, and manipulation of serious problems not with the intention of solving them but of reaping political advantages,” Lerner wrote in *La República*.

El Comercio published an editorial on Feb. 11 that said, “If Peru aspires to be a country that leads in the fields of democracy, human rights, regional integration, it’s a mistake [for Peru] to disconnect itself from the international justice system. It works against our own interests.”

Those who take a stand for the death penalty in the case of child molesters have the backing of public opinion. A survey taken Feb. 7 and 9 by *El Comercio-Ipsos* showed that 87% of the Peruvians approve of the death penalty for sexual crimes against minors.

Anthropologist Raúl Castro said the survey results reflect society’s reaction to the impunity associated with this crime.

“The social tolerance of these abominable acts is zero,” Castro told *El Comercio*. “The fact that the death sentence has almost unanimous backing shows that there is also a sense that justice regarding these crimes is not being served through regular channels [the penal codes, judicial actions, and laws] and that’s why there is a call for extreme punishment, such as taking the life of the killer.”

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