

Defending Lives in Peru: A holistic view of legislation, jurisprudence and tradition.
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TABLE OF CONTENTS

ABSTRACT

I. Type and Structure of the Peruvian Government

II. A. Legal Framework of the Right to Life

A. National Legal Framework

- A. Political Constitution
- D. The Civil Code
- C. The Criminal Code
- D. Code of Children and Adolescents
- E. Other Legal Framework

B. International Legal Framework

- B. International Covenants in Human Rights

III. RELEVANT CASE LAW

A. National

- A. An end to the morning after pill? Anticorruption Action (NGO) v. Ministry of Health

A. International

- A. Forced sterilization followed by death and 850 Soles of compensation. *Case Mamérita Mestanza v. Peru*
- B. A dubious case of therapeutic abortion: Case Karen Llantoy

IV. Current Political Panorama

- A. Double Discourse and International Pressure: Current Government's Ideology
- B. Jeopardizing sovereignty: The Pro Homine principle for an effective protection of Human Rights and the defense of National Sovereignty

Conclusion

ABBREVIATIONS

ACHR	American Convention on Human Rights
Art.	Article
CC	Civil Code
CCA	Code of Children and Adolescents
CrC	Criminal Code
ECPs	Emergency Contraceptive Pills
IACHR	Inter-American Commission of Human Rights
IACtHR	Inter-American Court of Human Rights
IASHR	Inter-American System of Human Rights
OAS	Organization of American States
PCP	The Political Constitution of Peru
TG	Technical Guide
VSC	Technical Guide
v.	Versus

ABSTRACT

The Peruvian Government, as part of the International Community and as a Latin American country, has a long history in the protection of the Right to Life, beginning at the earliest stages of human and ending at death.

This report aims to deliver a panorama of the Right to Life in Peru in a holistic perspective from the standpoint of not only the birth of a baby, but also that of the woman giving birth. The report also offers legislative initiatives that enhance the double protection aforementioned, which is essential for the integral development of a healthy and just society.

The discussion of this subject, through legislation and Court's decisions, will direct the reader to the remark on how international pressure conditions Peruvian society to live against their protective traditions of life.

I. TYPE AND STRUCTURE OF THE PERUVIAN GOVERNMENT

Enacted in 1993, the Political Constitution of Peru (PCP) defines the Peruvian State as a *democratic, social, independent and sovereign Republic. The State is one and indivisible. Peru's form of government is unitary, representative, and decentralized. It is organized pursuant to the principle of the separation of powers.*^[2]

Section IV of the PCP concerns the structure of Peruvian government. Its first chapter lays the foundations of the legislative branch, a sovereign body with regulatory, economic, administrative and political autonomy. This branch is structured around a single chamber made up of one hundred and twenty congressmen representing the nation. The parliamentary composition is established in the Parliamentary Rules of the Congress.^[3]

The fourth chapter of section IV is dedicated to the executive branch. Art. 110 gives the President the title of Head of State. The presidential office is assigned by direct vote of the population, and the candidate who receives more than half of the votes is elected. The term of the office is five years, with the prohibition of an immediate re-election. The delegation of the executive branch, is the Council of Ministers, who are appointed by the President. Ministers endorse the acts issued by the President. If there is no disapproval from the Ministers, the Presidential act is valid.

In Peru, the PCP has recognized the following principle: *The power of administering justice emanates from the people, and the Judiciary exercises it through its hierarchical entities, in accordance with the Constitution and the laws*^[4]. This principle commands the judiciary branch to subject its decisions to the PCP; whereas *in any proceedings when incompatibility exists between a constitutional and a legal rule, the judges decide for the first one*. Along with this principle, a list of jurisdictional restrictions are recognized. The judiciary branch's composition is established in its Rules.

The National Council of the Magistrature, established in Art. 150, decrees that its function is *the selection and appointment of judges and prosecutors, except when they are elected through popular election*. It also establishes that the National Council of the Magistrature is independent and is governed by its Act. The Office of Prosecutor General is an autonomous and single person governing body headed by the Prosecutor General of the Nation. This office is elected by a Board of Senior Prosecutors, with a term of three years, which may be extended for another two years if reelected.

Its duties are established in the Art. 159 of the PCP:

1. *to bring a lawsuit, ex officio or by private complaint, in defense of legal order or public interest protected by law.*
2. *to watch over the independence of jurisdictional bodies, and a fair administration of justice.*
3. *to represent society in legal proceedings.*

The office of the Ombudsman, an autonomous body, was recognized from the PCP of 1993,^[5] to defend the constitutional and basic rights of individuals and the community, to ensure the enforcement of state administrative duties, and the provision of public services to citizens. Art. 161 of the PCP aims to facilitate the observance of the office of Ombudsman's functions, and has conferred State bodies with an obligation to cooperate with the office whenever it requests their help.

Section V of the PCP, "Constitutional Protections," enumerates the constitutional protections and lays the foundations of The Constitutional Court. It is autonomous and independent, as it only depends on the PCP and its Act. It consists of seven members with a term lasting a maximum of five years.

The Constitutional Court is the ultimate interpreter of the Constitution and is responsible for ensuring that no State action or statute is contrary to the principle of constitutional supremacy, i.e., that no act emanating from a State Agency goes against any principle in the Constitution. If there is a violation of these principles, the Court must intervene to restore respect for the Constitution and its rights.

Art. 202 clearly states the duties of the Constitutional Court:

1. *to hear, in original jurisdiction, the writ of unconstitutionality;*
 2. *to hear, as a court of last resort, orders refusing petitions of habeas corpus, Amparo, habeas data, and mandamus; and*
 3. *to hear disputes over jurisdiction or over powers assigned by the Constitution, in accordance with the law.*
- Art. 205 rules on the principle that every individual deeming himself injured, in terms of the rights granted by the Constitution, may appeal to international courts or bodies established by treaties or agreements that Peru is bound to, once all legal recourse provided for by national legislation have been used and denied.

II. LEGAL FRAMEWORK OF THE RIGHT TO LIFE

In broad terms, all the countries of Latin America have a tradition of protecting and recognizing the right to life, from the earliest stages of its existence, through various legislation. Peru is not an exception to this protectionist tradition. However, the explicit recognition of this right, from conception, was not necessary until the 1979 Constitution.

- A. National Legal Framework
 - a. Political Constitution

i. Constitutional Protection of the Right to Life

Until 1979, the CCP stated *“the right to life [had] an implicit acknowledgment in the prohibition against killing.”*^[6] Until then, the constitutional protection of the human individual centered around personal safety or the abolition of torture and torment. For the first time, the CPP of 1979, in its Art. 2, explicitly enshrined the right to life.

Previous PCP started with the political aspects of the country, its form of government, the composition of the state, etc. However, this PCP makes a change in the organizational structure of this fundamental text, as it tries to start with the fundamental rights of the individual, then the political organization of the country. This change notes the prominence of the individual over the State. This feature can be seen indirectly in its organizational structure as it is expressly stated in Art. 1:

“The defense of the human person and respect for his dignity are the supreme purpose of society and the State.”
Art. 2 en su inc. 1 says:

[The right] *“to life, his identity, his moral, psychic and physical integrity and his free development and well-being. The unborn child is a rights-bearing subject, in any event which is beneficial for him.”*

It should be noted that the constitution makes a specific reference to the right to life of the unborn. If the unborn wouldn't be recognized as a legal entity, all rights listed in the following 23 paragraphs would be void. In this regard it is stated that, *“The first and most basic right is the right to life. It is obvious that this constitutional provision prevents abortion, being an unconstitutional act, besides itself contrary to nature and morals”*.^[7]

ii. Hierarchy of International Human Rights Treaties

Before the constitutional reform of 1993, Art. 105^[8] of the PCP established the constitutional status of the International Human Rights Treaties. After the reform, this article was removed, which gave rise to various academic stances either approving or repudiating such a change.^[9]

Despite of the removal of the article, it was placed in the fourth provision of a separate Chapter of Final and Transitory Provisions, which states that *“Norms relating to the rights and freedoms recognized by the Constitution are interpreted in accordance with the Universal Declaration of Human Rights and with international treaties and agreements on those rights that have been ratified by Peru.”*^{[10] [11]} This provision is intended to make clear that when an International treaty concerns a right recognized in the PCP, the international standard should be used as interpretative guidance for the practical implementation of the PCP. This use of the treaty, as a tool of constitutional interpretation, is possible only because it is a rule of equal rank, since a provision of lower rank cannot be used to interpret a provision of higher rank. Also in a

2006 ruling, the Constitutional Court reiterated that “International treaties not only are part of our legal system but also hold constitutional rank”. Thus, the Constitutional Court affirmed that the international treaties provide interpretative guidance.

b. The Civil Code

The Peruvian Civil Code (CC) currently used was sanctioned in 1984^[12]. This regulatory body is preceded by a Preliminary Title and then divided into 10 sections. Its first section, covering the Art. 1 to 139 addresses the *Rights of Individuals*. Art. 1 of the first section of the CC provides broad protection to an unborn individual, recognizing him as a subject of law from conception:

The human person is a subject of law from birth. Human life begins at conception. The unborn child is a subject of law in every respect. The attribution of economic rights is conditional on being born alive.^[13]

This recognition of the unborn individual as a subject of law, represents a significant advance in the protection of unborn individuals in Peruvian law. The CC of 1936 provided that “*The birth determines personality. To which the unborn child is inputed to every respect, provided it is born alive.*”^[14] This ignored the quality of rights to the unborn individual and subjects the existence of their rights to the condition of live birth. Thus, in the womb, an individual lacked any recognized rights granted to people already born. Currently, what is contingent upon live birth is not the quality of legal subject, but the irrevocable acquisition of property rights.

c. The Criminal Code.

i. Criminal Legal Framework. Previous considerations

The Peruvian Criminal Code (CrC) effective in Peru^[15] characterizes abortion as a criminal offense in all cases and ways that it may occur. However, since 1924 the code leaves people who perform therapeutic abortions without punishment.

In Section II of the Code, Special Part, where the offenses are set forth in Title I, chapter three, the crime of abortion is characterized. First, it criminalizes *self abortion*. Regarding this crime, it is important that the CrC always considers what hurts another, either on their person, property, etc. However, *self abortion* does not refer directly to the other person. From its redaction it seems that the code penalizes a crime performed by the woman to herself and does not recognize the unborn as the real victim of the crime. However this provision has to be understood as part of legal system that from its Constitution protects the unborn and recognizes it as a subject of law. Otherwise, this crime should not be treated under the title abortion.

The CrC continues the regulation of abortion performed with a woman’s consent, with more severe penalties for abortions performed without the woman’s consent. For both crimes, if the performer of the abortion is a doctor, obstetrician, pharmacist or a healthcare professional, the CrC establishes harsher punishments. Lastly, for incidental abortion, like the termination of a pregnancy through the woman’s involvement in trauma, has softer penalties. As stated above, the crime of therapeutic abortion is exempt from penalties when it is the only way to save the life or prevent serious, and sometimes longterm health issues, of the pregnant woman. It should be noted that this paragraph should in no way be construed to legalize abortion, as the CrC talks about what is unlawful and an offense, not of what is legal; although in some cases, it leaves some crimes without punishment .

Finally, sentimental and eugenic abortion are characterized in the same Art. Sentimental abortion results as a *consequence of rape outside marriage or artificial insemination, without consent and out of marriage*^[16]. Eugenic abortion is punishable when it is performed due to the unborn’s physical or mental defects, as diagnosed by a doctor.

It is worthy to remark that the penalties provided for sentimental or eugenic abortion are lower than the penalties provided for the other types of abortion. The legislature intended to provide special treatment to circumstances that put women in a vulnerable position by attenuating the punishment. To our understanding, the legislature wanted to point to those situations, but we do not to believe that criminal law should provide regulatory framework for those circumstances. Rather, public bodies, like health agencies or social development agencies, limit the action of Criminal Law in order for it to be aligned with the proper protection of rights. Because the right to life is to be protected, there should not be any

mitigation on the punishment to avoid generating uncertainty on the belief that life is less valuable when it has been a product of a sexual rape or when that life has malformations.

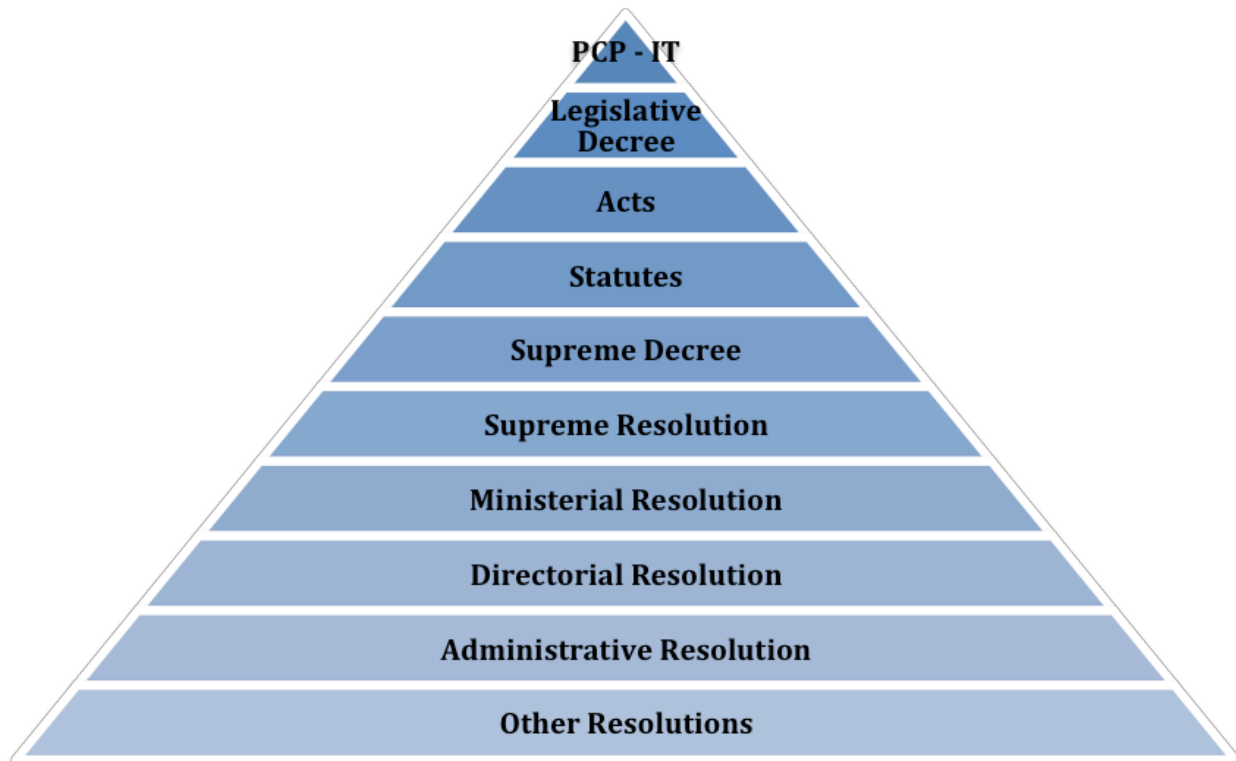
ii. **The National Technical Guide on Therapeutic Abortion and its unconstitutionality**

On June 27, 2014, the Ministry of Health, approved by a Ministerial Resolution,^[17] a Technical Guide (TG), which regulates the alleged “legal abortion” in the case of a risk to the life or health of the mother. The TG is unconstitutional for two reasons. First, it goes against Art. 2 of the PCP, which recognizes the right to life from conception, and secondly, it alters the normative range established in the PCP.

As we mentioned above, Art 2 of the PCP states that an unborn child is a subject of law for all that favors him. This Art. has been interpreted by the Constitutional Court in many cases and their interpretations always were in favor of protecting the unborn individual, thus, in their decisions, applying not only *pro homine principle*, but also the principle *pro debilis*.^[18]

Nowadays the advances in medical technology give to doctors the possibility to save the mother and the unborn if the mother’s health is in risk. With proper prenatal care the mother’s death can be avoided. In the worst-case scenario, which may always be applied by taking into account the importance of both lives, is the acceptance of indirect abortion. This is a behavior of double effect. When the doctor’s procedure are done with the intention of saving both lives, the death of the unborn individual is admitted as an indirect consequence. In this sense, the Dublin Declaration on Maternal Healthcare, signed by more than 700 doctors, states that “(...) we affirm that direct abortion – the purposeful destruction of the unborn child – is not medically necessary to save the life of a woman. We uphold that there is a fundamental difference between abortion, and necessary medical treatments that are carried out to save the life of the mother, even if such treatment results in the loss of life of her unborn child. We confirm that the prohibition of abortion does not affect, in any way, the availability of optimal care to pregnant women.”^[19]

On the hierarchical alteration of rules made by the TG, here is a pyramid hierarchy of rules where you can appreciate the regulatory jump that has come to give this Ministerial Resolution.



As seen in the pyramid, the Ministerial Resolutions are an instrument used for the approval of the TG,^[20] are hierarchically less than the Statutes, a genre to which it PCP belongs. The TG is an instrument regulating therapeutic abortion, an action qualified as a crime, thus creating conflict on both provisions. It is Art. 138 of the Fundamental Law which states that a conflict of rules, preference is given to the rule of higher rank, making it clear the principle that a provision of lower rank cannot contradict another higher.

Furthermore, the Protocol makes a sort of usurpation of functions to the judiciary. When we are facing a case of therapeutic abortion in which a criminal judge, who is assisted by a court medical expert, establishes the grounds for exemption from punishment set out in Art. 119. As it is proposed in the Protocol, it would be Medical Board who establishes whether this is a case referred to in the Code. And, although the Medical Board is an authorized body to determine whether the abortion is really the only “appropriate means” to save the health of the mother, it is inconceivable to allow them to replace judicial function in the correct application of the law. This also violates the right to due process that protects the unborn individual, when it concerns their own lives.

iii. The Technical Guide Review

This section is intended to highlight some inaccuracies and shortcomings of the protocol, as well as any omissions that left aside the rights of the persons involved in the process provided by the TG.

1. When establishing the purpose of the TG^[21], it is clear that the commission of abortion should be a therapeutic indication, provided that it is the only way to save the life or prevent serious health damage to a pregnant woman, within the framework of human rights, with a focus on quality, gender and multiculturalism ^[22].

What is worrying regarding this purpose, is that the broad and ambiguous language does not give a specific definition of health, leaving that up to the international human rights framework. While international human rights organizations have a long and legitimate path to protect the human right to health, we cannot deny that when it comes to women’s rights or sexual and reproductive rights, they have a marked tendency to recommend countries to approve abortion.^[23]

The Protocol establishes the time limit for the practice of an abortion procedure at 22 weeks of gestation, which is equivalent to about 4 months. On this point a strong criticism was made by the Medical Social Security National Union of Peru (SINAMSSOP) and the Peruvian Society of Medical Law, because this is permitting abortion to fetuses that can live outside the womb.^[24] They have also criticized the protocol as limiting the actions of medical professionals to save both lives. ^[25]

2. From this it is clear how the protocol allows the death of a perfectly viable life.

3. As was explained before, this TG was created as an instrument for the application of Art. 119 of the CrC. Art. 119 exempts abortion of penalty, when is the only mean to save the life of the mother or avoid a permanent damage to her health. At the same time the body in charge of the application of this cause of exemption of penalty is the judiciary. This TG allows the application of this exemption to the Medical Board leaving aside the constitutional attribution of the judiciary to apply the CrC.

4. In point III, the “Scope” authorizes hospitals of level 2 (based on the national health system), to meet the regulated procedure. However, it should be noted that Level 2 establishments are not equipped to take care the condition that the woman should suffer (numbered in the TG) and avoid the performance of an abortion. Thus, the woman would always be under critical conditions and so abortion will be the only mean to save her life or avoid a permanent damage to her health. Likewise, such institutions as the Technical Regulations may not handle cases of therapeutic abortion^[26].

The point developed in this section represents, in my consideration, one of the most dangerous. In the item 6.1, Protocol apparently exhaustively lists specific cases in which therapeutic abortion can proceed. Nonetheless section 11 states:

Any other breast pathology that endangers the life of the mother or generates serious and permanent damage to health is duly substantiated by the Medical Board.^[27]

The breadth and vagueness of its wording is preoccupying because in practice it would permit causal countless cases of abortion, which are not actually exempted from punishment under Peruvian law, freeing arbitrary medical cases where the abortion is performed.

5. In the first paragraph of Section 6.4, it speaks of the unborn child as “uterine contents.” The language used in the TG referring to the fetus is not consistent with the dignity of the human person and also violates the right to information of women in providing consent every time that imprecise language distorts reality.

6. With regard to methods provided to effectively perform an abortion[28], (in addition to manual vacuum aspiration), it is an allowed practice to use Misoprostol for both pregnant women up to 12 weeks and for those in the weeks 13 to 22, adding the latter practice curettage to remove any remaining residue. The effect of Misoprostol in pregnant women is that it generates *uterine contractions*[29]. When the fetus is of a small size, about week 12 or the third month, these contractions cause detachment of the fetus from the uterine wall, causing death and eliminating natural bleeding. However, the effects of Misoprostol are not known in most developed fetuses. This raises questions such as: what if the death of the fetus does not occur? What happens if the fetus ends up being born alive? And if born alive with malformations, has the fetus been a victim of an “unfortunate” effect of Misoprostol?[30]

7. Although the Peruvian government has a law on conscientious objection, the TG does not provide conscientious objection to the doctor, generating great insecurity in their professional practice that may be sanctioned if the doctor doesn’t want to practice the abortion either out of religious or personal convictions. The General Health Law establishes in its Twelfth Supplementary Provision, Transitional and Final that *“reasons of conscience or belief cannot be invoked to exempt from the provisions of the Health Authority, when such an exemption health risks arising from third”*. While this provision is not applicable in the case of therapeutic abortion because the TG and the relevant article of the Criminal Code are unconstitutional, and also because the reference to the “health of others” includes the unborn as subjects of law; Following the TG, it could be used to prevent doctors from exercising their right to conscientious objection to a “therapeutic” abortion. This reinforces the need for legislation on conscientious objection in this specific field.

8. The TG directly attacks the family unit through an effort to protect the woman. It ignores that there is often a parent behind the unborn child and a husband behind that woman suffering from a disease; and it does not make any reference that information should also be addressed to the man.

9. The Medical Board is a body that appears to be composed of highly qualified professionals, but there is no mechanism of transparent election, nor is there a set of requirements for access to that post. Also, there is not an impartial and independent body that can attest to the fairness of the medical evaluation conducted by the agency.

Rescuing the intention of those who promoted the creation of the TG, it is evident that the expected result was not achieved, as it puts at risk not only to the person to be born, but also to women and doctors. Due to the above reasons, we recommend that the TG should be repealed, as it is an unconstitutional standard lacking solid foundations that provide real protection to women and the unborn individual. However, whether this happens or not, Peruvian women and unborn children need a state system that ensures an effective protection of their human rights

iv. Proposals for real protection of women and the unborn

Given the present situation, we intend to focus on the vulnerable situation of women and unborn individuals. To do this, I propose the creation of an *Ombudsman for pregnant women and the unborn individual*. [31]

A similar figure is receipted in Argentina Legislation. This is the *Defender of Children and Adolescents*[32], which was created to generate a comprehensive system for minority protection. To date, there has been several achievements through recommendations to the various government agencies, campaigns, studies, monitoring and control. While there is no record of the creation of the position of an ombudsman

for pregnant women and the unborn individual^[33], I believe that just as the Ombudsman for Children has had success in Argentina, the Defender of the woman and the person unborn, can have success in different countries in Latin America.

The Ombudsman is governed by a single person with an independent body that has functional and financial autonomy. Its main objective is to ensure that the rights of pregnant women are fully respected and widely promoted, and in the exercise of these rights, the dignity of the unborn is not trumped - whether inside or outside the maternal womb, all while ensuring that they are a subject of law in every respect. The person holding this position may be chosen by the House of Congress, from among persons having a public path marked protection of human rights and of the unborn individual.

The following items are the office's powers in respect to the pregnant woman:

- To ensure pregnant women have access to health systems in order to provide them with all necessary treatments and studies to monitor the progress of their pregnancy.
- To provide clear, complete and detailed information on social plans and programs available in social security, public health, employment and education.
- To propose to the competent organ, public policies to generate information or access to it, on the causes of maternal mortality and provide for policies and lines of action in order to prevent it.
- Ensure that social benefits and access to the health system is equal without discrimination throughout the territory.
- To promote the material, psychological and medical assistance to pregnant women, in cases of criminal sexual violence committed against her, in order to help her carry the pregnancy to term. And also to provide greater facilities in the process of giving the child up for adoption.
- To propose a protocol on reporting of sexual offenses, which provides for complaint mechanisms that address the vulnerable situation in which the woman is.
- To ensure the availability of legal representation to the pregnant woman as a victim of domestic violence, in order to promote criminal actions.
- To ensure the creation of a register where evidence is left as acceptance and informed consent in every surgical intervention to female sterilization.
- To women with troubled pregnancies ensure the provision of detailed information on:
 - *The existence of medical alternatives that protect motherhood, access to social support, and providing adoption services;*
 - *The consequences and risks associated with abortion, including the risks of infection, bleeding, the risk of perforation or cervical uterine rupture with future pregnancies, increased risk of breast cancer, and possible psychological effects ;*
 - *The illegality of forced abortion. That is, it shall be stated explicitly that it is illegal for a third party to force a woman to be submitted to an abortion, according to the laws of each country.*^[34]

The following may be mentioned among the powers for the person to be born:

- *Arrange everything necessary for the effective defense of life, person and rights of unborn children.*
- *To promote judicial and extrajudicial measures –of own motion or request of a party— to any process where an unborn child has legally protected interests, under penalty of nullity of the proceedings.*
- *Exercise the defense and representation in court as plaintiffs or defendants, of those unborn children when the same interests are inimical to the interests of their parents, be they major or minor, or to exercise their rights.*
- *Investigate all complaints affecting health, life and the development of the unborn child, as well as the existence of clandestine abortions, which tend to cause illegal activities.*
- *Initiate actions towards the implementation of penalties for infringements of the rules protecting the unborn.*
- *Develop, with the occasion of research, to all public bodies: warnings, recommendations, reminders of their legal and functional duties, and proposals for further action.*
- *To report to the competent authorities about any delay caused by the Judges or the Courts' Clerks, which might be seriously detrimental to the legitimate interests of those whom he represents.*
- *Monitor public and private entities engaged in the care of pregnant women, especially those responsible for providing health services, and reporting to the competent authorities any irregularity that threatens or violates the rights of the unborn child.*^[35]

With the creation of this position, Peru will be better able to provide the mother and the unborn individual with a framework for the protection of their real, comprehensive and effective Human Rights; thus, complying with international human rights standards, and respecting their traditions and national legislation.

d. Code of Children and Adolescents

In accordance with constitutional principles and the ratification of international treaties on Human Rights, Peru enacted, in 2000, the Code of Children and Adolescents^[36] (CCA).

The preliminary title of this CCA, especially its first two Arts, is very important as it expressly reflects the constitutional principles that Peruvian law recognizes in favor of the unborn.

Art. I of the Preliminary Title states that *[a] child means every human being from conception to age 12*^[37], and it also repeats the constitutional principle giving the State to responsibility to protect the child. On the other hand, Art. II of the same title states that *children and adolescents are subjects of rights, freedoms and specific protection*.

Articles of Section I, Chapter I, Art. 1 establish the right to life and integrity. Re-establishing and stating the right that *“Children and adolescents have the right to life from the moment of conception. This Code guarantees the life of the unborn, protecting [the unborn from]experiments or genetic manipulations contrary to his integrity,physical and mental development.”*^[38]

In Art. 2 of this Chapter, the right to be heard by the State, beginning from conception, is established. It states, that *“it is the responsibility of the State to promote the establishment of appropriate care for the mother during the stages of pregnancy, childbirth and post-natal conditions. (...) ”*^[39]. This Art. is of great important as it covers not only the pregnant mother, but also helps protect the proper development of the unborn. Finally, in relation to the rights that particularly affect the gestational status of the child, Art. 92 includes, within the definition of food, *“...expenses of the mother’s pregnancy from conception to postpartum stage”*^[40]

e. Other Legal Framework

i. Unconstitutionality of Article 7 of the General Health Law

The General Health Law was published on July 20, 1997. Article 7 of this provision provides, *“Everyone has the right to appeal to their infertility treatment and to procreate using assisted reproduction techniques, provided the condition of the genetic mother and pregnant mother fall on the same person. For the application of assisted reproduction techniques, prior consent is required in writing from the biological parents. It is prohibited to fertilize human eggs for purposes other than procreation and the cloning of human beings.”*^[41]

This law go against the CCA just mentioned and also the PCP. Thus, the CCA in Art. 1 provides that *the life of the unborn is ensured, protecting against genetic manipulations contrary to its integrity and their physical or mental development*. There is no denying that it is contrary to the physical development of embryos to force them to undergo a conservation process that includes the use of chemicals, and processes both freezing and thawing, before being implanted in the womb. There is a direct possibility that several of these embryos will die, before the survival of a few It also creates a situation of uncertainty in the viability of life of these people.

Finally, it clearly goes against the Art. 2 of the PCP which states that *“everyone has the right to life, identity, moral, mental and physical integrity and to a free development and well-being. The unborn child is a subject of law in every respect”*.^[42] We cannot ignore that this is a fundamental and legitimate rule. The right in conflict with it could be the right to life as a fundamental right that deserves special protection because it is the first right, condition *sine qua non* to enjoy other rights established in both the PCP and other laws. It is recalled that the Constitutional Court in Decision No. 2005-2009 notes *“...the conception of a new human being occurs with the fusion of maternal and paternal origin cells which is given to a new cell, according to the state of science , marks the beginning of the life of a new being. Unique and unrepeatable, with its configuration and genetic individuality complete, [we] may not interrupt its vital process to take its course towards independent living.”*^[43]

ii. Ministerial Resolution N° 729-2009-SA/DM

This Resolution^[44] was issued by the Ministry of Health in June 2003, and it aims to approve the document entitled *“The Integral Health; All commitment – Model of Integrated Health Care”*^[45]. This document aids in the creation of comprehensive care programs for each stage of life of the person. The Programme of Comprehensive Care of Children’s Health, subdivided ages, establishes the first stage as the *“Unborn Child: from conception to before birth.”*^[46] Specific child individual attention includes *“Periodic care is expected during pregnancy, to stimulate the psycho child development. Set of processes and actions that enhance and promote the physical, mental, sensory and social development of humans from fertilization until birth (...)”*^[47]

With the previous discussion, we close the relevant treatment of domestic legislation in Peru and thus, we move to the international legal framework.

B. International Legal Framework

a. International Covenants in Human Rights

As a member of the International Community, the Republic of Peru has signed and ratified numerous International Covenants on Human Rights in order to provide the population ample protection of these rights. In the universal system, Peru is part of the American Declaration of the Rights and Duties of Man, whose Article 1 states that *“Every human being has the right to life, liberty and the security of his person”*; it has also ratified the Universal Declaration of Human Rights. Its Art. 3 states, in the same terms as the Declaration aforementioned, that *“Everyone has the right to life, liberty and security of person.”* Meanwhile the Art. 6 of the Covenant on Civil and Political Rights, also ratified by Peru, states that *“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”* It is also part of the Convention on the Rights of the Child, which in paragraph 3 of the preamble states *“Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance.”*

With respect to these International Treaties, Peru not only signed and ratified these treaties but also its Optional Protocols, which recognized competency of the respective committees to implement these Treaties. This generates an obligation for Peru to refer to these committees an annual report on internal measures taken to ensure the application thereof.

Within the regional system, Peru is a member of the Organization of American States (OAS). The OAS provides a system of protection for human rights where individual complaints concerning alleged human rights violations are decided. To be part of this system, Peru had to sign and ratify the respective international American Convention on Human Rights (ACHR) as well as recognize the jurisdiction of the Inter-American Court of Human Rights (IACtHR). Thus, forming part of the Inter-American System of Human Rights (IASHR)

La ACHR provides in Art. 4.1 that *“Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”* Art. 5.1 states that *“Every person has the right to have his physical, mental, and moral integrity respected.”* In the case of Peru, it has been enacted Ley N°27.775^[48], which regulates the process of implementing decisions or recommendations of supranational bodies to which Peru is a party.

III. RELEVANT CASE LAW

A. NATIONAL

a. An end to the morning after pill? Anticorruption Action (NGO) v. Ministry of Health

On October 19, 2004, the NGO “Acción de Lucha Anticorrupción” (Anticorruption Action) filed a writ of Amparo^[49] against the Ministry of Health of Peru in order to refrain from:

1. *Initiating the distribution program called the “Morning after Pill” in all public welfare, clinics and hospitals and other entities in which the free delivery is sought.*
2. *Distribution, under promotional labels, projects that the Executive intends to adopt and implement regarding the method of Oral Emergency Contraception, without consulting the Congress.*

According to the applicant, it is to prevent the flagrantly violation of the life of the unborn.^[50]

The case reached the Constitutional Court, in which the latter must rule on several issues including this process. But, we will focus on the fundamentals that the Court gave for the right to life.

The holding of the Court began by recalling the protection of the right to life, from conception, recognized fully in both domestic and international law, which has already been discussed in this report. To clarify the idea of conception, the court brought jurists with different doctrinal stances who expressed conception as a: “union of materials supplied by both sexes in the procreative act, for the formation of a new being” “the act of fertilization and early life process” or “[the] Biological time to fertilize the egg, which determines the legal order, the beginning of the existence of the people ...”^[51]

Then the Court made a conceptual development of *pro homine* principle and states, that it is a principle of interpretation of the rules. This principle “orders that it must be chosen among a plurality of applicable rules that guarantees the most effective and extensive way to ensure that the fundamental rights are recognized. (...) This guideline of preference for rules of interpretation is applicable even in cases of doubt or whether a situation in which there are fundamental rights in play or another interest arises.”^[52] With this quotation, we clearly understand how, when it comes to effective enjoyment of fundamental rights, the Court does not hesitate to apply the rule giving greater protection.

The Court even goes much further in regard to the protection of the right to life, underpinning *pro homine* principle with another principle, which is its corollary, the principle called *pro debilis*. The Court describes these two principles as the centrality of the human being. “This principle dictates that in situations of conflict of fundamental rights, special consideration should be deemed to the weaker party in a position of inferiority, and not equal with the other.”

Within the holding put forward, the effects of the use of the so-called morning-after pill, are also addressed. After transcribing the prospectus of each of the five products that are allowed to enter the country as Emergency Contraceptive Pills (ECPs), the Court notes that “in all cases, reference is made to so-called “third effect”, this is (...) that in addition to inhibiting ovulation or thicken[ing] the cervical mucus, [ECPs] interfere or prevent implantation”^[53]. To this regard, the Court notes the contradiction that generates the attitude of the Ministry of Health, negating any effect of ECPs on the endometrium and implementation. It is the Ministry of Health who approved prior assessment and received health records of these products, where it is expressed quite the opposite of the Court’s finding.

The Court understands that the anti-implantatory effect is not the only effect ECPs produce. This has generated scientific uncertainty about what is going to happen in the womb of the woman in each case, and so it choose to apply the so-called *precautionary principle*. Understanding that while this principle was “...initially created to protect the habitat of animals and in general, for the protection of ecology and environment, [it] has now also become a pattern or resource for analysis.”^[54] In this regard, the Court clarified how the three elements of the precautionary principle are made applicable to this situation. To wit:

- The existence of a threat, danger or risk of damage.
- The existence of scientific uncertainty, ignorance (...) or even a controversy in the scientific world about these effects in question.
- The need for positive action to reduce the risk or damage to the health of those involved (...).^[55]

Using these parameters, the Court ends elucidating this controversy by saying that “...taking into account, on the one hand, that conception occurs during fertilization, when a new being [is] created from the fusion of the pronuclei of maternal and paternal gametes, in a process that takes place before implantation; and, secondly, that there are reasonable doubts about the shape and organization in the so-called “morning-after pill’s” effects on the endometrium and thus the implementation process [and therefore], it should be clarified that the right to life of the unborn is affected per action of such product.”^[56]

For these reasons the Constitutional Court declared admissible the Writ, and ruled that the Ministry should refrain from developing public policy of free distribution of the so-called pill, as well as resolved to order the laboratories that produce, market and distribute the pill, including in their prospect, the possible effect of inhibiting implantation of the fertilized egg.

B. INTERNATIONAL

a. Forced sterilization followed by death and 850 Soles of compensation.

Case Mamérita Mestanza v. Peru

In June 1999, a complaint was filed before the Inter-American Commission on Human Rights (IACHR) against the Peruvian State. The facts of the complaint were as follows: Ms. María Mestanza Mamérita was a victim of a public health policy called *Voluntary Surgical Contraception (VSC)*^[57], which consists of

sterilization as a method of family planning. Since 1996, both Mrs. Mestanza and her husband Jacinto Salazar, who are farmers and parents of seven children, were subjected to harassment, intimidation and threats by the Health Center for Mrs. Mestanza to be sterilized. Finally in 1998, Ms. Mestanza agreed under duress to the submission of such surgery, which was discharged the next day. Her own discomfort of this intervention grew with time, so she went back to the health center, where no care was given to her and the staff told her that the discomfort was due to the effect postoperative anesthesia. Days later, Mrs. Mestanza died at home. Her death certificate indicated that her death was from “sepsis,” a result of a blockage in her fallopian tubes. After that, doctors who participated in the operation and diagnostics, offered Mr. Jacinto the sum of 850 Soles for funeral expenses, in order to terminate the problem. The case was brought before the Commission and reached a friendly settlement with the State of Peru. Mr. Jacinto received a pecuniary compensation that was as fair as possible. In addition, the Peruvian State pledged to “...change laws and public policies on reproductive health and family planning, eliminating any discriminatory approach and respecting women’s autonomy.”[58]

This case is not about the right to life of the unborn, but the right to life of the woman, as a mother, as a potential mother and as a wife. To bring up this case, is to highlight the importance of creating public health policies that address both the unborn child and the woman who is the mother of the unborn person. It is a wake-up call to show how when public health policies are not intended to Human Rights, many people are victims who could possibly lose their life.

A dubious case of therapeutic abortion: Case Karen Llantoy[59]

Ms. Karen Llantoy, 17 years old, became pregnant in March 2001; in June she underwent an ultrasound in which the child was diagnosed with an anencephalic fetus. In the National Hospital *Arzobispo Loayza* in Lima, Dr. Ygor Pérez Solf, let her know the suffering fetal abnormality and the alleged risks in life if she continued with the pregnancy. Although he said she could continue her pregnancy, he suggested the interruption of the pregnancy, in which she agreed. However, to practice abortion permission from the Director of the Hospital, Dr. Cardenaz Diaz had to be obtained. The Director did not agree to authorize the procedure, as the penal code only excuses the doctor when performing the abortion in case of danger to the life or health of the mother, meaning the abortion is the only possible way to save the life of the mother. In the case of Ms. Llantoy neither her life, nor her health, were at risk. Because of Dr. Cardenaz’s response, the Social Assistant Association of Social Workers of Peru made an assessment of the case and concluded that the abortion ought to be performed, as its continuation would only contribute to increased mental and emotional instability of Karen and her family. Without success to such requests, in January 2001, Karen gave birth to a girl who lived for 4 days.

The case was submitted to the Human Rights Committee of the UN denouncing Peru for having abstained to practice a case of legal abortion when the mother’s mental health was supposedly at risk.

However, without denying this situation can generate psychological consequences in the mother, like depressive symptoms, this is not a case of therapeutic abortion, but a case of eugenic abortion. This is because it is the removal of a person due to congenital malformations that affect the viability of the fetus’ life. Do not forget that the main task of the health aides is to always ensure the best possible protection of both lives, and that’s what the Peruvian government protected in this case, since Ms. Llantoy could live perfectly after the birth of her daughter.

This situation could repeat itself, and the state must be prepared to face it by providing the necessary and integral support women and families facing this situation require.

IV. CURRENT POLITICAL PANORAMA

a. Double Discourse and International Pressure: Current Government’s Ideology

In the presidential candidacy of 2011 – 2016, the current President of Peru, Ollanta Humala, published its plan of government[60]. As its name implies, it provides a *Major Transformation* for Peruvian law and tradition.

Chapter 7 is dedicated to address *Social Policy, Human Rights, Peace and Safe Life*. In a subtitle of this chapter it gives treatment policies for *gender equity*. It begins by making a diagnosis of the situation of women in Peru, highlighting the main causes of the exclusion of women (especially rural) as

follows: *poverty, education, access Health care*[61], *high unemployment, lack of exercise of citizenship by women, domestic violence, sexual violence, pollution by the presence of lead, etc.*

Then, when presenting policy proposals, it very specifically addresses each of the above mentioned causes and includes access to *ECPs and the decriminalization of abortion*[62], which was banned by the Constitutional Court several years ago. Following the proposals, he set as an urgent action to generate the treatment protocol for therapeutic abortion, as demanded by United Nations.[63]

It seems very clear that from his candidacy, the current President intended to include such policies. However, in his interview with the Cardinal and Bishop Monsignor Cipriani of Lima, he was contradictory in the exposure of his government plan regarding the right to life, “...in the abortion issue, we believe in the defense of life as it is also embodied in the constitution.” This statement does see the double discourse of the presidential candidate.

It is important to note that these type of policies, which are not claimed by the Peruvian people, but rather claimed by the Peruvian minorities, are heavily promoted by international organizations through recommendations, comments, and decisions in cases involving particular countries. In regard to recent therapeutic Abortion Protocol, United Nations closely followed the evolution evaluating the process and congratulating Peru the same day it was approved.

These type of recommendations and decisions, of both the United Nations system, particularly the CEDAW Committee, and the ISHR, [are] in regards to decisions of the Commission and the Court; It has been exerting strong pressure on the Peruvian government to make progress on the decriminalization of abortion and recognition within the policies of Health.

The Head of the State is expected to defend, at all times, the legislation, jurisprudence, constitutional principles and tradition of their country; generating health policies that address a real and comprehensive way to the special situation of vulnerability that is often the pregnant woman; before thinking about public policy as required by United Nations, which can be often very good and capable, but not always.

b. *Jeopardizing sovereignty: The Pro Homine principle for an effective protection of Human Rights and the defense of National Sovereignty*

Constitutional Procedural Code, in Art. V of its preliminary title states that “ *The content and scope of the constitutional rights protected by the processes covered by this Code should be interpreted in accordance with the Universal Declaration of Human Rights, rights treaties human, as well as the decisions taken by international human rights courts established under treaties to which Peru is a party.*” [64]

Moreover, according to the Fourth Final and Transitory Provision of the PCP, the Constitutional Court has established that “...according to human rights treaties, which implicitly contains accession to the interpretation of them that have been made by protective supranational bodies of the inherent human attributes.”[65]

Similarly, in two processes filed before the Constitutional Court[66], the obligation of the opinions, issued by the Committees of the Treaties, following individual processes was established. It is expressed as follows, the “*Decision of the Human Rights Committee ... has in itself, the scope of a final international judgment that the State endorses an International Convention on Human Rights, necessarily corresponds to fulfill and implement, as provided by Article 40 of Law No. 23506, in accordance with Article 101 of the Political Constitution of the State of 1979, in force at the time to consider this dispute.*”[67]

While these provisions have been established in order to provide an effective force to international treaties signed by Peru , one cannot deny that they fully adhere to the provisions of international bodies, which evolves in many cases ignoring the internal rules and constitutional principles protective of the right to life recognized by the Republic. Thus, in order to avoid international punishment, the exercise of internal sovereignty would be limited by the obedience to what this international organizations recommend.

In this sense, the Case Law of the Constitutional Court and legislation are really important since in its statements the protection of the right to life of the unborn is broader than the protection given by the international organizations.

This raises the question: *to what extent can international organizations intervene in the States for the defense of human rights? International practice means that human rights, especially serious violations and systematic crimes against humanity and genocide, are of common interest and appeal to [a nation's] sovereignty to prevent*

humanitarian intervention or international scrutiny when it is out of place.[68] But, what occurs when the legislation, case law and Peruvian tradition provide wider protection than what these agencies established?

We see that more intervention of these agencies results, in many cases, a strong international commitment to the protection of human rights. There are other cases where countries exercise their sovereignty and have forged an even broader protection than proposed by these organisms. It is then, when the principle *pro homine*, which states that the interpretation or rule that determines a greater or more extensive protection should always apply, brings to light the lack of binding force of international bodies decisions' which set narrower protection than those legislated and practiced by the particular country.

V. CONCLUSION

As we have seen throughout the report, Peruvian society has always reflected its values, traditions and principles in their legislation and their practices. Nonetheless, there is currently a strong international pressure for changing Peruvian society's principles and values in order to provide a misunderstood and alleged protection to women. In seeking to expand the right to privacy and freedom of woman, they neglect the most basic and fundamental rights.

Every sector of society plays a decisive role in this. The public sector has the necessary tools to defend tradition, legislation and especially national sovereignty in order to create a real protection of vulnerable women and unborn individuals. On the other hand, civil society must continue to make a public defense of their values, principles and traditions, letting the public sector have their support.

The challenge is raised, will people in vulnerable conditions find agents committed to providing a comprehensive and real defense of their lives?

[1] Law degree from Universidad de Mendoza. Diploma in Human Rights by the American University "Summer Human Rights Program", 2012. Recipient of the "Collegiate Academy" Scholarship by The Alliance Defending Freedom 2013. Blackstone Fellow, Blackstone Legal Fellowship Program 2014 of the Alliance Defending Freedom.

[2] Political Constitution of Peru (PCP). Art. 43.

See complete text available at: http://www4.congreso.gob.pe/ingles/CONSTITUTION_29_08_08.pdf

[3] Reglamento del Congreso de la República. Art. 3.

See complete text available at:

<http://www.congreso.gob.pe/accesible/reglamento/cap-preliminar.htm#2>

[4] PCP. Art. 138.

[5] ENRIQUE BERNALES BALLESTEROS, *La Constitución de 1993: Análisis Comparado*. Pág. 615. Editorial Constitución y Sociedad ICS. Lima 1996. 2° Ed.

"(...)The Constitution of 1979 dedicated an unclear subsection to the office of the Ombudsman and made it depend on the Office of the Prosecutor General. In contrast, the text of 1993 gives a different regulation that dedicates a complete chapter of the office of the Ombudsman and makes it an independent office."

[6] Op. Cit. P. 88.

[7] Op. Cit. P. 92. The translation was made by the author.

[8] Political Constitution of Peru -1979- Art. 105: *The provisions contained in human rights treaties have constitutional rank. They can not be modified except by the established procedure for the reform of the Constitution.* –Act repealed. [The translations were made by the author]

[9] For a review of the diverse academic position on the subject [The translations were made by the author]:

NOVAK TALAVERA, Fabián. *Los Tratados y la Constitución Peruana de 1993.*- En: *Agenda Internacional.*- Año 1, n. 2.- Lima, Pontificia Universidad Católica del Perú – Instituto de Estudios Internacionales-IOEI, julio-diciembre 1994.- P. 91:

"The removal of Article 105 in our new Constitution has no precedent, constituting its repeal not only a setback in legal terms but also a real political clumsiness, when you consider the current situation, in which our country faces a series of questions, founded or not, in terms of respect for Human Rights"

CIURLIZZA, Javier La Constitución de 1993. Análisis y comentarios n.- Lima, Comisión Andina de Juristas, 1995.- P. 68:

“Modifications involving setbacks :(...) c) Elimination of constitutional status granted to the precepts contained in treaties in the constitution of 1993, setbacks and conflicts.-“

BERNALES BALLESTEROS, Enrique. La Constitución de 1993 -análisis comparado-. Lima, ICS editores, 1977. 3ra Ed. P. 341:

“Another aspect that took in the Constitution of 1979 and has been ignored by the current, is the provision giving constitutional status to the precepts contained in the treaties on human rights, as they could only be amended by the procedure governed for the reform of the Constitution (art. 105). The article identified the previous Constitution with the defense of human rights and was one of the conceptual axes to provide superior value and historical significance to the Charter. The silence of the new Constitution on this issue indicates that the concerns of those who have flown elaborated by more practical matters. But the hurt is objectively the citizen who sees decreased the level of constitutional protection of their fundamental rights “

[10] Political Constitution of Peru. Final and Transitory Provisions. Fourth.

[11] Furthermore, the Constitutional Court of Peru has stated that “(...) on fundamental rights, recognized standards that regulate or limit them should be interpreted in accordance with human rights treaties. That criterion for interpretation of rights is not only a demand that is derived directly from the IV Final and Transitory Provision of the Constitution, but also the fact that the treaty, once ratified by Peru are part of national law. “(Judgment in File N^o. 1230-2002-HC / TC, of June 20, 2002, FJ8 °). And later, he explained that “(...) any public activity must consider the direct application of norms enshrined in international human rights treaties (...) is a general principle of international law that a State may not invoke the provisions of its internal law as justification for failure to perform a treaty or peremptory norms of international law. This principle has been established in Articles 27 ° and 53 ° of the Vienna Convention on the Law of Treaties of 1969, ratified by Peru by Supreme Decree No. 029-2000-RE dated September 14, 2000 “(Judgment in File N^o. 2798-2004-HC / TC, on December 9, 2004, fj6 °).

[12] Peruvian Civil Code. Enacted: 24/07/1984 Legislative Decree N^o 295 – Effective from 14/11/1984

[13] *Ibíd.*

[14] Civil Code of 1936 – Currently repealed. Enacted by Ley N^o 8305.”

[15] Peruvian Criminal Code. Enacted by Decreto Legislativo N^o 635.

[16] *Ibíd.* Art. 120.

[17] MINISTERIAL RESOLUTION N^o 486-2014/MINSA, approves the National Technical Guide for standardization of the procedure for the comprehensive care of pregnant women in the voluntary termination of pregnancy less than 22 weeks by medical prescription, with informed consent under the provisions of Article 119 of the penal code.

[18] Regarding this: Holdings in Decisions Karen Llantoy and Anticoncepción Oral de Emergencia. Decisiones referred in this report. P. 27 and following pages.

[19] Dublin Declaration on Maternal Healthcare. Available at: <http://www.dublindeclaration.com>

[20] Laws in Peru are divided in three genres:

1. Fundamental Law
2. Legislative Acts
3. Administrative Acts

The Ministerial Resolutions are part of the Administrative Acts.

[21] Ministerial Resolution N^o 486-2014/MINSA. Technical Guide: Point I. P. 2.

[22] The highlight is ours.

[23] **Concluding comments of the Committee on the Elimination of Discrimination against Women: Peru Recommendation N. 24:** *“The Committee notes with concern that illegal abortion remains one of the leading causes of the high maternal mortality rate and that the State party’s restrictive interpretation of therapeutic abortion, which is legal, may further lead women to seek unsafe and illegal abortions.”*

Concluding comments of the Committee on the Elimination of Discrimination against Women: Peru Recommendation N. 25: *“The Committee urges the State party to review its restrictive interpretation of therapeutic abortion, which is legal, to place greater emphasis on the prevention of*

teenage pregnancies and to consider reviewing the law relating to abortion for unwanted pregnancies with a view to removing punitive provisions imposed on women who undergo abortion, in line with the Committee's general recommendation 24 on women and health, and the Beijing Declaration and Platform for Action."

Full text available at:

<http://acnudh.org/wp-content/uploads/2010/12/N0724413.pdf>

Beijing Declaration and Platform for Action. Point 106. K) "(...) consider reviewing laws containing punitive measures against women who have undergone illegal abortions."

Full text available at:

<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

[24] To read the statement:

<http://www.aciprensa.com/noticias/medicos-del-peru-dan-un-no-rotundo-al-protocolo-del-aborto-terapeutico-91966/#.U76o9V5stoy>

[25] An example of this is the case Douse Magdalena, a girl from the UK who was born with only 23 weeks of gestation and weigh upon by the weight of scissors inadvertently left in the balance, it was believed that had 500 grams required to continue providing care, but actually weighed only 328 grams. She survived perfectly.

The read the news: <http://www.dailymail.co.uk/health/article-2249383/The-tiny-premature-baby-lived-doctors-recorded-weight-incorrectly-battled-alive.html>

[26] Technical rule on categories of the Health Facilities Sector, P. 45 [Text in Spanish]:

http://www.minsa.gOp.pe/dgiem/infraestructura/WEB_DI/NORMAS/NT0021DOCUMENTO%20OFICIAL%20CATEGORIZACION.pdf

[28] Ministerial Resolution N° 486-2014/MINSA. Technical Guide: Point 6.7: Procedures for evacuating the uterine contents. P.4

[29] Scientific term: *Uterine hyperstimulation*.

[30] Review the following study: *Misoprostol y teratogenicidad: Revisión de la evidencia*

<http://gynuity.org/resources/read/misoprostol-and-teratogenicity-reviewing-the-evidence-sp/>

[31] Adaption to Peruvian reality of the proposal published in the web. Original version available at: <http://www.aul.org/wp-content/uploads/2013/05/Section-3.pdf>

Printed version: "Defendiendo el Derecho Humano a la Vida en Latinoamérica". 2012. 1° Ed. P. 24.:

[32] Ley Nacional 26.061. Capítulo III. Sancionada 28 de septiembre de 2005.

[33] In Argentina a bill regarding this specif proposal, was introduced: Proyecto Ley S-1483/14 de creación de la Defensoría de la Persona por Nacer.

[34] Defending the Human Right to Life. Legislative Guidelines. Information for women with conflicting pregnancies. 2012. 1st Ed. P. 28.

To see full text:

<http://www.aul.org/wp-content/uploads/2013/05/Section-3.pdf>

[35] Op. Cit. P. 29.

[36] Code of Children and Adolescents. Law 27337. Enacted on August 7, 2000. <http://www.congreso.gOp.pe/ntley/Imagenes/Leyes/27337.pdf>

[37] Ibid. Preliminary title. Art. I.

[38] Translated by the author.

[39] Translated by the author.

[40] Translated by the author.

[41] Translated by the author.

[42] Translated by the author.

[43] Ruling N° 2005-2009. Fundament N° 38. Full text can be seen at:

<http://www.tc.gOp.pe/jurisprudencia/2009/02005-2009-AA.html>

[44] The full text of "Program *Integral Health; a commitment of everyone – Model of Integrated Health Care*" is available at: www.minsa.gOp.pe/dgsp/documentos/dgsp/Mais.doc

[45] "*Integral Health; a commitment of everyone – Model of Integrated Health Care*".

[46] P. 12. www.minsa.gOp.pe/dgsp/documentos/dgsp/Mais.doc

[47] *Ibíd.* P. 41.

[48] Statute. Full text is available

at: <http://www.congreso.gOp.pe/comisiones/2001/justicia/ley27775.htm>

[49] Writ of Amparo. Constitutional Remedy recognized in the Art. 200 and following of the PCP.

[50] Facts of the Writ, Constitutional Court Decision. P. 1. EXP. N.º 02095-2009-PA/TC. Full text is available at: http://www.sincomponenda.org/files/fallo_tribunal.pdf

[51] Sentencia TC N.º 2005-2009 Fundament N. 22. P. 8. Full text is available at:

<http://www.tc.gOp.pe/jurisprudencia/2009/02005-2009-AA.html>

[52] Op. cit. Fundament N. 33. P. 11.

[53] Op. Cit. Fundament N. 41. P. 13.

[54] Op. Cit. Fundament N. 48. P. 15.

[55] *Ibíd.*

[56] Op. Cit. Fundament N. 53. P. 16.

[57] Law N.º 26,530, promulgated in September 1995, established the National Family Planning Program, and implemented sterilization as a family planning method. Pursuant to this law, the Ministry of Health began an intensive campaign to raise awareness, through health fairs, to induce women to make use of irreversible contraceptive methods in an effort to control the birth rate, especially in peasant women (...) Peru has indicated in its observations to this report that the Office of the Human Rights Ombudsman has made a series of recommendations on this issue that are being implemented by the Government. (...)The Commission considers that when a family planning program ceases to be voluntary and turns women into a mere object of control so as to make adjustments to population growth, it loses its *raison d'etre* and instead poses a danger of violence and direct discrimination against women.

In: Second Report on the Situations of Human Rights in Peru. Inter-American Commission of Human Rights. OEA/Ser.L/V/II.106. Doc. 59 rev. (2000). Full text is available

at <http://www.cidh.org/countryrep/Peru2000sp/capitulo7.htm>

[58] *María Chávez v. Peru*, Case 12.191, Report No. 71/03, Inter-Am. C.H.R., OEA/Ser.L/V/II.118 Doc. 70 rev. 2 at 668 (2003). *María Chávez v. Peru*, Case 12.191, Report No. 71/03, Inter-Am. C.H.R., OEA/Ser.L/V/II.118 Doc. 70 rev. 2 at 668 (2003). <https://www.cidh.oas.org/women/Peru.12191sp.htm>

[59] Karen Noelia Llantoy Huamán v. Peru, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005). Full text available at: <http://www1.umn.edu/humanrts/undocs/1153-2003.html>

[60] Plan of Government 2011-2016. *La Gran Transformación*. December 10th. Full text is available at: <http://www.presidencia.gOp.pe/plan-de-gobierno-gana-peru-2011-2016>

[61] (...) Every 8 hours a woman dies from complications in pregnancy mainly due to lack of health facilities in remote areas of our territory, which does not allow women to quality services and efficiency especially near areas of poor, rural and indigenous women.

(...)Cada 8 horas muere una mujer por complicaciones en el embarazo debido principalmente a la falta de centros asistenciales en las zonas más alejadas de nuestro territorio, lo que no permite que las mujeres tengan servicios de calidad y eficiencia cercanos a las zonas especialmente de mujeres pobres, campesinas e indígenas. Op. Cit. Chapter 7. Políticas Sociales, Derechos Humanos, Vida Segura y Paz Social. 7.3.2 Políticas para la Equidad de Género. a) Diagnóstico. P. 180.

[62] *Ibíd.* P. 182

[63] *Ibíd.* The Highlight was made by the author.

[64] Highlight is ours.

[65] Constitutional Court. Sentencia del 17 de abril de 2002.Habeas Corpues filed by Alfredo Crespo against the military jurisdiction. (Exp. 217-02-HC/ TC). Fundamento No 2

[66] Constitutional Court. Exp. No 105-2001- AC/TC y Exp. N.º 012-95-AA/TC.

[67] Constitutional Court. .Sentencia del 17 de abril de 1998. Writ of Amparo filled by Rubén Toribio Muñoz Hermoza against the General Director of National Secure Force. (Exp. N.º 012-95-AA/TC). Fundament N.º 2.

[68]Collection of University Legal Texts. HUMAN RIGHTS. *Oxford University Press*. – Hugo Saúl Ramírez García y Pedro de Jesús Pallares Yabur – P. 11.

