

Peru and Emergency Oral Contraceptive July 2016

By Andrés Delgado[1]

Peru sued in the Inter American Commission of Human Rights for denying access to Emergency Oral Contraceptive (morning-after pill).

This past May 2nd, Peruvian Government was sued[2] before the Inter American Commission of Human Rights (IACHR), through different NGO's led by the Center for Reproductive Rights (CRR), Demus, Peace and Hope, and Promsex.

The basis of the complaint is the failure to supply a woman named Maria with the morning-after pill (MAP) in a public hospital. Maria was allegedly the victim of rape in 2014, in a rural zone of Huánuco, capital of the department with the same name, in the center of Peru. Thus, for the plaintiffs, denying the MAP generated unnecessary risk of pregnancy, as a consequence of the rape.

Main arguments supporting the plaintiff.

The complaint denounces alleged violation of several women's rights.[3]. The first argument is that the failure to supply the MAP violates the sexual and reproductive rights of women. However, regarding this issue, it is also important to underline that neither any international Pact nor any legal document in Peru recognizes the existence of the so-called rights. This demonstrates that the claim is part of the political agenda in favor of abortion's legalization.

Secondly, they are arguing that not supplying the pill is a direct discrimination against the poorest citizens, because it is sold in pharmacies where people with economic resources can buy it, but it is not provided in public health institutions where poor people goes as they have limited economic resources.

As a last argument, they say that ruling N° 2005-2009-AA/TC[4] issued by the Constitutional Court in 2009, goes against of what was stated in a previous decision from the Constitutional Court in process N° 7435-2006-TC/PC[5], which ordered the implementation of Ministerial Resolutions N° 465-99-SA/DM and 399-2001-SA/DM, that assured provision and information regarding the MAP, in every health institution under the Ministry's competence.

Main consequences.

In the event that the Commission ends up by condemning the State of Peru, that would generate some contingencies in terms of policies and laws that would go against the protection of the right to life from conception, in which this society has invested so much effort.

As first contingency, it will contravene directly what is stated in all Peruvian legislation[6]; thus it would be an affront to and direct attack against the unborn's right to life.

The Constitution, the Civil Code, and the Children and Adolescents Code, protect human life from conception, and recognize rights – *The unborn as a subject of law in every respect*[7].

As a second contingency, a resolution that declares the mandatory distribution of the MAP would produce an eventual collision between jurisdictions, such as Peruvian that, as we stated before, has ordered the Health Ministry to abstain from supplying the MAP, and that of the IACHR's jurisdiction.

In relation to this last contingency, it is possible that the IACHR would attempt to base its decision on the case *Artavia Murillo v. Costa Rica*[8], where it stated: “(...) *the Court observes that the regulatory trends in international law do not lead to the conclusion that the embryo should be treated in the same way as a person, or that it has a right to life.*”[9], concluding that whether the pill has or has not abortive effects is not relevant.

Pending challenges.

This case will likely set a milestone within international jurisprudence; therefore, it is crucial that different organizations that work in defense of life, make their best efforts to present *amicus curiae*, and cooperate to assure the protection of the unborn's right to life.

In turn, the new Peruvian president Pedro Pablo Kuczynski[10], must defend the case, and ensure the care and protection of the most vulnerable. Also he should seek to reassert the state sovereignty by creating policies that protect the weakest and avoid endangering human dignity, a fundamental pillar of the Peruvian constitutional order.

Lastly, we must emphasize the need for the state to make the best efforts from a multidisciplinary perspective to reduce the incidence of violence against women. For that, it is crucial to boost education based on respect of women, as well as security policies that allow an effective defense of their rights. In addition, support must be given to the victims in order to receive psychological and physical care required to face and overcome the violent situations suffered. We must not forget violence is not solved with more violence, but preventive and palliative reforms must be generated in order to counteract and achieve its reduction to the minimal expression.

Notes:

[1] Bachelor in Law by Saint Paul Catholic University; Arequipa, Peru. Blackstone Fellow 2014. He has been President of the XXII Model of the Organization of American States (MOEA 2014) and he is currently working in his thesis regarding therapeutic abortion.

[2] Information about the law suit has been obtained thanks to news in several media, as well as a note press released by the involved organizations. Read more in:
<http://www.promsex.org/informacion/aoe/2937-peru-es-demandado-ante-cidh-por-negar-la-aoe-en-hospitales-publicos-y-violar-derechos-de-las-mujeres>

[3] The plaint establishes a list of rights that may have been undermined: Personal integrity, honor and dignity, to live free without gender violence, to freedom and intimacy, to health, to a diligent attention for victims of sexual violence, to have access to information, equality before the law and nondiscrimination, protection and judiciary guarantees. Read more at: https://issuu.com/promsex/docs/hojas_informativas_aoe_caso_maria

[4] “On this grounds, the Constitutional Court, with the authority conferred by the Political Constitution of Peru **HAS RESOLVED: Declare the petition GRANTED;** in consequence, order the Health Ministry to abstain of developing as public policy the free distribution nationwide of the named “morning-after pill). STC N° 2005-2009-AA/TC. Translation made by the author.

[5] “*On these grounds, the Constitutional Court, with the authority conferred by the Political Constitution of Peru HAS RESOLVED: Declare GRANTED the compliance action, in consequence, comply with the ongoing resolutions to the date of the present plaint.*” STC N° 07435-2006-AC/TC. Translation made by the author. The highlighting belongs to us.

[6] “**Article 2:** *Every person has right: 1. To life; identity; moral, psychic and physical integrity; and his free development and wellbeing. The unborn child is a rights-bearing subject in all cases that benefit him. (...)*” Peruvian Constitution.

Translation available at:

http://www.congreso.gob.pe/Docs/files/CONSTITUTION_27_11_2012_ENG.pdf

“**Article 1:** 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.” Peruvian Civil Code. Enacted: 24/07/1984 Legislative Decree N° 295 – Effective from 14/11/1984

Plus it is important to underline that in preliminary title of the Children and Adolescents Code it is stated: “It is considered children means every human being from its conception”. Additionally: “State protects the unborn for everything that could benefit him (...).

Finally, in the first article of the initial chapter of the same text it was established: “Child and adolescent have the right to life from the moment of conception. The present Code guarantees life of the unborn, protecting him from experiments and genetic manipulation contrary to his integrity and his physical or mental development.” Translation made by the author

[7] Art 1. Peruvian Civil Code. Enacted: 24/07/1984 Legislative Decree N° 295 – Effective from 14/11/1984

[8] *Artavia Murillo et al. (“In vitro Fertilization”) v. Costa Rica*, Sentence of preliminary objections, merits, reparations and costs, Ser. C N° 257, Nov. 28th, 2012.

[9] *Artavia Murillo et al. (“In vitro Fertilization”) v. Costa Rica*, Sentence of preliminary objections, merits, reparations and costs, Ser. C N° 257, Nov. 28th, 2012, Legal Basis N° 253.

[10] The new president said he was “in favor of life, in general” because in exceptional cases, such as rape and risk to life of the mother he defends abortion. It should be added that the elected parliament, is mostly pro-life.