

# PERU: Abortion guidelines established after 90-year delay

## Summary

A 13-year-old girl who became pregnant after being raped was denied a legal abortion, even though her physical and mental health were in danger. She was left paralysed; but thanks to her case, Peru now has a protocol on therapeutic abortion and the UN has recognised the denial of a legal abortion as a form of discrimination against women.

## Background

When she was 13 years old, a girl the courts named simply as L. C. attempted to end her life by jumping off the roof of a building next to her house in Ventanilla District, an impoverished area near Peru's capital city of Lima.

L. C.'s ordeal began in 2006. She split her time between school and helping her mother at a local market until a 34-year-old man began sexually abusing her. The man was a long-time family friend, but he quickly changed after the death of L. C.'s father. "He worked with my mother, and he knew us and my siblings. In spite of that, he did what he did", [L. C. explained](#).

For the next year she was repeatedly raped by the man and when, in 2007, L. C. suspected she was pregnant she confronted her attacker. He accused her of being crazy and said he was not responsible. Filled with anger and shame L. C. decided to commit suicide.

When some of her neighbours finally found her after her attempted suicide she had been paralysed for hours. L. C. was taken to a public hospital where doctors concluded that her spinal column needed to be realigned immediately, or she could suffer permanent paralysis. This intervention was scheduled for 12 April 2007, almost two weeks after she was initially taken to the hospital.

One day before the surgery, during the medical examination, the doctors confirmed L. C. was pregnant. Arguing that abortion in cases of pregnancy resulting from sexual abuse were illegal, the doctors refused to operate on her and suggested that they would wait until she gave birth.

On the day of the surgery, L. C.'s mother was informed that it had been postponed because of the girl's pregnancy. Six days later, after a consultation with L. C., she requested the hospital to carry out a therapeutic abortion. Under Article 119 of the Peruvian Penal Code, an abortion can be performed legally in cases where the pregnant woman's health and life are at risk – commonly known as therapeutic abortion.

Furthermore, she was diagnosed with moderate anxiety-depression syndrome, for which she was given no treatment as the medicine recommended could not be taken during a pregnancy. As L. C.'s pregnancy was clearly endangering her life, her physical and psychological health, a therapeutic abortion was both legal and justified.

A month and a half after L. C. submitted the request for an abortion, but the medical board of the hospital denied her the procedure, saying that her life was not in danger, without mentioning the danger to her mental health. When L. C. was 17 weeks pregnant, she miscarried spontaneously.

Three weeks later, and almost three and a half months after it had been decided that spinal surgery was necessary, she was operated on for her injuries. After 20 more days in hospital, she was discharged and a report noted that she would need immediate intensive physical and psychological therapy. This therapy began four months later, when it was too late for her to recover.

As a result of the delays in her treatment L.C. is now paralysed from the neck down and has regained only partial movement in her hands. She depends on a wheelchair to get around and on the people around her to help her meet her needs. She has a catheter which must be changed five times a day under sterile conditions, which prevents her from attending school.

### **Social and legal context**

Peru has one of the highest rates of sexual violence in South America, with [more than 68,000 reported rapes](#) between 2002 and 2012. Despite the high rates of sexual abuse, Peru has [banned the free distribution of emergency contraception](#) in the public healthcare system and adolescents often lack access to reproductive health information and services, resulting in high rates of unplanned pregnancies, including pregnancy as a result of rape.

According to Catalina Martínez Coral, Regional Director for Latin America and the Caribbean at the Center for Reproductive Rights (CRR), 34 per cent of victims aged between 10 and 19 years old become pregnant as a result of this abuse, with abortion still [criminalised by the Penal Code](#) even in cases of pregnancy resulting from rape. Without legal access to safe abortion services, these children must choose between backstreet abortions or the health risks that accompany adolescent pregnancy.

Coral explained that “effective access to sexual education and contraceptive methods, including emergency contraception, could serve as a unique tool to reduce the adolescent pregnancy rates across the region.”

“These strategies should go hand-in-hand with economic, social and rights empowerment plans that allow women to fully understand their role in society and the impact of their decisions throughout life, which will ultimately allow them to achieve gender equality.”

### **Getting the case to court**

The hospital’s excessive delay in responding to her request for a therapeutic abortion is what made L. C. look for assistance from a reproductive rights group in Peru, the Center for the Promotion and Defence of Sexual and Reproductive Rights (PROMSEX).

Brenda Alvarez, Legal Advocacy Advisor at PROMSEX, explained that, based on experience from previous cases, a petition for *amparo* - an inexpensive way to protect rights which should be provided under the Constitution - to the Peruvian Constitutional Court would have taken a minimum of two months. Waiting another 60 days to obtain a court decision ordering the hospital to perform the abortion would have only worsened L. C.’s health, and would have had no effect on repairing the damage to her spine.

Thus, with no effective remedy available at the national level, PROMSEX decided to take the case to the United Nations Committee on Elimination of Discrimination against Women (CEDAW) in 2009 with the Center for Reproductive Rights (CRR), which previously achieved a [landmark victory on behalf of K. L.](#), another victim of Peru’s restrictive abortion laws.

K. L., a 17-year-old, was pregnant with [an anencephalic foetus](#), meaning the child was expected to die a few hours or days after birth. Her doctors refused her a therapeutic abortion, and K. L. was forced to deliver and breastfeed the child for the four days the baby survived. The complaint brought to the UN Human Rights Committee alleged that K.L.’s pregnancy endangered her physical and psychological health and claimed that forcing her to bear the child was a violation of international standards prohibiting violence against women. The Committee’s final decision was the first time an international human rights body held a government accountable for failing to ensure access to legal abortion services.

This successful complaint is what motivated PROMSEX to work with CRR and bring L. C.'s case to the United Nations. Alvarez explained: "We took the case not only to protect the integrity of L. C., but also to show the barriers that women and girls have to face when their lives or health are at risk as a consequence of a pregnancy."

The complaint challenged the Peruvian government's failure to establish a set of guidelines and implement measures to guarantee women and girls' access to essential reproductive health services in a timely manner, particularly to legal therapeutic abortion, as was requested by the UN Human Rights Committee in its final decision in K. L.'s case.

L. C.'s complaint stated that her doctors' refusal to end the pregnancy violated her right to health, dignity and freedom from discrimination in accessing sexual and reproductive health services. All these rights are included in the [Convention on the Elimination of All Forms of Discrimination against Women](#), ratified by Peru in 1982, as well as in the [General Recommendation No. 24](#), a text which includes CEDAW's instructions to States for improving women's rights and access to health.

L. C. also claimed that forcing her to continue the pregnancy constituted cruel and inhuman treatment and so was a violation of her right to physical, psychological and moral integrity. Furthermore, healthcare professionals did not provide the appropriate care required due to her status as an adolescent female, or take into account her limited economic resources.

Her complaint emphasised that compensation alone was not enough, adding that further preventative measures needed to be taken to stop similar cases occurring in the future.

## **Outcome**

On 17 October 2011, CEDAW [condemned Peru for violating L. C.'s human rights](#). The Committee concluded that Peru was responsible for not facilitating L. C.'s access to justice, for basing a decision on stereotypes around women's 'duty' to bear children when doctors prioritised the life of the foetus over her's, and for not providing equal access to health services when she was denied access to a lawful abortion.

The Committee added that although the medical board of the hospital considered that L. C.'s life was not in danger, it failed to consider the damage to her health, including her mental health, a right to which is protected under the Peruvian Constitution and through [Peru's General Law of Health \(Law No. 26842\)](#).

Based on these findings, CEDAW recommended that Peru provides L. C. reparations, including adequate compensation for material and moral damages and money for her rehabilitation. It also urged Peru to amend its law and establish a mechanism for effective

access to therapeutic abortion under conditions that protect women's physical and mental health.

Furthermore, the Committee asked Peru to ensure that adequate education and training programmes on reproductive rights were provided to all health professionals in all healthcare facilities across the country, adding that the State should establish guidelines to ensure health services are available and accessible in public facilities.

Finally, Peru was asked to decriminalise abortion when the pregnancy was a result of rape or sexual abuse, making this the first decision by a UN committee demanding that a country protects women's rights by changing its abortion laws and also the first time the UN identified the denial of legal abortion as a form of discrimination against women.

### **Impact**

As a result of the UN Human Rights Committee's decision in K. L.'s case and CEDAW's recommendations in L. C.'s, [Peru adopted a set of guidelines on therapeutic abortion](#) in 2014 to regulate and facilitate access to this procedure - 90 years after therapeutic abortion was first legally recognised in Peru's 1924 Penal Code.

According to CEDAW's recommendations, the guidelines ought to protect both women's physical and mental health, but the current guidelines only [mention women's health in general terms](#). In addition, none of the medical conditions included as possible situations where a therapeutic abortion could be performed are related to mental health.

The guidelines help hospitals to consider the rights and needs of women and girls [case by case, but lack crucial details](#). For instance, cases where a girl or woman might become suicidal or suffer serious mental health problems as a result of carrying an unwanted pregnancy to term are not addressed, even though these may constitute a threat to their life.

Despite the establishment of the guidelines both CRR and PROMSEX reported that they continue to receive cases similar to L. C. and K. L.

"The implementation of the protocol and the measurement of its impact is being difficult, mainly because previous to its establishment, abortions were not registered correctly", explained Alvarez, "Also, doctors continue to face social pressure, especially from the Catholic church, and some of them still think that practicing a therapeutic abortion is illegal".

Despite this, the CRR believes that the decision has helped to begin addressing the stereotypical view of women's reproductive health common in Peru, in which the rights of a

foetus are given more weight than the rights of the mother, while also demonstrating how vital access to reproductive services can be for young girls.

Alvarez added: “This case is very significant because it shows how girls could also be victims of this kind of rights violation. Sometimes we don’t imagine that girls can be in this situation and that for them [it] is very important to have access to abortion services because their lives or health could be in danger.”

“Thanks to this case, the right to abortion for girls and adolescents is more visible, and the essential component of mental health in the interpretation of therapeutic abortion is recognised”, she added.

In an [interview](#) L. C. also welcomed the guidelines, saying: “This brings me great joy, since thanks to me and other women who denounced the Peruvian State before CEDAW at the United Nations, we have ensured that other people that go through this, God forbid, will be able to access therapeutic abortion, a procedure that can save the life of the woman.”

L. C.’s case has set a precedent not only in Peru, but around the world. The decision has been extensively cited by other UN committees, as well as high-level domestic courts across Latin America and Africa.

The Inter-American Court on Human Rights has since [ruled](#) that Costa Rica’s absolute ban on IVF is discriminatory because it gives absolute prevalence to the protection of fertilised eggs without considering the rights of other persons, in the same way that the foetus was given priority over L.C.’s health.

Also based on the CEDAW decision in L.C.’s case, Argentina’s Supreme Court has [ruled](#) that abortion is legal following all cases of sexual abuse, and in [Chile](#) a bill on the decriminalisation of abortions in some situations has been passed this month.

### **The situation after CEDAW’s decision**

L. C. continues to experience severe discrimination in other aspects of her life, including restricted access to health facilities, educational programmes and employment because of her paralysis. L.C. and her mother have received monetary compensation from the government, but L. C.’s mother cannot work because her daughter requires constant care. The medicines and equipment she needs place a heavy burden on the family’s finances, which in turn led L. C.’s brothers to leave school to support the family through work.

In its [most recent review of Peru’s implementation of the Convention on the Rights of the Child](#) the UN Committee on the Rights of the Child noted the problems with sexual and reproductive health still prevalent in Peru and recommended the State to improve

age-appropriate sex education, decriminalise abortion in all circumstances, ensure the availability of emergency contraception and provide clear guidance to health practitioners and adolescents about safe abortions and post-abortion care.

On 29 March 2016, at [a ceremony organised by the Medical College of Peru](#) to reflect on L. C.'s case, Justice Minister Aldo Alejandro Vasquez, representing the Peruvian government, [recognised that the State violated the girl's rights](#) by preventing her access legal abortion in order to protect her physical and mental health.

Lilian Sepulveda, Vice President of Global Legal Program at the CRR welcomed this symbolic apology, saying: "the government is demonstrating its willingness to correct the damage caused to women around the country who would have been denied the legal abortion to protect their health.

"Peru must now take a step to implement clear guidelines that allow all women and adolescents access to this basic reproductive health services."

While Peruvian organisations keep working to build a better society for girls and women in their country, one thing is clear: [L. C. has already changed the world](#).

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### Further information

- Read CRIN's case summaries of [L.C. v Peru](#) and [K.L. v Peru](#).
- Find out more about [strategic litigation](#).
- See CRIN's [country page on Peru](#).
- Read CRIN's report on [access to justice for children in Peru](#).

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