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THE ABORTION CRISIS IN PERU: FINDING A WOMAN'S RIGHT TO OBTAIN SAFE AND LEGAL ABORTIONS IN THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

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Abstract: Under Peruvian law, abortion is illegal unless it is necessary to save the life of the mother. At the same time a woman can be imprisoned if she receives an illegal abortion. Yet, despite its illegality and the threat of punishment, there are over 350,000 illegal and clandestine abortions performed each year in Peru and nearly 65,000 of these women are hospitalized due to complications. Peru has the second-highest maternal mortality rate in South American and unsafe abortions account for nearly one quarter of the deaths. The Convention on the Elimination of All Forms of Discrimination Against Women may provide an answer to the problem of unsafe and illegal abortions in Peru. Although it doesn't explicitly provide that a woman has a right to access safe and legal abortions, it impliedly does so. This Note argues that the actions of the Convention's Committee reveal that a woman has a right to safe and legal abortions and that Peruvian women should take the next step by asserting their claim to this right through the formal complaint procedure.

INTRODUCTION

One woman's story embodies the crisis that Peruvian women face because of their inability to obtain safe and legal abortions.¹ Recently separated from her children's father, she was impregnated by her new boyfriend after she received misleading advice on how to use birth control pills.² She knew she could not afford to have the baby and to obtain an abortion she went to a "run down house in a back street"

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¹ See *Illegal Abortions Killing South American Women*, BBC News, Oct. 10, 2003, <http://news.bbc.co.uk/1/hi/world/americas/3194680.stm> [hereinafter BBC News].

² *Id.*

recommended by a friend.³ As she lay on the couch, a tube filled with hydrochloric acid was pushed into her uterus and she was told not to remove it for several hours.⁴ After hours of bleeding and delirium, she finally decided to go to the hospital.⁵ She knew that if the doctors found out she had had an abortion they could put her in jail, but her only alternative was death.⁶ The tube had perforated her uterus causing massive infection.⁷ The doctors removed her uterus and gave her only three hours to live.⁸ Fortunately, she survived, but she still suffers from infections in her internal organs and can no longer have children as a result of her inability to obtain a safe and legal abortion.⁹

This Note examines the problem of illegal and clandestine abortions in Peru and analyzes the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and its potential use in establishing Peruvian women's right to obtain safe and legal abortions. Part I of this Note examines the current abortion crises in Peru. Part II discusses the history and purpose of CEDAW and the CEDAW-Optional Protocol, as well as Peruvian laws and policies that deal with abortion.¹⁰ Part III argues that although CEDAW does not directly address or mention abortion, it nevertheless implies that women have the right to access safe and legal abortions. The lack of access to legal abortions in Peru violates CEDAW and women's rights groups should utilize the Convention to expand Peruvian women's access to abortion.

I. THE ABORTION CRISIS IN PERU

For centuries, women have been concerned with the ability to control their destinies with respect to the number and spacing of their children.¹¹ Before women were aware of the biology of reproduction they resorted to several methods to control the number of children

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ BBC NEWS, *supra* note 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

¹¹ See DELICIA FERRANDO, CLANDESTINE ABORTION IN PERU: FACTS AND FIGURES 3 (2002), available at http://www.pathfind.org/site/DocServer/Pathfinder_English_FINAL.pdf?docID=509.

they had, including abortion.¹² Despite increased knowledge surrounding pregnancy and the introduction of several safe and easy methods to control fertility, unwanted pregnancies still affect millions of women around the world.¹³ Regardless of their race or economic status, unwanted pregnancy negatively affects Peruvian women because of their unequal social status, limited decision-making possibilities, lack of education, and barriers to quality legal reproductive health services.¹⁴

In an effort to prevent induced abortion, governments have continuously criminalized it, but rather than solve the problem, criminalization has only pushed abortion underground, leading to the widespread practice of clandestine abortions.¹⁵ When abortion is illegal or extremely difficult to obtain, women undergo abortions in unsanitary and unsafe conditions.¹⁶ This puts not only women's health at risk, but also their liberty, because in Peru, like many countries, women face jail time for having an abortion.¹⁷

Abortion is illegal in Peru, except in extreme circumstances when it is the only way to save a woman's life or avoid serious and permanent damage to a woman's health.¹⁸ Even then, the absence of clear regulations to ensure access to abortion services often leaves women at the mercy of public officials.¹⁹ Additionally, Peruvian law does not provide for abortions in the case of rape, incest, or fetal impairment.²⁰ As such, a significant number of women who wish to limit

¹² *Id.*

¹³ *See id.*

¹⁴ *Id.*

¹⁵ *Id.*; see also *Abortion Rights in Latin America*, N.Y. TIMES, Jan. 6, 2006, at A1 (stating that over the course of a Peruvian woman's reproductive years she will have an average of two abortions).

¹⁶ FERRANDO, *supra* note 11, at 3.

¹⁷ *Id.* See generally POPULATION DIVISION, DEPT. OF ECON. & SOC. AFFAIRS, U.N. SECRETARIAT, ABORTION POLICIES: A GLOBAL REVIEW (2002), available at <http://www.un.org/esa/population/publications/abortion/index.htm> [hereinafter ABORTION POLICIES] (providing a comparative overview of abortion laws, penalties, and policies around the world).

¹⁸ U.N. Econ. & Soc. Council, *Implementation of the International Covenant on Economic, Social and Cultural Rights*, ¶ 56, U.N. Doc. E/1990/5/Add.29 (June 17, 1996) [hereinafter Peru Report]; see also ABORTION POLICIES, *supra* note 17, at 32 (explaining that in such circumstances, a doctor may perform the abortion after consultation with two physicians and with the consent of the pregnant woman).

¹⁹ Luisa Cabal et al., *What Role Can International Litigation Play in the Promotion and Advancement of Reproductive Rights in Latin America?*, 7 HEALTH & HUM. RTS. 51, 69–70 (2003) (describing the case of a seventeen-year-old girl fourteen weeks pregnant with a fetus that lacked most of its brain; the hospital director determined she did not fit the exception and denied her an abortion).

²⁰ ABORTION POLICIES, *supra* note 17, at 32.

the number of children they have lack adequate protection against unwanted pregnancy.²¹

Despite the illegality of abortion, an estimated 352,000 abortions are performed each year in Peru.²² There are approximately one million pregnancies annually; forty percent of these pregnancies end in wanted births, twenty-five percent end in unwanted births, and thirty-five percent end in abortion.²³ Additionally, nearly 65,000 (or approximately one in seven) women are hospitalized each year due to complications from unsafe abortions, and about 800 of those women die from such complications.²⁴ From 1995 to 2000, there were seven million pregnancies; two million ended in abortion, and 1900 of those abortions ended in death.²⁵ Peru has the second-highest maternal mortality rate in South America, more than twenty times the maternal mortality rate of the United States. Unsafe abortions account for nearly one-fourth of these deaths.²⁶

II. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

A. *The History of CEDAW and Peru's Involvement*

In an effort to afford women additional protections against discrimination, the United Nations (U.N.) adopted the CEDAW treaty in 1979, and ratified it on September 3, 1981.²⁷ CEDAW has the second most signatories of any international treaty with 180 ratifications, which represents over ninety percent of the Members of the U.N.²⁸

²¹ See FERRANDO, *supra* note 11, at 15 (stating that 25.5% of women aged nineteen to forty-nine, over 860,000 women, are at risk of an unwanted pregnancy).

²² *Id.* at 26.

²³ *Id.* at 28.

²⁴ Alyssa Rayman-Read, *The Sound of Silence*, AM. PROSPECT, Sept. 24, 2001, at A21, A21; Susana Chavez, Centro de la Mujer Peruana Flora Tristán, Remarks at U.S. Congress Briefing about Breaking the Silence: The Global Gag Rule's Impact on Unsafe Abortion (Oct. 22, 2003), http://www.crlp.org/hill_int_ggr_chavez_speech.html (indicating that about three women die from abortion complications each day).

²⁵ See NILS DAULAIRE ET AL., GLOBAL HEALTH COUNCIL, PROMISES TO KEEP: THE TOLL OF UNINTENDED PREGNANCIES ON WOMEN'S LIVES IN THE DEVELOPING WORLD 43 (2002), available at <http://www.globalhealth.org/assets/publications/PromisesToKeep.pdf>.

²⁶ Rayman-Read, *supra* note 24, at A21; see PAN AMERICAN HEALTH ORGANIZATION, HEALTH SITUATION IN THE AMERICAS: BASIC INDICATIONS, <http://www.paho.org/English/DD/AIS/BI-brochure-2005> (2005) (estimating the maternal mortality rate in Peru at 185 deaths per 100,000 births and in the United States at 8.9 deaths per 100,000 births).

²⁷ CEDAW, *supra* note 10.

²⁸ See Rebecca L. Hillock, Comment, *Establishing the Rights of Women Globally: Has the United Nations Convention on the Elimination of All Forms of Discrimination Against Women Made*

CEDAW is premised on the notion that discrimination creates obstacles for women's full participation in the political, social, economic, and cultural spheres.²⁹ In Article I, the Convention defines discrimination as:

[A]ny distinction, exclusion or restriction . . . [based on] sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.³⁰

This definition encompasses any difference in treatment based on sex that intentionally or unintentionally disadvantages women, prevents the recognition of women's rights in the domestic and public spheres, or prevents the exercise of women's rights and fundamental freedoms.³¹ By signing CEDAW, each State agrees to reform domestic legislation and amend its constitution to ensure equality for women.³² States must also establish legal protections for women's rights and set up a tribunal system to hear complaints from women alleging violations of their rights.³³ States must refrain from any act of discrimination against women and must take measures to eliminate all discrimination against women at any level.³⁴ CEDAW thus binds the private sector as well as the public sector to the provisions of the treaty.³⁵

To manage the implementation of CEDAW, Article 17 establishes the Committee on the Elimination of Discrimination Against Women (Committee), which is made up of twenty-three "experts of high moral standing and competence in the field covered by the Convention," elected by the State parties.³⁶ Every four years, each State Party must submit a report to the Committee on the measures it has taken to effec-

a Difference?, 12 TULSA J. COMP. & INT'L L. 481, 483 (2005). *But see id.* (observing that the United States has signed, but not ratified CEDAW).

²⁹ See CEDAW, *supra* note 10, pmb1. (detailing the purposes behind the treaty).

³⁰ *Id.* art. 1.

³¹ U.N. Office of the High Commissioner for Human Rights, *Fact Sheet No. 22, Discrimination Against Women: The Convention and the Committee*, available at <http://www.unhchr.ch/html/menu6/2/fs22.htm> (last visited Nov. 16, 2006) (clarifying CEDAW's definition of discrimination).

³² CEDAW, *supra* note 10, art. 2.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* arts. 2, 3.

³⁶ *Id.* arts. 17(1), 17(2).

tuate the Convention.³⁷ The Committee examines these reports and asks questions, requests more information, or seeks clarification as needed.³⁸ After the Committee examines the reports, it submits its suggestions and comments to the General Assembly and to the individual State Party.³⁹ The questions and recommendations of the Committee demonstrate the Committee's interpretation and understanding of CEDAW.⁴⁰

The Convention allows for reservations to certain articles, while allowing States to remain a party to the remaining parts of the treaty.⁴¹ Although several states took advantage of this provision, Peru did not make any reservations, signifying that it agrees with the entirety of CEDAW.⁴² Peru signed the treaty in 1981 and ratified it on September 13, 1982.⁴³ Under Peruvian law, ratified international treaties are part of the Peruvian legal system and have the same effect as domestic laws.⁴⁴

1. Relevant CEDAW Articles

CEDAW requires State parties to provide "access to health care services, including those related to family planning" and to ensure appropriate care during pregnancy, childbirth and the post-natal period.⁴⁵ CEDAW also contains an unambiguous right to reproductive freedom in Article 16:

³⁷ CEDAW, *supra* note 10, art. 18 (asserting that the Committee may request reports at any time).

³⁸ MAJA KIRILOVA ERIKSSON, REPRODUCTIVE FREEDOM 92 (2000).

³⁹ CEDAW, *supra* note 10, arts. 18, 20, 21.

⁴⁰ See Comm. on the Elimination of All Forms of Discrimination Against Women, *Contributions of the Committee to International Conferences: Report of the Committee on Progress Achieved in the Implementation of the Convention*, ¶ 305, U.N. Doc. CEDAW/C/1995/7 (Nov. 14, 1994) ("[B]y looking at the questions asked and issues raised over time by the Committee . . . its views about the nature of the States parties' obligations under the Convention will emerge."); see also Andrew C. Byrnes, *The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women*, 14 YALE J. INT'L L. 1, 46 (1989).

⁴¹ CEDAW, *supra* note 10, art. 28.

⁴² See U.N. Division for the Advancement of Women, *Declarations, Reservations and Objections to CEDAW*, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (last visited Nov. 21, 2006) [hereinafter CEDAW Reservations] (listing all States with reservations to CEDAW without reference to Peru).

⁴³ U.N. Division for the Advancement of Women, *State Parties to CEDAW*, <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited Nov. 21, 2006) (listing the signatories to CEDAW and the date that each State signed and ratified the treaty).

⁴⁴ See CONST. PERU arts. 55–57.

⁴⁵ CEDAW, *supra* note 10, arts. 12, 14.

States parties shall take all appropriate measures to eliminate discrimination . . . [and] shall ensure, on a basis of equality of men and women . . . [t]he same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights. . . .⁴⁶

This idea of reproductive freedom is premised on the notion that reproductive self-determination is essential for women's ability to exercise their other rights.⁴⁷ The Committee has stated that Article 16, along with Article 2, embodies the ultimate goal of the Convention.⁴⁸ As such, the Committee views any reservation to Article 16 with concern and as contrary to the provisions of the Convention.⁴⁹

2. CEDAW-Optional Protocol

In 1999, the Committee expanded the treaty to include an Optional Protocol, which created two provisions that strengthen the enforcement power of CEDAW.⁵⁰ First, a communication procedure allows individuals or groups to bring complaints to the Committee against States that are parties to both CEDAW and the Optional Protocol.⁵¹ A second procedure allows the Committee to investigate countries where evidence of grave or systematic violations of CEDAW exists.⁵² Unlike CEDAW, the Optional Protocol does not allow for reservations. Peru ratified it on April 9, 2001.⁵³

⁴⁶ *Id.* art. 16(1).

⁴⁷ See Paula Abrams, *Reservations About Women: Population Policy and Reproductive Rights*, 29 CORNELL INT'L. L.J. 1, 21 (1996).

⁴⁸ U.N. Division for the Advancement of Women, Reservations to CEDAW, <http://www.un.org/womenwatch/daw/cedaw/reservations.htm>.

⁴⁹ *Id.*

⁵⁰ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Oct. 6, 1999, 2131 U.N.T.S. 82, U.N. Doc. A/RES/54/4 (Oct. 15, 1999) [hereinafter CEDAW-OP.]

⁵¹ *Id.* arts. 2–7. See also U.N. Division for the Advancement of Women, Optional Protocol (Decisions/Views) <http://www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm> (last visited Nov. 16, 2006) (showing that since the Optional Protocol's ratification, only six communications have been brought before the Committee).

⁵² CEDAW-OP, *supra* note 50, art. 8.

⁵³ *Id.* art. 17; U.N. Division for the Advancement of Women, Signatures to and Ratification of the Optional Protocol, <http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm> (last visited Nov. 21, 2005) (listing the dates of signature and ratification for each country).

B. *Relevant Peruvian Laws*

The Peruvian Penal Code provides that a woman who causes herself to abort or allows another person to perform an abortion on her may be imprisoned for up to two years or sentenced to community service ranging from fifty-two to 104 days.⁵⁴ A person who performs an abortion with a woman's consent is subject to imprisonment from one to four years.⁵⁵ If the woman dies and the "person performing the abortion could have foreseen that outcome," the punishment increases to imprisonment to two to five years.⁵⁶ A person who performs a non-consensual abortion is subject to three to five years' imprisonment.⁵⁷ As with a consensual abortion, the woman's death constitutes an aggravating factor that can increase the sentence to five to ten years.⁵⁸ Rape may act as a mitigating factor that reduces the woman's penalty to three months imprisonment, but only if she reported the rape to the police, an investigation took place, and a doctor performed the abortion.⁵⁹

The law also requires doctors to report women who show signs of abortion to the appropriate authorities and to provide the police with information about abortion cases when the police request it.⁶⁰ The only exception to Peru's restrictive abortion policies provides that a doctor who carries out a consensual abortion will not be penalized if it is the "only way of saving the life of the pregnant woman or avoiding serious and permanent damage to her health."⁶¹

According to the Peruvian Health Code, human life and the right to life begin with conception.⁶² Therefore, pregnancy should never end unnaturally, unless there are unavoidable natural occurrences or the life or health of the mother is in danger.⁶³ The Health Code prohibits abortions performed on moral, social, or economic grounds, or as a

⁵⁴ Peru Report, *supra* note 18, ¶ 56.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Equality Now, Submission to the U.N. Human Rights Committee: Peru (July 2006) http://www.equalitynow.org/english/campaigns/un/unhrc_reports/unhrc_peru_en.pdf [hereinafter Equality Now] (emphasizing that the Code expressly excludes from the provisions for mitigation rape by a woman's husband).

⁶⁰ See THE CTR. FOR REPROD. LAW AND POL'Y, WOMEN'S RIGHTS IN PERU: A SHADOW REPORT 8 (2000), available at http://www.crlp.org/pdf/sr_peru_1000_eng.pdf [hereinafter A SHADOW REPORT].

⁶¹ Peru Report, *supra* note 18, ¶ 56 (noting that such an exception is referred to as a therapeutic abortion).

⁶² ABORTION POLICIES, *supra* note 17, at 33.

⁶³ *Id.*

means of birth control, but like the Penal Code, provides an exception for therapeutic abortions.⁶⁴ Peru's National Population Policy Law also excludes abortion as a method of family planning and guarantees the right to life from the time of conception.⁶⁵

III. FINDING THE RIGHT TO SAFE AND LEGAL ABORTIONS IN CEDAW

A. CEDAW Establishes a Women's Right to Have Access to Safe and Legal Abortions

Although CEDAW does not explicitly address a woman's right to obtain a safe and legal abortion, the treaty implicitly provides for the right within its terms.⁶⁶ This argument is partially supported by Malta's reservation to CEDAW, which stated that Malta did not consider itself bound by Article 16(1)(e) because "the same *may* be interpreted as imposing an obligation on Malta to legalize abortion."⁶⁷ Although Malta is the only State Party to have expressed concern that the treaty might include the right to an abortion, the work of the Committee makes it clear that CEDAW does include such a right.⁶⁸

In its work, the Committee has implied that the treaty includes the right to an abortion by expressing great concern about women's lack of access to safe and legal abortion services.⁶⁹ Importantly, the Committee

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See discussion in section III. *But see* ERIKSSON, *supra* note 38, at 317 (asserting that there is no "strong support for the proposition that there is a formally recognized enforceable right to abortion under international law"); CORINNE A. A. PACKER, *THE RIGHT TO REPRODUCTIVE CHOICE* 74 (1996) (concluding that international law does not include the right for women to obtain an abortion).

⁶⁷ See CEDAW Reservations, *supra* note 42 (emphasis added).

⁶⁸ See, e.g., U.N. Comm. on the Elimination of Discrimination Against Women, *Report of the Committee on the Elimination of Discrimination Against Women*, 21st Sess., ¶ 228, U.N. Doc. A/54/38/Rev.1 (1999) [hereinafter 21st Session Report] ("The Committee is especially concerned at the laws prohibiting and punishing any form of abortion."); U.N. Comm. on the Elimination of Discrimination Against Women, *Report of the Committee on the Elimination of Discrimination Against Women*, 17th Sess., ¶ 258, U.N. Doc. A/52/38/Rev.1 (1997) [hereinafter 17th Session Report] (noting with concern that illegality of abortions leads to unsafe abortions). *But see* PACKER, *supra* note 66, at 75 (arguing that the Malta reservation does not imply that States parties interpret CEDAW to include the right to abortion because over fifty State parties maintain strict laws against abortion and have not felt the need to make such a reservation); Julia L. Ernst et al., *The Global Pattern of U.S. Initiatives Curtailing Women's Reproductive Rights: A Perspective on the Increasingly Anti-Choice Mosaic*, 6 U. PA. J. CONST. L. 752, 785–86 (2004) (noting that the U.S. State Department feels that the treaty is neutral on the abortion issue).

⁶⁹ See, e.g., 21st Session Report, *supra* note 68, ¶ 228; 17th Session Report, *supra* note 68, ¶ 258.

has frequently stated that high maternal mortality rates due to unsafe abortions and restrictive abortion laws are indicative of violations of women's right to life.⁷⁰ The Committee further asserts that high maternal mortality rates and studies that show a large number of women "who would like to limit their family size, but lack access to or do not use any form of contraception" are indicators of State parties' "[p]ossible breaches of their duties to ensure women's access to health care."⁷¹ The Committee also routinely asks questions about restrictive abortion laws, the rate of illegal abortions, and the accessibility of safe abortions, indicating that they are concerned about women's lack of access to safe and legal abortions.⁷²

Moreover, the Committee regularly criticizes restrictive abortion laws with concern, noting "there is a close link between the number of abortions performed and the high maternal mortality rate, and . . . criminalizing abortion does not discourage abortions, but rather has the effect of making the procedure unsafe and dangerous for women."⁷³ The Committee has often asked State parties to review laws making abortion illegal and to revise punitive laws.⁷⁴

The Committee has maintained that children have a tremendous impact on women's lives and health and that "women are entitled to

⁷⁰ See, e.g., 21st Session Report, *supra* note 68, ¶ 56 (proposing that the "level of maternal mortality due to clandestine abortions may indicate that the Government does not fully implement its obligations to respect the right to life of its women citizens"); U.N. Comm. on the Elimination of Discrimination Against Women, *Report of the Committee on the Elimination of Discrimination Against Women*, 20th Sess., ¶ 393, U.N. Doc. A/54/38/Rev.1 (1999) [hereinafter 20th Session Report] (affirming the Committee's belief that legal provisions, which punish women who seek illegal abortions or treatment for abortions and doctors who perform them, "constitute a violation of the rights of women to health and life and of article 12 of the Convention").

⁷¹ 20th Session Report, *supra* note 70, ¶ 17.

⁷² See ERIKSSON, *supra* note 38, at 93 (finding that the Committee habitually inquires about abortion laws concerning abortion and the rate of illegal abortion); see, e.g., U.N. Comm. on the Elimination of Discrimination Against Women, *Report of the Committee on the Elimination of Discrimination Against Women*, 14th Sess., ¶¶ 425–426, U.N. Doc. A/50/38 (May 31, 1995) [hereinafter 14th Session Report] (showing that Committee Members asked about legislation relating to abortion as well as information on health statistics).

⁷³ U.N. Comm. on the Elimination of Discrimination Against Women, *Report of the Committee on the Elimination of Discrimination Against Women*, 19th Sess., ¶ 339, U.N. Doc. A/53/38/Rev.1 (1998); see also 21st Session Report, *supra* note 68, ¶ 147.

⁷⁴ See, e.g., 14th Session Report, *supra* note 72, ¶¶ 446–447 (urging Peru to suspend the penal punishment of women who have undergone an illegal abortion and to consider a more expansive interpretation of therapeutic abortion); U.N. Comm. on the Elimination of Discrimination Against Women, *Report of the Committee on the Elimination of Discrimination Against Women*, 15th Sess., ¶ 181, U.N. Doc. A/51/38 (1996) ("The Committee noted with interest the decriminalization of voluntary interruption of pregnancy and the observance of confidentiality in counselling [sic] women who may or may not opt for it.").

decide on the number and spacing of their children,”⁷⁵ and has insisted that governments must not limit childbearing decisions.⁷⁶ The Committee has further emphasized that State parties should take action to “prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control.”⁷⁷

The nature and frequency of the Committee’s questions, recommendations, and expressions of concern about clandestine abortions and women’s lack of access to safe and legal abortions reveal that CEDAW implicitly provides for such a right.⁷⁸

B. Peru’s Failure to Provide for Safe and Legal Abortions Violates CEDAW

The large number of Peruvian women who would like to control the number of children they have and the high rate of clandestine abortions in Peru are indicators that Peru has breached its obligations under CEDAW.⁷⁹

The Government’s maintenance of restrictive rules on abortion forces women to bear the burden of unwanted pregnancies and creates discrimination.⁸⁰ First, forced pregnancy only affects women and is not a burden that men must bear. Second, there is a clear discriminatory effect based on social status in that only five percent of urban women with financial resources in Peru will suffer serious complications from unsafe abortions, whereas almost half of women living in extreme poverty will suffer complications.⁸¹ Peruvian law also discriminates against

⁷⁵ U.N. Comm. on the Elimination of Discrimination Against Women, *General Recommendation 21: Equality in Marriage and Family Relations* (13th Sess.), ¶ 21, U.N. Doc. A/49/38 at 1 (1994).

⁷⁶ *Id.* ¶ 22.

⁷⁷ U.N. Comm. on the Elimination of Discrimination Against Women, *General Comment 19: Violence Against Women* (39th Sess.), ¶ 24(m), U.N. Doc A/47/38 (1994) [hereinafter General Comment 19].

⁷⁸ See e.g., 14th Session Report, *supra* note 72, ¶¶ 446-47.

⁷⁹ See ABORTION POLICIES, *supra* note 17, at 32.

⁸⁰ See generally FERRANDO, *supra* note 11.

⁸¹ See Chavez, *supra* note 24 (recognizing that forty-four percent of Peruvian women live in extreme poverty); FERRANDO, *supra* note 11, at 20, 22 (indicating that abortion among rural women is infrequent and access to healthcare is dependent on women’s financial means and place of residence, and explaining that 44% percent of women who suffer complications from clandestine abortions are poor rural women, 27% are poor urban women, 24% are rural women who are not poor, and 5% are urban women who are not poor).

married women.⁸² If a woman is raped by her husband and has an abortion, she may be sentenced to two years in prison.⁸³ However, if a woman is raped by someone other than her husband and has an abortion, she may only be sentenced to three months in prison.⁸⁴

Peru also continues to require doctors to report women who show signs of abortion to the police, even though the Committee has stated that such confidentiality violations act as barriers to health care and infringe on a women's right to health care under the treaty.⁸⁵ Additionally, by criminalizing abortion, Peru has further restricted women's access to health care because "laws that criminalize medical procedures only needed by women punish women who undergo those procedures."⁸⁶ For the aforementioned reasons, Peru's abortion policies and practices are currently in violation of CEDAW.

CONCLUSION

Peru's restrictive abortion law and its high rate of clandestine abortions have created a significant crisis in Peru that affects the life and health of millions of women. Unfortunately, the Peruvian government is not giving proper attention to this problem. Implicit in the CEDAW treaty is the right to obtain safe and legal abortions and Peruvian women should assert their claim to this right through the complaint procedure available in Optional Protocol. This could be an important first maneuver not only for Peruvian women, but also for women in similar situations around the world.

⁸² Peru Report, *supra* note 18, ¶ 56; Equality Now, *supra* note 59.

⁸³ Peru Report, *supra* note 18, ¶ 56; Equality Now, *supra* note 59.

⁸⁴ Peru Report, *supra* note 18, ¶ 56; Equality Now, *supra* note 59.

⁸⁵ A SHADOW REPORT, *supra* note 60, at 8; See U.N. Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 24: Women and Health*, (20th Sess.), ¶¶ 11, 22, U.N. Doc. A/54/38 (1999) [hereinafter *General Recommendation 24*] (asserting that barriers to health care services include lack of confidentiality requirements that result in women being less willing to seek medical care for incomplete abortions).

⁸⁶ *General Recommendation 24*, *supra* note 85, ¶ 14.