

## EDITORIAL

1. Physician Specialist in Gynecology and Obstetrics, Consultorios El Golf, Lima, Peru. President of the Peruvian Society of Obstetrics and Gynecology. Permanent Advisor of the Hipolito Unanue Institute Foundation, Lima, Peru. Former Vice Chair of the Peru Section of the American College of Obstetricians and Gynecologists

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**Corresponding author:**

Dr. Manuel Antonio Ciudad-Reynaud

✉ antoniociudadreynaud@hotmail.com

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# About Bill 1520/2021-CR of the Congress of the Republic of Peru

## Acerca del Proyecto de Ley 1520/2021-CR del Congreso de la República del Perú

Manuel Antonio Ciudad-Reynaud<sup>1</sup>

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The Sociedad Peruana de Obstetricia y Ginecología (SPOG) together with the United Nations Population Fund (UNFPA), the Joint United Nations Program on HIV/AIDS (UNAIDS) and the Office of the High Commissioner for Human Rights (OHCHR) drafted a technical legal opinion in the framework of the parliamentary debate on bill 1520/2021-CR, which proposes the law that promotes the protection of the pregnant mother's pregnancy, the unborn child, and their family environment.

This document was sent to the President of the Board of Directors of the Congress of the Republic for his consideration, by involving the Minister of Health, the Minister of Women and Vulnerable Populations, the Ombudsman's Office and the President of the Commission of Women and Family of the Congress of the Republic in this initiative.

The main objective of this document, the abstract of which is presented in this editorial, was to provide technical legal information about the relevant standards of International Human Rights Law related to the general obligation of States to provide girls, adolescents, and women with high quality sexual and reproductive health services, including access to therapeutic abortion.

Likewise, the technical position of UNFPA and SPOG regarding access to sexual and reproductive health services is grounded in the framework provided by the International Conference on Population and Development (ICPD). Indeed, the most recent edition of the ICPD Action Program (2014) states:

- i. That States should eliminate the need for abortion by providing universal access to comprehensive sexuality education and sexual and reproductive health services, including (a) the timely provision of emergency contraception and male and female condoms, (b) the promotion of gender equality, and (c) the protection of women and girls from gender-based violence (paragraphs 6.15 and 8.35).
- ii. That States should remove legal barriers that prevent women and girls from accessing safe abortion - including by reviewing existing legislation - to safeguard their lives and integrity and, where abortion is legal, ensure that all girls, adolescents and women have access to safe and quality abortion services (paragraphs 7.6 and 7.24); and
- iii. That States should implement concrete measures to reduce abortion-related complications and deaths, especially by providing non-discriminatory access to post-abortion care and ensuring that all providers offer quality care to all girls, adolescents and women (paragraphs 8.25 and 8.26).



The aforementioned Report mentions that the approval of Bill No. 1520/2021-CR hinders free access to therapeutic abortion by girls, adolescents and women.

It is recalled that on June 27, 2014, through Ministerial Resolution No. 486-2014/MINSA, the Peruvian State approved the National Technical Guide for the Standardization of the Procedure for the Comprehensive Care of the Pregnant Woman in the Voluntary Interruption for Therapeutic Indication of Pregnancy under 22 weeks with informed consent (IVITE Guide, for its acronym in Spanish) in the framework of the provisions of Article 119° of the Criminal Code. This document seeks to guarantee the pregnant woman voluntary access to a therapeutic abortion when the pregnancy puts her life at risk or generates a very serious and permanent damage to her health.

A systematic reading of the Bill and its explanatory memorandum, as well as its opinions and ruling, shows that the legislative proposal contravenes Article 119 of the Penal Code and hinders the effective application of the IVITE Guide. This scenario violates several obligations emanating from International Human Rights Law and relevant to Peru regarding the access of girls, adolescents and women to therapeutic abortion.

When reviewing articles and the explanatory memorandum of the Bill, the first preamble and the opinion, it can be seen that the texts coincide in stating that the term “unborn child” is equivalent to “conceived”, understanding conception as “the beginning of human life from fertilization” which is subject to the fundamental right to life”.

The Bill then recognizes the right to health and well-being of the pregnant woman only to the extent that the birth of the conceived child is guaranteed first. As we will see below, provisions of this type disregard standards clearly established in international human rights law to guarantee the right of access of girls, adolescents and women to a therapeutic abortion when their life or health is at serious risk.

As of 2022, there is a clear standard in international human rights law requiring States to decriminalize abortion. From the universal system side, treaty monitoring bodies and special pro-

cedures have repeatedly stated that States have a general obligation to ensure access to legal abortion, especially when seeking to safeguard the health and life of pregnant women. In Peru, safe and legal abortion is therapeutic abortion.

It is worth noting that -in the context of the decision adopted by the Supreme Court of the United States of America overruling the precedent of the Roe v. Wade case- different special procedures stated with concern that restrictions on access to legal abortion generate extremely high risks to the life and health of girls, adolescents and women.

In 2005, the Human Rights Committee found the Peruvian State responsible for the violation of the human rights of K.L., a minor who was prevented from terminating a life-threatening pregnancy. In its decision, the committee concluded that K.L. did not have adequate recourse to access therapeutic abortion services, which led her to experience severe psychological suffering. This was also the first time that the committee noted that the Peruvian state had “an obligation to take measures to prevent similar violations in the future”.

In 2013, the Human Rights Committee again pronounced itself on the situation in Peru, this time in its concluding observations. There, the committee expressed its concern about “the lack of a national protocol regulating the practice of therapeutic abortion”. It therefore urged the Peruvian State to rapidly adopt a protocol or guide to regulate access to this health service. By that time, almost a decade had passed since the pronouncement in the K.L. case.

In the International Human Rights Law, there is a clear standard that obliges the Peruvian State to decriminalize abortion and to guarantee free access to it, especially when the life or health of the pregnant woman is at serious risk. Furthermore, in the case of Peru, the universal system has repeatedly expressed its deep concern about the barriers faced by girls, adolescents and women in the country when they request a therapeutic abortion.

Therefore, under this framework, the provisions developed in articles 2, 4, 5 and 6 of Bill No. 1520/2021-CR, its precepts and opinion would not comply with the international obligations as-



sumed by Peru to guarantee unrestricted access to therapeutic abortion and, therefore, would affect the right to life and sexual and reproductive health of girls, adolescents and women in the country.

Possible barriers to access to therapeutic abortion may also lead to an increase in teenage pregnancies, maternal deaths, and clandestine abortions in Peru.

In the last two years alone, various Peruvian government agencies have published worrying figures on underage pregnancies and maternal mortality.

For example, the Live Birth Certificate Registration System (CNV, for its acronym in Spanish) of the Ministry of Health (MINSa, for its acronym in Spanish) indicated that the year 2020 had 48,546 births to mothers under 19 years of age, of which 97.6% (47,388 cases) were adolescents between 15 and 19 years of age. Of particular concern is that the remaining 2.4% (1,158 cases) corresponded to girls aged 14 or younger.

By 2021, MINSa reported a total of 1,437 births from pregnancies of girls up to 14 years of age, which represents an increase of 24% over 2020. As of May 2022, the figures have reached 8,290 births to adolescent mothers.

In relation to maternal deaths, the National Center for Epidemiology, Prevention and Disease Control (CDC) of MINSa recorded 493 maternal deaths in 2021. For that year, one out of every 11 maternal deaths (9.1%) occurred in adolescents before the age of 20. Likewise, during the first half of 2022, 159 maternal deaths have already been recorded. So far this year, one out of every 9 maternal deaths (11.3%) corresponds to women under 20 years of age.

International Human Rights Law has warned that there is a direct relationship between the barriers that impede access to therapeutic abortion and

the increase in the number of underage pregnancies, maternal deaths, and clandestine abortions. The universal system has also pointed out on different occasions that this relationship is particularly worrisome in the Peruvian case.

Therefore, under this framework, if Bill No. 1520/2021-CR is approved, the worrisome rates already existing in Peru in these matters could increase significantly.

This situation could end up affecting in a greater way girls, adolescents and women in vulnerable conditions in the country.

Therefore, it is considered that:

1. Bill No. 1520/2021-CR (Articles 2, 4, 5 and 6) hinders free access to therapeutic abortion for girls, adolescents and women whose life and health are at serious risk, the Peruvian State would be violating international obligations that require it to (i) remove all legal and factual obstacles to access to abortion, (ii) ensure that health personnel know and know how to apply the IVITE Guide and (iii) disseminate to the general public about the legality of therapeutic abortion and the guidelines that guarantee it.
2. Bill No. 1520/2021-CR places barriers to free access to therapeutic abortion, the Peruvian State could provoke an increase in the number of underage pregnancies, maternal deaths, and clandestine abortions in the country. This situation would also affect mainly girls, adolescents and women in the country who are in a situation of greater vulnerability.

The document concludes that it is respectfully expected that the legal standards binding Peru can be considered by the Legislative Branch when analyzing Bill No. 1520/2021-CR.

Lima, September 6, 2022.