

Status of Human Rights in Peru for the 42nd Session of the Universal Periodic Review

Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding human rights violations in the Republic of Peru (Peru) for the 42nd Session of the Universal Periodic Review (UPR).

Background

2. Peru is located in western South America and borders the Pacific Ocean.¹ The country has an estimated population of 32.2 million people.² The country is predominately Christian with 60% of the population identifying as Roman Catholic, 14% as Christian, 21% as unspecified, 4% as having no religion, and 0.3% as other.³

3. Peru's previous UPR was on November 8, 2017.⁴ As a result of the review, Peru received 181 recommendations, 176 of which Peru supported.⁵ One recommendation made by Colombia, and supported by Peru, was that the government "[s]tep up measures to combat trafficking and smuggling of persons, especially trafficking of children and establish the necessary measures for the prevention, investigation and punishment of persons or groups involved in this crime."⁶ It was also recommended by Slovenia, and supported by Peru, that the government "[r]eview its restrictive interpretation of therapeutic abortion and decriminalize[e] abortion in cases of rape, incest, and sever[e] fetal impairment."⁷ There were no recommendations made regarding religious freedom.⁸

Legal Framework

Human Trafficking

4. Under Article 2 (15) of the Constitution of Peru, "[e]very person has the right . . . [t]o work freely, in accordance with the law."⁹ Additionally, under Article 23, "[n]o one is obliged to work without pay or without his free consent."¹⁰ Furthermore, under Article 24, a worker is entitled to: fair compensation, payment of wages and social benefits, and State regulation of minimum wages.¹¹

5. Article 129-A of the Law Against the Treatment of People and the Illicit Trafficking of Migrants Law No 28950 established the crime of human trafficking:

Article 129-A. Treatment of persons

1. The one who through violence, threat or other forms of coercion, deprivation of liberty, threat or other forms of coercion, deprivation of liberty fraud, deception, abuse of power or a situation of vulnerability, granting or receiving payments or any benefit, captures, transports, transfers, hosts, receives or retains another, in the territory of the Republic or for their departure or entry from the country for exploitation purposes, is punished with imprisonment for not less than eight not more than fifteen years.

2. For the purposes of subsection 1, the exploitation purposes of human trafficking includes, among others, the sale of children or adolescents, prostitution and any form of sexual exploitation, slavery or practices similar to slavery, any form of labor exploitation, begging, forced labor or services, servitude, extraction or trafficking of organs or somatic tissues or their human components, as well as any other analogous form of exploitation.

3. The recruitment, transportation, transfer, harboring, reception or retention of a child or adolescent for the purpose of exploitation is considered human trafficking even when none of the means provided for in subsection 1 is used.¹²

6. Peru is also a party to the Convention on the Rights of the Child (CRC).¹³ Under Article 32, Section 1 of the CRC, States Parties recognize the right of children to be protected from economic exploitation, hazardous work or work interfering with the child's education or harmful to the child's overall health. Section 2 provides that States Parties shall take measures to ensure the implementation of the present article, particularly States Parties shall establish provisions for: a minimum age(s) for employment eligibility; appropriate regulation of hours and employment conditions; and appropriate penalties or other sanctions to ensure the effective enforcement of the present article.¹⁴ Article 34 provides that States Parties shall protect children from all forms of sexual exploitation and abuse. For these purposes, State Parties shall take all appropriate measures to prevent the: inducement or coercion of a child to engage in illegal sexual activity; exploitative use of children in prostitution or other illegal sexual practices; and exploitative use of children in pornography.¹⁵

7. Furthermore, Article 8 of the International Covenant on Civil and Political Rights (ICCPR), of which Peru is a party, holds that “[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude.”¹⁶ Peru also has a responsibility to uphold pro-life principles enshrined in other international agreements such as the UN Charter, Universal Declaration of Human Rights (UDHR) and the 1994 Cairo Conference on Population and Development.

Abortion

8. Under Article 2 (1) of the Constitution of Peru, “[e]very person has the right: [t]o life, his identity, his moral, physical, and physical integrity, and his free development and well-being. The unborn child is a rights-bearing subject in all cases that benefit him.”¹⁷

9. In Peru, only “therapeutic” abortions – abortions that are necessary to save the life of the mother – are legal.¹⁸ This restriction of abortion is evidence of Peru's value for innocent human life, and its protections for the lives of the preborn are codified within the Peruvian Penal Code.

Under Article 119 of the Penal Code, “[a]bortion practiced by a physician with the consent of the pregnant woman or her legal representative, if applicable, is not punishable when it is the only means to save the life of the woman or to avoid serious and permanent damage to her health.”¹⁹

10. Peru’s laws regarding abortion reflect the principles enshrined within the International Covenant on Civil and Political Rights (ICCPR), to which Peru is a party: “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”²⁰ Peru also has a responsibility to uphold pro-life principles enshrined in other international agreements such as the UN Charter, Universal Declaration of Human Rights (UDHR) and the 1994 Cairo Conference on Population and Development.

Human Trafficking

11. Peru serves as a source, destination and transit country for sex and labor trafficking of men, women and children.²¹ In 2020, for example, 394 cases of human trafficking were reported to police; 245 of these cases dealt with sexual exploitation.²² However, this “data only covers the number of reported cases and is a fraction of the estimates of people at risk of trafficking, including for sexual purposes in Peru.”²³ This lack of reporting occurs for multiple reasons, among which is the remote nature of the parts of Peru in which sex and labor trafficking are prevalent:

Traffickers target villages around the tourist hotspot of Cusco, taking their victims hundreds of miles away to Peru’s Amazon rainforest region where illegal gold mining is rife.

In the vast jungle area of Madre de Dios, women and girls are sex trafficked in bars and brothels frequented by miners, while men and boys suffer labour abuses in the open-pit mines operating without a license, prosecutors and campaigners say.²⁴

12. Women and girls are targets for sex trafficking.²⁵ “Often they are deceived with fake offers of work and then on arrival are forced into prostitution in brothels and bars.”²⁶ One victim shared her story of how she was sent by her aunt to “work as a waitress in one of the scores of bars along the highway cutting through the Amazon jungle region of Madre de Dios, in the heart of Peru’s illegal gold mining region.”²⁷ She quickly found herself working at a bar that doubled as a brothel.²⁸ As she stated in her story, “[a]t the bar, I was taught to wear make-up, high heels and dress accordingly At first it was just drinking and dancing with the miners but then it was sex. I was ashamed of myself.”²⁹ Her story is just one example of the many women and girls who are trapped in similarly horrific situations.³⁰ There are estimates that at least 400 bars are operating in Madre de Dios in which children are forced to work 13-hour days in addition to being sexually exploited.³¹

13. Regions like Madre de Dios present a difficult challenge for authorities trying to combat human trafficking, as the mining operations taking place in them that create a demand for sex and labor workers are “heavily concentrated in remote regions.”³² In addition to difficulties accessing remote regions to investigate cases of trafficking, there are also reports of police officers being complicit in human trafficking. For example, there have been instances of “police taking bribes from traffickers or turning a blind eye to trafficking.”³³ In addition, “[p]olice and

investigators commonly conflate prostitution and sex trafficking, leading to unreliable data.”³⁴ Moreover, when victims are found and rescued they often do not even know the names of their abusers and will even lie about their age to investigators.³⁵ All of these factors contribute to the difficulty in effectively combatting human trafficking.

14. In February 2022, a joint operation between U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), and the Peruvian National Police (PNP) Human Trafficking Investigations Division led to the rescue of four trafficking victims and the arrests of three suspects in La Pampa, Madre de Dios, Peru.³⁶ Two of the suspects “were arrested for Trafficking in Persons/Sexual Exploitation under Peruvian law.”³⁷

15. In September 2019, Peruvian authorities dismantled a human trafficking network that was operating in Madre de Dios, a region notorious for carrying out illegal mining operations.³⁸ “The female trafficking victims were lured by promises of work, then exploited in night clubs in the cities of Lima, Callao, Madre de Dios, Trujillo, Huánuco and Ayacucho”³⁹ One of the individuals arrested was Commander Manuel Morillo Cribilleros, who was the chief of the Criminal Investigation Division,⁴⁰ as “he was accused of providing information about police operations to the network.”⁴¹

Abortion

16. Despite the fact that it was recommended during the previous UPR that Peru “[r]eview its restrictive interpretation of therapeutic abortion and decriminaliz[e] abortion in cases of rape, incest, and sever[e] fetal impairment,” Peru has remained steadfast in maintaining its protections for the lives of both women and preborn babies. It is critical for the lives of many innocent human beings that Peru remain steadfast in upholding its protections.

17. Peru has demonstrated its high regard for the value of innocent human life, and we applaud Peru for this strong stance, and it is not alone in doing so. There is no international right to abortion, and this can be seen when looking at each country’s abortion legislation. While Peru is far from alone in valuing innocent human life, as a vast majority of countries do, it does have stronger protections in place than many countries. Currently, a majority of the world has strict limitations when it comes to taking the life of a preborn baby. Out of the 193 member states of the U.N., an overwhelming majority (112) of them have strict limits on abortion: twenty countries prohibit abortion altogether; forty-two countries only permit abortion where the mother’s life is at risk; and fifty only allow abortion to preserve the health of the mother. Even in the sixty-two countries that have varying gestational limits for on-demand abortions, the majority of these (53) have a gestational limit of twelve weeks or less, while some allow only up to fourteen weeks, or somewhere in-between. Only eleven countries allow abortion throughout pregnancy for social and economic grounds, including for rape, incest, or fetal impairment. Only two countries broadly allow pre-viability abortion. And finally, there are only six extreme outliers among the nations, including China and North Korea, which do not have a law indicating any gestational limit on abortion, though their regulatory mechanisms vary.⁴²

18. While abortion laws and regulations vary across nations, what most countries do agree on is that the state has an interest, not only in protecting women and girls, but also in protecting the lives of all their citizens – including the unborn.⁴³ This interest is enshrined in national and international documents alike, as well as in the legislation of individual countries. Peru is no

exception, as its constitution provides that “[e]very person has the right: [t]o life.”⁴⁴

19. For instance, the UDHR states that “recognition of the inherent dignity and of the equal and inalienable rights of *all* members of the human family is the foundation of freedom, justice and peace in the world,” and that “[e]veryone has the right to life”⁴⁵ Additionally, Article 6 of the ICCPR likewise states that “[e]very human being has the inherent right to life. This right shall be protected by law.”⁴⁶ And the preamble of the UN Charter states that “the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person”⁴⁷ It is important to note that, while virtually all international treaties contain provisions for the protection and promotion of the right to life, not one contains a “right to abortion.” Furthermore, since the 1994 Cairo Conference on Population and Development, U.N. Member States have had an affirmative commitment to “reduce the recourse to abortion”⁴⁸ and to “take appropriate steps to help women avoid abortion, *which in no case should be promoted as a method of family planning.*”⁴⁹

20. Peru obviously recognizes that abortion is one of the gravest of all offenses against human life and justice because it entails the deliberate killing of an innocent human being. Any justification of abortion (aside from the extremely rare life vs. life situations where a mother is at risk of dying from continuing the pregnancy) fundamentally rests on the proposition that some members of the human race do not have even the most basic of human rights, i.e., the right to life. That proposition is incompatible with international law, and Peru’s own laws, as discussed above. Moreover, the value of human life is not dependent upon the nature in which it begins, and the life of a preborn baby conceived by rape or incest is no less valuable and deserving of life than any other. Furthermore, babies born with disabilities, such as Down syndrome, are no less deserving of life than otherwise completely healthy babies. In fact, babies born with Down syndrome are capable of living long and otherwise healthy lives.⁵⁰ Additionally, the tests used to detect these abnormalities are not consistently reliable.⁵¹ As prenatal screenings are becoming more common, companies are trying to screen for more and more diseases and abnormalities. For example, studies found that a prenatal screening for Prader-Willi syndrome, a genetic multisystem disorder, returned an incorrect positive result 90% of the time.⁵²

21. Furthermore, abortion can also cause physical harm to the mother, beyond the harm (i.e., death) to the preborn child. This can result directly from the procedure itself (e.g., perforation of the uterus, laceration of the cervix), from the deprivation of the health benefits of continuing pregnancy (e.g., eliminating the protective effect of a full-term pregnancy against breast cancer),⁵³ or by masking other dangerous symptoms (e.g., a woman with an infection or an ectopic pregnancy may believe her symptoms are merely normal after-effects of abortion, leading her to delay seeking medical help).⁵⁴ Remarkably, although completely partisan and lacking in legal authority, the World Health Organization’s newly published 2022 “Abortion care guideline,”⁵⁵ also acknowledges the complications of abortion.

22. In addition, post-abortive women experience a host of negative side-effects including:

- Depression
- Guilt/Remorse
- Self-hatred/anger at self/self-loathing/feelings of worthlessness/unworthy of love
- Shame

- Addiction, alcohol or drug abuse
- Regret
- Self-destructive behaviors including promiscuity, self-punishment, and poor choices
- Low self-esteem
- Anxiety/fear
- Suicidal/suicidal thoughts/wanting to die/self-harm/dangerous risks/suicidal attempts.⁵⁶

All of these factors contribute to the negative and even devastating effects abortion has on women and girls. Clearly, there is no reason that Peru should alter the protections for women, girls, and preborn babies that it has in place, as these protections are well within its right – indeed, even its duty, as an independent nation to protect the lives of its citizens.

Recommendations

23. In order to effectively combat human trafficking, the Peruvian government must allocate resources and training for authorities to be able to effectively travel to remote areas in order to investigate cases of human trafficking and sexual exploitation. Adequate training for law enforcement is critical for them to be able to identify cases of human trafficking, so they can provide aid to the victims and effectively prosecute the perpetrators. Furthermore, measures must be taken to punish and investigate corrupt government agents who are complicit in human trafficking. Finally, we want to commend Peru for its continued commitment to the protection of innocent human life and for its courage to stand against any minority pressure to change that position.

¹ *Peru*, WORLD FACTBOOK (May 15, 2022), <https://www.cia.gov/the-world-factbook/countries/peru/>.

² *Id.*

³ *Id.*

⁴ *Universal Periodic Review – Peru*, UNHRC, <https://www.ohchr.org/en/hr-bodies/upr/p-eindex>.

⁵ *UPR of Peru – Thematic List of Recommendations*, UNHRC, <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session28/PE/MatriceRecommendationsPeru.docx>.

⁶ *Id.* at A/HRC/37/8/Add.1.

⁷ *Id.*

⁸ *Id.*

⁹ Constitution of Peru art. 2 (15), https://www.constituteproject.org/constitution/Peru_2021.pdf?lang=en.

¹⁰ *Id.* art. 23.

¹¹ *Id.* art. 24.

¹² Ley Contra la Trata de Personas y el Tráfico Ilícito de Migrantes art. 129-A, https://www.limaeasy.com/index.php?option=com_jreviews&format=ajax&url=media/download&m=kt66Y&1653076187454 (unofficial internal translation).

¹³ *Ratification Status for Peru*, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx (last visited June 30, 2022).

¹⁴ Convention on the Rights of the Child, G.A. Res. 44/25, art. 32 (Nov. 20, 1989),

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_44_25.pdf.

¹⁵ *Id.* at art. 34.

¹⁶ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 6 I.L.M. 368 (1976), 999 U.N.T.S. 171, art. 8.

¹⁷ Constitution of Peru art. 2 (1), https://www.constituteproject.org/constitution/Peru_2021.pdf?lang=en.

¹⁸ *V. Obstacles to Therapeutic Abortion*, HRW, https://www.hrw.org/reports/2008/peru0708/5.htm#_ftn34.

- ¹⁹ Peruvian Penal Code art. 119, https://www.hrw.org/reports/2008/peru0708/5.htm#_ftn34 (unofficial translation).
- ²⁰ ICCPR, at art. 6.
- ²¹ *Turn on the Light Human Trafficking in Peru*, CATHOLIC RELIEF SERVICES, <https://www.crs.org/human-trafficking-peru>.
- ²² *Peru: A Need to Better Protect Indigenous Children and Prevent Domestic Trafficking*, ECPAT, <https://ecpat.org/story/peru-eco/>.
- ²³ *Id.*
- ²⁴ Anastasia Moloney, *In Peru's Highlands, Student Radio Show Sounds Alarm on Trafficking*, REUTERS (Jan. 17, 2020), <https://news.trust.org/item/20200117052733-9ps2i>.
- ²⁵ *Peru: A Need to Better Protect Indigenous Children and Prevent Domestic Trafficking*, ECPAT, <https://ecpat.org/story/peru-eco/>.
- ²⁶ *Id.*
- ²⁷ Stephania Corpi, *Superstition Drives Child Sex Trafficking in Peru's Gold Rush*, REUTERS (Aug. 9, 2018), <https://www.reuters.com/article/us-peru-humantrafficking-youth/superstition-drives-child-sex-trafficking-in-perus-gold-rush-idUSKBN1KV00D>.
- ²⁸ *Id.*
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ *Id.*
- ³² *On the Trail of Illicit Gold Proceeds: Strengthening the Fight Against Illegal Mining Finances*, DEP'T AGAINST TRANSNATIONAL ORGANIZED CRIME, 17 (Nov. 2021), <https://www.oas.org/en/sms/dtoc/docs/On-the-trail-of-illicit-gold-proceeds-Peru-case.pdf>.
- ³³ Julie Anne Laser-Maira et al., *Human Trafficking in Peru: Stakeholder Perceptions of How to Combat Human Trafficking and Help Support its Survivors*, vol. 6, no.1 34-40, 38 (June 2018), http://jsswnet.com/journals/jssw/Vol_6_No_1_June_2018/5.pdf.
- ³⁴ *Id.*
- ³⁵ Stephani Corpi, *Superstition Drives Child Sex Trafficking in Peru's Gold Rush*, REUTERS (Aug. 9, 2018), <https://www.reuters.com/article/us-peru-humantrafficking-youth/superstition-drives-child-sex-trafficking-in-perus-gold-rush-idUSKBN1KV00D>.
- ³⁶ *US – Peru Human Trafficking Operation Leads to the Recovery of 4 Sex Trafficking Victims*, ICE (Feb. 15, 2022), <https://www.ice.gov/news/releases/us-peru-human-trafficking-operation-leads-recovery-4-sex-trafficking-victims>.
- ³⁷ *Id.*
- ³⁸ Laura Zuñiga, *Peru's Illegal Mining Hotspot Has Other Crimes to Worry About*, INSIGHT CRIME (Sept. 6, 2019), <https://insightcrime.org/news/brief/human-trafficking-la-pampa-peru/>.
- ³⁹ *Id.*
- ⁴⁰ *Id.*
- ⁴¹ *Id.*
- ⁴² *The World's Abortion Laws*, CTR. FOR REPROD. RTS. (Feb. 23, 2021), https://reproductiverights.org/sites/default/files/WALM_2021update_V1.pdf.
- ⁴³ *Id.*
- ⁴⁴ Constitution of Peru art. 2 (15), https://www.constituteproject.org/constitution/Peru_2021.pdf?lang=en (emphasis added).
- ⁴⁵ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, preamble, art. 3 (Dec. 10, 1948) (emphasis added).
- ⁴⁶ ICCPR, *supra* note 16 (emphasis added).
- ⁴⁷ U.N. Charter preamble.
- ⁴⁸ Report of the International Conference on Population and Development, Cairo A/CONF/F.171/13/Rev.1, 58 (5-13 Sept. 1994), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/231/26/IMG/N9523126.pdf?OpenElement>.
- ⁴⁹ *Id.* at 46 (emphasis added).
- ⁵⁰ *Data and Statistics on Down Syndrome*, CDC, <https://www.cdc.gov/ncbddd/birthdefects/downsyndrome/data.html> (last visited May 12, 2022).
- ⁵¹ *When They Warn of Rare Disorders, These Prenatal Tests Are Usually Wrong*, NEW YORK TIMES (Jan. 1, 2022), <https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>.
- ⁵² *Id.*
- ⁵³ See Justin D. Heminger, *Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco*, 54 CATH. U.L. REV. 1273, 1288-89 & nn.119 & 121 (2005).
- ⁵⁴ See generally *Physical Effects of Abortion: Fact Sheets, News, Articles, Links to Published Studies and More*, THE UNCHOICE, www.theunchoice.com/physical.htm (listing sequelae and referencing sources).

⁵⁵ *Abortion Care Guideline*, WORLD HEALTH ORGANIZATION & HUMAN REPRODUCTION PROGRAMME 79 (Mar. 8, 2022), <https://www.who.int/publications/i/item/9789240039483>.

⁵⁶ Priscilla K. Coleman, Ph.D., et al., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their Experiences*, JOURNAL OF AMERICAN PHYSICIANS & SURGEONS, Vol. 22 No. 4, p. 115, 116-17 (2017), <https://www.jpands.org/vol22no4/coleman.pdf>.