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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report highlights the burdensome restrictions on freedom of religion or belief imposed by the government in its attempts to curb the effects of the Covid-19 crisis. It also discusses why Peru should continue to respect the right to life and resist calls to liberalize its abortion laws amidst its high maternal mortality rate.

(a) Freedom of Religion or Belief

3. Article 2(3) of the 1993 Constitution of Peru guarantees freedom of religion or belief, stating, 'no one shall be persecuted on a basis of his ideas or beliefs' and 'public exercise of any faith is free, insofar as it does not constitute an offense against morals, or a disturbance of the public order.'¹
4. Under Article 50, the Constitution refers to the Catholic Church as an 'important element in the historical, cultural, and moral formation of Peru, and [the State] lends the church its cooperation.'²
5. Constitutional protections for freedom of religion or belief are further strengthened by Law No. 29.635 on Religious Freedom (hereinafter, the 'Law'). The Law significantly expands on the protections the Constitution affords to this fundamental freedom with a wide array of specific provisions related to the practise of religion, rooted in international law. Among these is Article 6(d), which provides that collective religious entities may 'freely exercise their ministry, practice their worship, hold meetings related to their religion and establish places of worship or meeting for religious purposes.'³
6. As of 2017, roughly 71% of Peruvians professed to practise Christianity. A closer look into the demographics of religious practice reveal that 60% identify as Catholic, 11% identify as Evangelical, 3% practise another religion, 4% do not practice any religion, and 22% are unspecified.⁴
7. In response to the COVID-19 crisis, the government's efforts to mitigate the impact of the virus resulted in undue restrictions on freedom of religion or belief. Throughout the first several months of the pandemic in 2020, churches in Peru remained closed.⁵ Conversely, neighbouring countries Ecuador⁶ and Bolivia⁷ reopened churches with capacity limitations in May and July respectively even as the impact of COVID-19 in

¹ 1993 Constitution of Peru, Article 2(3), https://www.constituteproject.org/constitution/Peru_2009?lang=en.

² 1993 Constitution of Peru, Article 50, *supra*, note 1.

³ ACN International, Religious Freedom in the World Report 2021, Peru <https://2018.religious-freedom-report.org/reports/pe/>.

⁴ Cultural Atlas, Peru <https://culturalatlas.sbs.com.au/peruvian-culture/peruvian-culture-religion>.

⁵ The Impact of the Church–State Model for an Effective Guarantee of Religious Freedom: A Study of the Peruvian Experience during the COVID-19 Pandemic (19 May 2021) <https://www.mdpi.com/2075-471X/10/2/40/html>.

⁶ Ecuador: Catholic Church prepares plan for gradual reopening (6 May 2020) <https://www.vaticannews.va/en/church/news/2020-05/ecuador-catholic-church-prepares-plan-for-gradual-reopening.html>.

⁷ Bolivia: Churches Reopen in Santa Cruz Amid Deconfinement (18 July 2020) <https://www.telesurenglish.net/news/bolivia-churches-in-santa-cruz-reopen--20200718-0006.html>.

these countries was similar to that of Peru⁸. It is understood that the government eventually allowed churches to reopen due to pressure from members of the legislature and the Inter-American Commission on Human Rights.⁹

8. Further, in April 2021, churches in several regions of Peru were forced to close their doors due to a surge in cases whereas other places of public accommodation such as restaurants and salons remained open with capacity restrictions.¹⁰

Freedom of Religion or Belief in International Law

9. Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of thought, conscience, and religion for everyone. Peru ratified the ICCPR in 1972.
10. Article 18(3) of the ICCPR states that, 'Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.'¹¹ Furthermore, as noted in General Comment 22 of the Human Rights Committee, 'restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.'¹²
11. Article 4(2) of the ICCPR specifically provides that States Parties may not derogate from their obligations under Article 18 even 'in time of public emergency which threatens the life of the nation.'¹³ Further, the Human Rights Committee's General Comment No. 29 states that, 'Even in times of most serious public emergencies, States that interfere with the freedom to manifest one's religion or belief must justify their actions by referring to the requirements specified in article 18, paragraph 3.'¹⁴
12. In April 2020, the Office of the United Nations High Commissioner for Human Rights extended guidance on the need for emergency measures to be limited in the context of COVID-19. The guidance suggested that mitigation limitations should be provided for by the law, necessary for the protection of one of the permissible grounds stated in the ICCPR, proportionate to the interest at stake, and should not discriminate contrary to the provisions of international human rights law.¹⁵

⁸ Our World in Data 'Daily new confirmed COVID-19 cases & deaths per million people' <https://ourworldindata.org/explorers/coronavirus-data-explorer?uniformYAxis=0&Interval=7-day+rolling+average&Relative+to+Population=true&Color+by+test+positivity=false&country=PER~ECU~BOL&Metric=Cases+and+deaths>.

⁹ S. Mosquera 'The Impact of the Church-State Model for an Effective Guarantee of Religious Freedom: A Study of the Peruvian Experience during the COVID-19 Pandemic' (19 May 2021) *Laws* 10(2), 40, <https://doi.org/10.3390/laws10020040>.

¹⁰ *Id.*

¹¹ International Covenant on Civil and Political Rights (ICCPR), Article 18(3), 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

¹² UN Human Rights Committee 'General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)' (30 July 1993) CCPR/C/21/Rev.1/Add.4, 8.

¹³ *Id.*, art 4(2).

¹⁴ UN Human Rights Committee, 'General Comment No. 29: Article 4 (States of Emergency)' (24 July 2001) CCPR/C/21/Rev.1/Add.11.

¹⁵ OHCHR 'Emergency measures and COVID-19: Guidance' (26 April 2020) <https://www.ohchr.org/en/documents/tools-and-resources/emergency-measures-and-covid-19-guidance>.

13. The restrictions Peru imposed warrant scrutiny as they plainly discriminated on the basis of freedom of religion or belief, as reflected by the prompt re-opening of places of public accommodation while churches remained closed.

(b) Right to Life

14. Article 2(1) of the Constitution of Peru affirms that everyone has a right, *inter alia* 'To life, his identity, his moral, psychical, and physical integrity, and his free development and well-being. The unborn child is a rights-bearing subject in all cases that benefit him.'¹⁶
15. Accordingly, abortion remains illegal in Peru, except in circumstances when the mother's life is in danger or when it is deemed necessary to protect the health of the mother. Penalties include imprisonment of up to two years in the case of a woman who consents to undergo an illegal abortion, and imprisonment up to four years for those who perform the procedure.¹⁷
16. In 2019, the Inter-American Court of Human Rights (IACHR) held that the morning after pill is not an abortifacient based on the conjecture that life begins at the 'nesting stage'. This ruling runs directly contrary to Peru's Constitutional Court's position, according to which the morning after pill.¹⁸
17. Developments such as the IACHR ruling contribute to pressure campaigns to legalize or loosen restrictions to abortion access in Peru. Citing the high maternal mortality rate in Peru, abortion advocates call for greater access to abortion as a means of reducing 'unsafe abortion'. These calls, however, are misguided.
18. Liberalizing abortion further will not make it safe. As stated by Guttmacher Institute, 'Changing the law [...] is no guarantee that unsafe abortion will cease to exist.'¹⁹
19. Indeed, women who receive abortions will still face poor conditions, the same ones faced by women who give birth and deal with similar complications, such as bleeding and infection. Thus, providing access to abortion will result in more women suffering from abortion complications.
20. Further, abortion can never be safe because it takes the life of the unborn child. Instead of giving in to pressure to liberalize abortion, Peru must focus on helping women get through pregnancy and childbirth safely, rather than helping them terminate their pregnancies.
21. The maternal mortality ratio in Peru was 88 maternal deaths per 100,000 live births in 2020, which is a very high rate in light of its status as a middle-income country.²⁰ Every maternal death is a tragedy. It devastates the woman's family, in particular the woman's children, and affects the entire community socially and economically. The high number of maternal deaths in Peru must be seen as an urgent human rights

¹⁶ 1993 Constitution of Peru, Article 2(1), *supra*, note 1.

¹⁷ Privacy International 'Country case-study: sexual and reproductive rights in Peru' (15 May 2020) <https://privacyinternational.org/long-read/3791/country-case-study-sexual-and-reproductive-rights-peru>.

¹⁸ *Id.*

¹⁹ See S. A. Cohen 'Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide' (2009) Guttmacher Policy Review, <http://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html>.

²⁰ UNICEF Multiple Indicator Cluster Surveys, Peru.

priority.

22. That being said, it should be acknowledged that almost all maternal deaths are preventable, particularly when skilled birth attendants are present to manage complications and the necessary medication is available, such as oxytocin (to prevent haemorrhage) and magnesium sulphate (to treat pre-eclampsia). Problems include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.²¹
23. The World Health Organization (WHO) recommends a minimum of eight prenatal visits with trained health workers, in order to prevent, detect, and treat any health problems.²² In 2019, an estimated 96 % of women in Peru were having a minimum of four visits.²³ However, a recent study observed that despite notable improvements over the last decade, wealth inequality in access to quality prenatal check-ups remained at roughly 26% in 2019, indicating a need to improve access to quality prenatal health care for women from poorer backgrounds.²⁴
24. Given the maternal health crisis in Peru, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

The Right to Life in International Law

25. A so-called international 'right to abortion' is incompatible with various provisions of international human rights treaties, in particular provisions on the right to life. Article 6(1) of the ICCPR states, 'Every human being has the inherent right to life.'²⁵
26. The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. Article 6(5) states that, 'the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.'²⁶ This clause must be understood as recognizing the unborn child's distinct identity from the mother and protecting the unborn child's right to life.
27. The *travaux préparatoires* of the ICCPR explicitly state, 'the principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.'²⁷ Similarly, other early UN texts note that the intention of the paragraph 'was inspired by humanitarian considerations and by consideration for the interests of

²¹ World Health Organization 'Fact Sheet No. 348: Maternal mortality' (19 September 2019) <https://www.who.int/en/news-room/fact-sheets/detail/maternal-mortality>.

²² WHO 'WHO recommendations on antenatal care for a positive pregnancy experience' (28 November 2016) <https://www.who.int/publications/i/item/9789241549912>, xvi.

²³ WHO 'Global Health Observatory - Peru' (2019) <https://www.who.int/data/gho/data/countries/country-details/GHO/peru?countryProfileId=db6bcbf7-776e-4740-a8da-6683a275366d>.

²⁴ E. Canto 'Inequalities in the Coverage and Quality of Prenatal Care in Peru, 2009-2019' (2 June 2022) PAHO 46(47), <https://doi.org/10.26633/RPSP.2022.47>.

²⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 6.

²⁶ *Id.*

²⁷ UN General Assembly 'Report of the Third Committee to the 12th Session of the General Assembly' (5 December 1957) A/3764, 18.

the unborn child.’²⁸

28. The protection of unborn life is also found through an ordinary reading of the preamble of the Convention on the Rights of the Child (CRC). Article 6 holds that ‘States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.’²⁹ Article 1 defines a child as ‘every human being below the age of eighteen years.’³⁰ This provides an upper limit as to who is a child but does not provide a lower limit on when the status of ‘child’ attaches. This is reinforced by the preamble, which asserts that ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth* [emphasis added].’³¹ Viewed in this context, both Articles 1 and 6 of the CRC indicate recognition and protection of the right to life of the unborn child.

(c) Recommendations

29. In light of the aforementioned, ADF International suggests that the following recommendations be made to Peru:

- a. Ensure that freedom of religion or belief is fully respected and that restrictions thereon are in strict compliance with relevant obligations under international human rights law, including during public health crises;
- b. Resist calls to liberalize abortion, and instead implement laws and policies aimed at safely getting mothers and babies through pregnancy and childbirth;
- c. Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health, with a focus on safely getting mothers and babies through pregnancy and childbirth.
- d. Improve health-care access for women from poor and/or rural backgrounds;

²⁸ UN General Assembly ‘Report of the Secretary-General to the 10th Session of the General Assembly’ (1 July 1955) A/2929, ch. VI, 10.

²⁹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art. 6.

³⁰ *Id.*, art. 1.

³¹ *Id.*, preamble.



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