



COUNTRY SECTION: Peru

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OVERVIEW OF THE LEGAL SYSTEM OF PERU

The constitutional principle and right to equality and non-discrimination has been enshrined in domestic legislation since the 1979 Political Constitution. Article 2 of the current 1993 Constitution recognises equality as a fundamental right and prohibits discrimination on the basis of sex, race, origin, religion, opinion or socio-economic status. Non-discrimination for reasons of pregnancy, gender identity or sexual orientation is not explicitly mentioned but can be inferred from an open 'catch-all clause that also prohibits discrimination in other areas.

The 1993 Constitution did not create any general provisions explicitly recognising the state's duty to adopt positive action measures (special temporary measures) to speed up the development and advancement of women so that they can compete on an equal footing with men (substantive equality). The only reference can be found in Article 191 of the Constitution (following the 2002 reform), which constitutionally guarantees gender representation in nominations for public posts, albeit only at the level of regional and local councils. It should, nonetheless, be noted that constitutional case law has repeatedly reaffirmed the constitutional nature of positive action measures in the context of the states role of guaranteeing and actively promoting substantive equality.¹

INTERNATIONAL INSTRUMENTS

The 1993 Political Constitution established that treaties concluded at supranational level – through the UN universal human rights system or the OAS inter-American human rights system – form part of the country's domestic legislation and may also be referred to as a source of interpretation. A Constitutional Court judgement of 25 April 2006 ruled that the international human rights treaties are of constitutional standing. Moreover, the provisions of the Constitutional Procedural Code stipulate that constitutionally-recognised laws must be interpreted not only in the light of the international treaties but also in the light of the decisions of the international courts, which at first sight would indicate a strong desire on the part of the state to protect and comply with international human rights standards.

Unfortunately, this normative framework of rights protection does not always translate into practice. The Peruvian state has a long tradition of quasi-schizophrenic behaviour that has resulted in the government making commitments at the international and inter-American levels

¹ See, among others, the judgements passed in Case No. 0016-2002-AI (legal reasons 11 and 12) and Case No. 2945-2003-AA/TC (legal reason 8).

based on one set of judgements, while acting differently, and even contrarily, at home. These conventions and protocols form part of the legal mandate for protecting and promoting human rights, thus extending the scope of the state's obligations and, as they evolve over time, they are contributing to strengthening the meaning and interpretation of these rights.

United Nations System	Internal Implementing Regulation	Entry into force
International Covenant on Civil and Political Rights	Decree Law 22128	28/07/1978
International Covenant on Economic, Social and Cultural Rights	Decree Law 22129	28/07/1978
Optional Protocol to the International Covenant on Civil and Political Rights	1979 Constitution	03/01/1981
International Convention on the Elimination of All Forms of Racial Discrimination	Decree Law 18969	29/10/1971
International Convention on the Elimination of All Forms of Discrimination against Women	Legislative Resolution 23432	13/10/1982
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	Legislative Resolution 24815	06/08/1988
Convention on Rights of the Child	Legislative Resolution 25278	04/10/1990
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	Legislative Resolution 27429	09/07/2001
Rome Statute of the International Criminal Court	Legislative Resolution 27517	01/07/2002
Optional Protocol to the Convention on the Rights of the Child	Legislative Resolution 27518	12/02/2002
Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons	Legislative Resolution 27527	25/12/2003
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.	Legislative Resolution 28602	01/01/2006
Convention on the Rights of Persons with Disabilities	Legislative Resolution 29127	03/05/2008

REGIONAL INSTRUMENTS

American Convention on Human Rights

Within the inter-American sphere, in addition to the American Convention on Human Rights (Pact of San José), Peru has signed and ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará). It is noteworthy that the inter-American human rights system's response to women's issues has been a belated one given that no initial outcomes were observed until the 1990s, even though its main organs - the Inter-American Commission and Inter-American Court - had been in operation since the 1960s and 70s.

The Belém do Pará Convention

"The Belém do Pará Convention is the most important legal instrument for establishing a new legal framework through which to combat one of the region's most under-reported crimes [domestic violence]. In fact, it goes beyond a view of domestic violence and sheds light on the multiple forms of gender-based violence that are relevant to different public policy areas, including public security".²

NATIONAL LAWS

National Human Rights Council

Founded in 1986 as an inter-sectoral body chaired by the Minister of Justice.³

Law 27775 of 2002

This states that "compliance with the judgements issued by the international human rights courts is of national interest and establishes a procedure for their implementation. This law makes judgements passed by the Inter-American Court binding."⁴

Supreme Decree 014-2000-JUS of 2002

"This establishes that the decisions, resolutions or recommendations adopted in the context of international procedures and mechanisms for the protection of non-jurisdictional human rights will be implemented by the state according to principles of good faith, strict adherence to the respective treaties, and cooperation with the international human rights promotion and protection bodies. This supreme decree refers not only to the periodic recommendations and observations issued by the

² Ibid

³ Ibid

⁴ LLaja, Jeannette, El Estado Peruano y el Marco Internacional de Derechos Humanos, in "Los Derechos Humanos de las Mujeres en el Perú, Demus, Lima, August 2011.

international human rights bodies but also to the resolutions of the committees of the Universal Human Rights System in concrete cases”.⁵

Equality of Opportunities

The Law of Equal Opportunities (approved by means of Law 28983 of 2007)

This is a regulating law that implements the right to equality and to freedom from sexual discrimination, as recognised in Article 2.2 of the 1993 Constitution. The Law gives a definition of discrimination in line with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and states, in generic terms, the following:

Article 4: This notes the state’s duty to adopt all measures necessary to remove obstacles preventing the full exercise of the right to equality, to adopt positive action measures to speed up de facto equality between women and men (equality in practice), and to incorporate and promote the use of inclusive language in all official communications and documents.

Articles 5, 6, 7 and 8: These articles lay down a set of guidelines establishing obligations on the legislative, executive and judicial powers, regional and local governments and autonomous constitutional bodies to guarantee, protect, promote and comply with certain criteria in order to ensure the full realisation of the right to equality between women and men, in both public and private spheres, and to eradicate all forms of discrimination against women from state and private practices.

Violence Against Women

Peru has no primary legislation dealing with violence against women. The main legislative framework currently in force comprises the following laws:

Law on Protection from Domestic Violence (approved by Law No 26260 of 1993⁶).

The aim of this law is to prevent, deal with, investigate and punish violence committed within the family, understood as being “any act or omission that causes physical or psychological harm, ill-treatment without injury, including serious threats or serious and/or repeated coercion, as well as sexual violence” (Article 2). It stipulates a set of policies through which to address domestic violence, regulates the intervention of the national police, the Public Prosecutor’s Office and

⁵ Ibid

⁶ Partially amended by: Law No 26763 (1997), Law No 27398 (2001), Law No 27306 (2001), Law No 27982 (2003) and Law No 29282 (2008).

the Judiciary in its prevention, investigation and punishment, bans conciliation between victims and aggressors⁷ and establishes the duty of public prosecutors to issue immediate protection measures to guarantee the physical, mental or moral safety of victims, whether they request this or not.

Criminal Code (approved by Legislative Decree No 635 of 1991)

This classifies the following, among other things, as crimes: domestic violence, violation of sexual freedom, the encouragement of prostitution, procurement (pimping), the commercial sexual exploitation of children and adolescents for tourism and child pornography.

Since its enactment, the Code has been reformed a number of times with the aim of extending or restricting the classification of certain types of crime and increasing their punishment. Two amendments were particularly significant. The first is the change made to the definition of rape which, in the previous version - “sexual act or similar” - was giving rise to restrictive interpretations that were failing to protect the victim. The second is the repeal of a law that used to protect the aggressor and possible co-perpetrators from punishment, provided they married the victim.

Femicide or “the homicide of women for gender reasons”⁸ is not recognised as a specific crime in the Criminal Code.

Law on the Prevention and Punishment of Sexual Harassment (approved by Law No 27942 of 2003⁹)

This defines sexual harassment as any repeated physical or verbal conduct of a sexual or sexist nature in the context of a relationship of authority or dependence, notwithstanding any consideration of the relationship existing between the aggressor and the victim in terms of hierarchy, class, level, function, salary or similar. It applies to public and private work places, educational institutions, police and military institutions and any other relationship not regulated by employment law but which implies the subordination of one of the parties. It only provides for the application of administrative sanctions. It also gives rise to compensation for damages.

⁷ In its original version, the Law on Protection from Domestic Violence permitted public prosecutors and judges specialised in family matters to encourage the conclusion of conciliatory agreements between victim and aggressor. Amendments to this law removed such powers and included, in the case of the National Police, an express ban on promoting such kinds of agreement.

⁸ Inter-American Court of Human Rights, Judgement issued in the case of González and others— “Campo Algodonero”— vs. Mexico, 16/11/2009, para 143.

⁹ Partially amended by Law No 29430, approved in 2009.

Law on Human Trafficking and the Smuggling of Migrants

(approved by Law No 28950 of 2007¹⁰)

This classifies human trafficking as a violation of personal freedom and punishes all human trafficking generally, not only in relation to women or with the aim of sexual exploitation. It also punishes trafficking for the purposes of begging, slavery, forced labour and other forms of exploitation, the sale of children, and trafficking in organs and tissues, among other things. Its main objective is to combat organised crime.

Sexuality and Reproduction

There is no law of constitutional standing that explicitly recognises sexual and reproductive rights, with the exception of the right to family planning.

Some rights are legislatively recognised, for example the right to receive appropriate and timely information on sexual and reproductive health; to access and freely choose a method of contraception; to receive sex education of a scientific and ethical nature; to access methods of assisted reproduction; to enjoy safe motherhood, including access to ante- and post-natal healthcare; and to access services for the prevention and treatment of sexually-transmitted infections. These rights are set out in:

- The **Law on National Population Policy** (approved by Legislative Decree No 346 of 1985)
- The **General Health Law** (approved by Law No 26842 of 1997)
- The **Law on Combating HIV, AIDS and Sexually-Transmitted Infections** (approved by Law No 26626¹¹ of 1996)
- The **Law of Equal Opportunities** (approved by Law 28983 of 2007)

Legislative Gaps and Omissions with regard to Sexuality and Reproduction

The constitution makes no mention of discrimination on the basis of gender or sexual orientation. This continues to give rise to restrictive interpretations of the scope of constitutional law, as can be seen in the lack of explicit recognition of the rights of lesbian, bisexual and transsexual women, and in the discriminatory conduct and practices that continue to remain widespread among a certain level of private and public employees. The Constitutional Procedural Code is the only piece of domestic legislation that expressly prohibits discrimination due to reasons of sexual orientation (Article 37, numeral 1), although it omits all reference to discrimination due to gender identity.

¹⁰ This amends various articles of the Criminal Code.

¹¹ Amended by Law 28243 of 2009.

Access to family planning methods through state-run services now excludes oral emergency contraception following a 2009 ruling of the Constitutional Court¹² which ordered the Ministry of Health to stop distributing such contraception through public institutions. This discriminates against poor women who are unable to access other family planning services. In addition, current laws limit the right of adolescents to access contraception given that the prior consent of their parents or legal guardian is required. It is, however, understood that this restriction applies exclusively to prescription-only methods so, strictly speaking, they should be able to gain direct access to most barrier methods, like condoms.

Abortion is a criminal offence, unless a termination is the only way of saving the mother's life or of avoiding serious and permanent damage to her health (therapeutic abortion). Despite this, more than 370,000 abortions take place illegally in the country each year, most of them amongst poor women under unsanitary conditions that put their life and health at serious risk.

Political participation

The only area in which legislation establishes affirmative action in favour of women is that of political participation.

Organic Law on Elections (approved by Law 26859 of 1997¹³)

This establishes a preferential voting system and a minimum 30% quota of women on the electoral lists for Congress and the regional councils.

Law on Regional Elections (approved by means of Law 27683 of 2002¹⁴)

The Law on Regional Elections specifies a compulsory gender quota for the candidate lists but contains no express provisions when establishing the lists for their substitutes, and this has given rise to restrictive interpretations of the scope of the obligatory minimum quota.

Law on Local Elections (approved by Law 26864 of 1997¹⁵)

This also establishes a minimum 30% quota of women on the electoral lists for the local councils, but does not provide for the "alternation" rule when placing men and women on electoral lists. Insofar as the election of local councillors takes place via a closed list system (the preferential voting system is not used), the fact that this rule is not established clearly

12 Judgement in Case No 020050-2009-PA/TC of 16 October 2009.

13 Partially amended by Law No 27387 of 2000 and Law No 27764 of 2002.

14 Partially amended by means of Law 29470 of 2009.

15 Partially amended by Law No 27734 of 2002 and Law No 28869 of 2006.

puts women at a disadvantage.

Law on Political Parties (approved by Law 28094 of 2003¹⁶)

This establishes a minimum 30% quota of women on the lists of candidates for party leadership posts and publicly-elected posts but does not establish penalties for any parties that fail to comply.

Other relevant laws

Law No 29600 of 2010, amending the General Law on Education

This establishes a duty to adapt educational provision to the needs of pregnant pupils and teenage mothers, including a system of grants and support to enable them to continue their studies. In addition, it bans educational institutions from taking any measures that would prevent them from accessing and/or remaining in school until the end of their studies, although it does not stipulate penalties for institutions that fail to comply.

Law 29700 of 2011

This law aims to quantify in detail the contribution of unpaid domestic and care work (primarily done by women) to the country's overall production. This will be measured via a regular series of surveys on the use of people's time.

Over the course of the last two decades, a significant number of laws have been approved that recognise and protect women's rights and authorise the enforcement of constitutionally- recognised rights. All these laws should have enhanced the protection of women's rights but, unfortunately, in most instances this has not been the case. One example is the case of *MM vs. Peru* on forced sterilisation (a result of the Fujimoro government's family planning policy) which was referred to the Inter-American system and resulted in a Friendly Solution Agreement. To date - and despite sustained follow-up from feminist organisations and substantial media coverage - the Peruvian state has employed various strategies to avoid fulfilling its commitments, which has led to condemnation from the inter-American system itself.

¹⁶ Partially amended by Law No 28581 of 2005, Law No 28845 of 2006 and Law No 29490 of 2009.

OVERVIEW OF GENDER MACHINERY

The state institutions that have been created to address the needs and interests of Peruvian women are primarily:

- The **Committee for Women and Social Development**. This is a congressional standing committee with the authority to propose, study and advise on bills of law that directly or indirectly affect the interests and situation of women.
- The **Ministry for Women and Social Development**. This is the body responsible for policy in relation to women's development, equal opportunities between women and men and the prevention and treatment of domestic and sexual violence.
- The **Specialist Women's Rights Unit**. This is a sub-division of the Peruvian Ombudsman, the main function of which is to strengthen and promote the validity of women's rights and contribute to eradicating state administrative actions that discriminate against women.

POLITICAL CONTEXT

Peru is a pluri-ethnic and multicultural country whose political class has largely refused to face up to this reality. A country with a long tradition of centralism, the current decentralisation process was initiated with the constitutional reform of 2002. Peru suffers from endemic institutional fragility and one of the ways this can be seen is in the state's absence from a large part of the national territory, as well as the way it swings from military dictatorship to civil-military and then to constitutionally-elected government. Paradoxically, a number of the laws granting rights to women were achieved under dictatorships.

One important factor affecting the lives and rights of women is the lack of a truly secular state. Despite the fact that the 1979 Constitution established a separation between the Church and the State, this separation has in practice not been effective on various levels, in particular with regard to the area of sexuality and reproduction.

Despite efforts made by the feminist and women's movement, the sexual division of labour has thus remained virtually unchanged, with women bearing a disproportionate share of the workload. In addition to tasks of production, they also continue to remain largely responsible for the care chain and the task of reproduction.

Change is, nonetheless, now a distinct possibility given that one of the

slogans of the new government that came to power on 28 July 2011 is “economic growth with social inclusion”.

EXPERIENCE OF WOMEN’S ORGANISATIONS IN PERU

Risks and opportunities for women’s rights activists

The task of promoting and defending women’s rights goes back a long way, and activists around the country continue to advocate for the needs and interests of Peruvian women. Women’s rights activists face widespread sexism, however, with their demands frequently being distorted and mocked. They are also exposed to verbal and physical violence because of the way in which their work is stigmatised and the threat they represent to more conservative sectors of society. Black, indigenous and lesbian women face increased risks because of the discrimination they face on the grounds of race, ethnicity or sexuality, combined with gender-based discrimination.

The lack of a neutral or impartial state when it comes to faith-based dogmas hampers the implementation of laws and policies on women’s rights, with the state coordinating openly with conservative sectors of society. One particularly significant example is the failure to approve a national medical protocol on therapeutic abortion care in the public health service. The long struggle to obtain this protocol, notwithstanding the different commitments and promises made by various Ministers of Health has, for a number of years now, led to confrontation between women’s rights activists and conservative political groups, with the latter resorting to intimidating and physically attacking feminist activists.

A new stage may now be dawning with the change in government, as the strong rhetoric of social inclusion may open up new opportunities for feminist activists. But in relation to gender equality, the fate of the Ministry of Women and Social Development remains unclear, and it remains to be seen whether there is going to be stronger legislative will to recognise and protect women’s rights.

Another important dimension – and one which, if not taken into account, increases the risks run by activists – is that of failing to correctly anticipate the need for self-care spaces, essential for those who are constantly in the public eye and involved in intense and stressful activities. It is essential to provide spaces for individual and group support where batteries can be recharged, evaluation and reflection can take place, and risks can be mitigated.

The following case study shows how advocacy has been used by feminist activists to push for change to protect the rights of women in Peru.

Example

The “Not One Death More” Campaign: preventing femicide in Peru.¹⁷

In 2001, the NGO Demus decided to launch a campaign called “Not One Death More” in

Peru. The objectives were to:

1. Increase visibility of the problem of femicide and create awareness among the general public with regard to its severity and magnitude, its socio-cultural dimensions and its representation in the media.
2. Draw attention to the way in which femicide is handled by the country’s police, prosecutors and courts.
3. Produce legislative and public policy proposals for handling and preventing such cases, from a gender perspective.

The **first phase** of the campaign focused on getting the issue of gender-based violence onto the **public agenda**. The idea was to demonstrate the severity of the suffering caused by focusing on the murders of women, and to draw attention to the lack of appropriate and effective response by the relevant authorities.

The campaign involved a number of different strategies. Firstly, Demus identified the lack of information on femicide. The campaign therefore focused on gathering information, publishing notes and reports, and disseminating this information through different events with the press and through communications campaigns in order to raise awareness. This was followed by the development of concrete proposals for changes in public policies and legislation. The combination of information gathering, the publicity campaign and the concrete changes proposed were key to the success of this campaign.

Information gathering:

Media articles on women’s deaths were collated and a report was produced on the basis of this information. Part of this information came from the monitoring of two “diarios chicos”¹⁸ undertaken by the “Centro de la Mujer Peruana Flora Tristán” (Flora Tristán Peruvian Women’s Centre). In cooperation with Amnesty International, a report was then produced on all the work conducted over the 2003-2005 period.

In 2004, Demus also conducted an investigation into lawsuits with the aim of analysing the way in which the justice administration handles such cases. In addition, they took on the defence of two femicide cases

¹⁷ In describing this experience, we have relied on published materials and reports, internal records of the NGO Demus, and interviews with some of those involved.

¹⁸ Peruvian expression denoting the tabloid press or “red tops”.

with the aim of finding out more about how such cases are handled legally, highlighting the limitations in their proceedings, and proposing changes from a gender perspective.

Dissemination through media events and campaigns:

International Women's Day on 8 March was chosen as a landmark event around which to disseminate information and raise awareness of femicide. Focus groups were held in order to ascertain people's perspectives on how violence is handled by the media. On the advice of communications professionals, a set of materials was produced as well as a briefing note on the campaign's objectives and actions, aimed primarily at journalists. In addition, Demus began to send news items on women's deaths regularly to different organisations and individuals.

The report into the way women's deaths are reported in the press was launched at a press conference and had a huge impact, with the press release on the Not One Death More campaign being broadcast via a number of different channels and radio stations. In 2003, Demus held six further press conferences in the provinces and two in Lima. In 2005, they decided to add 25 November – International Day for the Elimination of Violence against Women – to the campaign as another important 'peg' around which to raise awareness. Further press releases and another information folder were produced, based on the initial findings into how the judicial system handles these cases. Progress was also made in expanding and decentralising the campaign.

In March 2006, a further press conference was held at which all the final results of the lawsuit monitoring were presented, along with those of the Thematic Audience convened by the Inter-American Commission, plus updated figures for femicides reported by the press. It was subsequently suggested that a group of women from the art world should be brought together and asked to take part in a group photo in support of the campaign. This was very well-received and a public presentation was later attended by some of these artists, drawing a good deal of attention from the media

In 2008, in coordination with the Centro de la Mujer Peruana Flora Tristán and Cladem, the National Report on Femicide in Peru was published. In coordination with the 28 September Campaign, the Campaign for an Inter-American Convention on Sexual and Reproductive Rights and Flora Tristán, a workshop was also organised for journalists on the issue of both femicide and abortion.

Proposals for change:

In addition to striving to get the issue onto the public agenda and denouncing the inefficiency and ineffectiveness of the justice system in its handling of these cases, the research was used as a basis for proposing an amendment to the Criminal Code to the effect that the specific concept of homicide in partner relations should be recognised. In addition, the use of the concept of “sudden heat of passion” was denounced, both in the media’s handling of the news and on the part of the aggressors’ defence lawyers, on the grounds that it promotes impunity for these crimes.

Achievements:

- a. In 2006, in coordination with other organisations that were also implementing the Not One Death More” campaign, Demus successfully persuaded the Inter-American Commission on Human Rights to convene a Thematic Hearing on Femicide in Latin America. This led to the production of a national report.
 - b. A Femicide Victims’ Register¹⁹ was adopted in the context of the National Plan against Domestic and Sexual Violence.
 - c. The General Directorate for Women suggested that it should regularly analyse and document cases of femicide, in part to help develop effective responses.
 - d. The Public Prosecutor’s Office created a Femicide Register within the Criminality Watchdog²⁰ with the aim of facilitating the design and implementation of policies that could contribute to preventing this kind of homicide.
 - e. During 2009, three bills of law were drawn up which proposed classifying the crime of femicide in the Criminal Code.
 - f. In 2010, on the basis of an initiative of the Specialist Women’s Rights Unit, the Ombudsman promoted an investigation in five of the country’s regions aimed at reviewing the justice administration’s response to cases of femicide. The results upheld the previous findings in terms of the persistent gender stereotypes that are used to justify acts of violence. The study also concluded that 82% of the cases reviewed indicated a likelihood that the accused had previously perpetrated violence against women. One noteworthy recommendation from the Ombudsman’s report was the need for the Academia de la Magistratura (Magistrates’ Training College) to provide a compulsory course on gender-based violence and womens rights.
- The above campaign offers an interesting example of how organised

19 Ministerial Resolution 110-2009 MIMDES, 6 March 2009.

20 Directive 006-2009-MP-FN, approved by Resolution No1690-2009-MP-FN, 25 November 2009.

and persistent advocacy, based on timely and accessible information that provides a solid foundation and argument, along with coordinated action among various organisations, can get an issue onto the public agenda and influence a state structure that is usually largely impermeable to such issues.

CONCLUSION

Although Peru has made significant progress in promoting women's rights, it is very difficult to obtain legislation and public policies that are favourable to the advancement of women. In most cases, little more than formal recognition has been achieved; the real difficulty lies in breaching the enormous gap between formal policy adoption and its actual implementation by state officials. The area that activists are finding most difficult to tackle in this regard is that of sexuality and reproduction, due primarily to the substantial and ongoing involvement of the Church in the workings of the state. There are, however, cases in which the considerable efforts of feminist groups have managed to bring about changes in legislation by means of long and well-planned advocacy.