

February 11, 2012

**HUMAN RIGHTS COMMITTEE SECRETARIAT**  
**8-14 Avenue de la Paix**  
**CH 1211 Geneva 10**  
**Switzerland**

Dear Sirs or Madams:

Regarding the 107<sup>th</sup> session of the Committee, the **Center for the Promotion and Defense of Sexual and Reproductive Rights – Promsex (Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos - Promsex)** a feminist non-governmental organization composed of men and women, professionals and activists, who seek to ensure the integrity and dignity of individuals accessing sexual and reproductive health, justice, and human security, hereby submits relevant and updated human rights information about Peru in two areas of interest.

## **I. OVERVIEW**

**Articles 3, 17 and 24. The Right to not be subjected to arbitrary interference with the privacy free from discrimination: Legal barriers against teenagers' sexual activities.**

1. The Law N° 28704 became effective on April 6<sup>th</sup>, 2006, the first article of which reformed article 173 of the Criminal Code, becoming all sexual encounters with or between teenagers ages 14 to less than 18, are automatically deemed as rape, regardless of whether or not there was consent. This law not only restricted the enjoyment and exercise of the teenager's rights, but also it became a barrier to the implementation of public policies for the prevention of unwanted teen pregnancy and maternal mortality in pregnant adolescents.
2. On April 3<sup>rd</sup>, 2012, ten thousand six hundred nine citizens filed a lawsuit of unconstitutionality against article 1° of law N° 28704, before the Constitutional Tribunal stating that its content violated the adolescents' fundamental rights as: free personality development, equality and nondiscrimination, access to information, sexual and reproductive health, privacy and intimacy.

3. The Constitutional Tribunal gave judgment on December 12<sup>th</sup>, 2012<sup>1</sup>, declaring article 1° of Law N° 28704 unconstitutional, due to the violation of the right to sexual freedom of adolescents ages 14 to less than 18, penalizing their consensual sex indiscriminately, namely, all teenagers' ages 14 to less than 18 have the right to sexual freedom, understood as the capacity of self-determination, regarding their sexuality; which means to decide with whom, how and when they have sex.
4. After the statement of the unconstitutionality of such article, the Constitutional Tribunal demanded the Congress of the Republic to legislate and amend the chapter referred to sexual offences, having as purpose to establish severe sentences to acts against the right to sexual freedom of adolescents. Since now, any sex offender of adolescents aged 14 and under 18 years, will be sanctioned with lesser sentences from 6 to 8 years of imprisonment. Nowadays, there is a Bill pending approval N° 651-2011- CR<sup>2</sup>, which improves the criminal framework on sexual offences, imposing higher sanctions in cases of aggression to teenagers aged 14 to under 18. Besides, it has a favorable dictum from the Commission of Women and Family and it is pending a final decision of the Committee on Justice and Human Rights since 2011, in order to be debated in the Congress of the Republic; however, now this Bill is not a priority for the legislative power.

### **Articles 3, 17 and 23. The right to life, personal Integrity and to form a family free from discrimination: Violence against Gays, Lesbians, Bisexuals, and Trans.**

1. Peru includes in its national legislation, the expressed prohibition of discrimination based on sexual orientation<sup>3</sup>. On this respect, the Peruvian Government in all its levels is obliged to act and ensure respect for the equality right and non-discrimination based on sexual orientation and gender identity.

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<sup>1</sup> Sentence enforced in File N°. 00008-2012-PI/TC posted on January 7<sup>th</sup>, 2013. The Constitutional Tribunal declares 1) unconstitutional article 173.3 from the Penal Code for having accredited the violation of the right to free personal development of adolescents aged 14 and less than 18 years; 2) declares not giving release rights to defendants and individuals on conviction by violence, aggression or rape in adolescents aged 14 and less than 18 years 3) demands the Congress of the Republic to legislate in a systematic way and considering the severity of the sentence for all cases that concern fundamental rights of adolescents in sex situations.

<sup>2</sup> The Bill proposes: 1) To maintain sentence enhancements in cases of rape by force or serious threat to adolescents aged 14 and less than 18 years; (2) To decriminalize valid consensual sexual intercourse for adolescents aged 14 and under 18 years; (3) To incorporate a new improved criminal type that protects teenagers aged 14 and less than 18 years from sexual acts without valid consent. Please find this at: <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2011.nsf>

<sup>3</sup> The Code of Constitutional Procedure of Peru (Law 28237) Article 37 ° has expressly identified the sexual orientation discrimination as contrary to the effective validity of fundamental rights, recognized by the Constitution. For its part, the Peruvian Constitutional Tribunal specified through its jurisprudence that the human person dignity is fully applicable to homosexuals and transsexuals, the discrimination is forbidden by the Constitution and such norm recognizes the right to free sexual orientation.

2. On March 16<sup>th</sup>, 2011, Peru did not sign the Joint Statement to stop all Acts of Violence and Human Rights Violations against people due to their sexual orientation and gender identity, having presented various states before the Human Rights Council, authority from the United Nations System.
3. The Inter American Convention on Human Rights of the elderly presented on April 30<sup>th</sup>, 2012, sought to ensure that older people exercise their rights without discrimination. However, representatives of Peru to the Organization of American States presented a series of observations, proposing the exclusion of the term sexual orientation as a protected category from discrimination, and recommended not to use this term because it is not established in the Peruvian Constitution<sup>4</sup>. Additionally, Peru has filed a series of objections to the signing of the Ibero-American Youth Rights Convention, regarding sexual orientation and gender identity issues.
4. Besides, Peru does not have a National Human Rights Policy that includes measures to prohibit discrimination against gays, lesbians, bisexuals, and trans and to guarantee the sexual and reproductive rights for everyone.

## II. SUGGESTED QUESTIONS

### **Articles 3, 17 and 24. The right to not be subjected to arbitrary interference with the privacy free from discrimination: Legal barriers against teenagers' sexual activities.**

1. What legislative measures, as those proposed by the Bill 651-2011-CR, are going to be taken by the Peruvian State in order to adequately punish aggressors of adolescents aged 14 and less than 18 years?
2. What measures is the Peruvian State taking to formulate and implement multisectoral policies for prevention of unwanted teen pregnancy?

### **Articles 3, 17 and 23. The right to life, personal Integrity and to form a family free from discrimination: Violence against Gays, Lesbians, Bisexuals, and Trans and absence of legal framework to sex-same families.**

1. What policies is the Peruvian State taking to eradicate discrimination based on sexual orientation and gender identity in older people?

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<sup>4</sup> Region protest letter from civil society organizations against the proposal submitted by the Peruvian delegation, before OEA to exclude sexual orientation from the Convention Bill for older people. January 15, 2013.

# PROMSEX

Centro de Promoción y Defensa de los  
Derechos Sexuales y Reproductivos

We hope the information provided helps make a better assessment of the development of human rights in Peru.

Sincerely,



Rossina Guerrero  
Director