



Lima, March 30, 2017

Office of the High Commissioner for Human Rights

Dear Sir/Madam,

In the framework of the third cycle of the Universal Periodic Review (UPR), the Peruvian State shall be evaluated in its 28th session, which is to take place on November 6-17 of this year. The Center for the Promotion and Defense of Sexual and Reproductive Rights - PROMSEX, Centro IDEAS - Piura and the Homosexual Community Esperanza Región Loreto - CHERL submit relevant information on human rights in Peru in six (06) aspects of interest related to the recommendations issued to the State in the 2nd evaluation cycle: i) the situation of LGBT people, ii) the situation of sexual and reproductive rights defenders, iii) the guarantee of the right to sexual and reproductive health, especially for girls and adolescents, iv) human trafficking with the purpose of sexual exploitation, v) the guarantee of the right to education in the framework of equality and non-discrimination and vi) the guarantee of sexual and reproductive rights in situations of natural disasters.

The Center for the Promotion and Defense of Sexual and Reproductive Rights (PROMSEX) is a non-governmental feminist organization, composed by professional and activist men and women seeking to contribute to the validity of the integrity and dignity of all persons in the access to sexual and reproductive health in a framework of guarantee of human rights; Centro IDEAS - Piura is a Peruvian organization that promotes sustainable human development, seeking the active and concerted involvement of people and private and public social institutions; and the Homosexual Community Esperanza Región Loreto - CHERL is a regional organization seeking to make visible the discrimination against LGBTI people and to defend the right to equality through regional and national incidence activities.



## 1. The Situation of LGBT Persons in the Country

### 1.1 Institutional Violence against LGBT Persons and Lack of Special Mechanisms to Prevent, Research and Sanction Torture (Recommendation No. 116.16 Continue its efforts to set up the National Preventive Mechanism against Torture and No. 116.15 Consider enacting legislation that addresses crimes based on sexual orientation (Canada):

LGBTI persons suffer aggressions that may entail torture and other cruel, inhuman or degrading treatments or punishments<sup>1</sup> driven by the desire to punish those who are considered as defying gender regulations<sup>2</sup>. In this regard, the Special Rapporteur on the subject indicated that “indifference and inaction by the State provides a form of encouragement and/or *de facto* permission”<sup>3</sup>.

In the period of 2015 - 2016<sup>4</sup>, there were eight (8) cases of discrimination perpetrated by police officers and municipal security agents in public spaces (parks, squares, etc.) in order to expel non-heterosexual couples and repress their manifestations of affection by stating that “they are inappropriate for children”<sup>5</sup>, that “it is not normal to kiss another man”<sup>6</sup> or that they are considered “obscene acts”<sup>7</sup>. Regarding the impact to personal security that did not result in death, it was reported that trans women related to sexual work were the main victims of state agents (24 cases). These acts have become systematic practices of municipal security agents<sup>8</sup>, who detain them arbitrarily, hit them and take them to isolated places to strip them of their belongings and sexually assault them (forced nudity, rape, etc.), without being sanctioned.

However, there is no specific national policy to prevent, register, investigate and sanction discrimination and violence against LGBTI persons perpetrated by municipal security agents and police officers, which may constitute acts of torture. The Criminal Code does not establish specific sanctions in this regard and its amendments do not consider the mentioned patterns. Although the Executive branch amended the Criminal Code to sanction hate crimes through aggravating factors (Art. 46.d) and to include sexual orientation and gender identity as prohibited grounds of discrimination (Art. 323), at the legislative level, such amendments pretend to be overruled.

In this regard, we suggest the following recommendations to the Peruvian State:

- Adopt general regulations at all government levels that contemplate administrative sanctions for public officers who discriminate or use violence or force against LGBTI persons.

<sup>1</sup> Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A/56/156. UN. July 3, 2001, page 17.

<sup>2</sup> Violencia contra Personas Lesbianas, Gays, Bisexuales, Trans e Intersex en América (Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas). OAS/Ser.L/V/II.rev.1. Inter-American Commission on Human Rights (IACHR). November 12, 2015, page 25.

<sup>3</sup> Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A/ HRC/31/57. January 5, 2016, page 11.

<sup>4</sup> Promsex and Red Peruana TLGB (2016) Informe Anual sobre Derechos Humanos de las personas TLGB en el Perú 2015 – 2016 (Annual Report on the Human Rights of LGBT People in Peru 2015 – 2016). Available at: <http://promsex.org/images/docs/Publicaciones/InformeTLGB2015a2016.pdf>

<sup>5</sup> LaMula.pe. Municipio de Miraflores despidió a dos serenos que discriminaron a parejas del mismo sexo (The Municipality of Miraflores Fired Two Municipal Security Agents who Discriminated Couples of the Same Sex). Available at: <https://redaccion.lamula.pe/2016/01/13/municipio-de-miraflores-despidio-a-dos-serenos-que-discriminaron-a-parejasdel-mismo-sexo/redaccionmulera/>

<sup>6</sup> Record of the facts at: <https://www.youtube.com/watch?v=ON92QIHtlc0>

<sup>7</sup> Ibidem.

<sup>8</sup> Security personnel hired by the Municipalities.



- Adopt comprehensive mechanisms to guarantee that LGBTI persons are not arbitrarily detained, without providing information on their location and condition, as well as not criminalizing them by the implementation of regulations that protect “morals” or “good practices”.
- The National Police Force, the Office of the Attorney General, the Judiciary and the Office of the Ombudsperson shall keep a detailed record of violence and discrimination acts against LGBTI persons.

## 1.2 Attitudinal Barriers and Lack of Due Diligence for LGBTI Persons Victims of Violence and/or Discrimination:

There are no specialized protocols in the Justice System for the attention of victims and the specialized investigation of the facts in cases of violence and discrimination against LGBTI persons, moreover when the victims are LGBTI children and adolescents.

In this respect, the performance of justice operators may be discriminatory and affect the due diligence during investigations and the judicial proceeding. In May 2016, Promsex assumed the defense of an adolescent who suffered physical psychological violence since childhood. When her mother, who is part of an Evangelical church, and her stepfather found out she was lesbian, the aggressions increased, they stopped paying for her studies and harassed her so she would go to the Evangelical church to “save her soul”.

However, the first time she went to file a report, the police officers told her she first had to have a psychological exam and suggested her not to file the report because they were her parents, in spite of the fact that their obligation is to receive any accusation, and not to discourage the victims nor revictimize them. When she finally filed the report, they only provided her with protective measures that prohibit her parents to approach her. Until now, in spite of being a case of family violence, her aggressors have not been sanctioned and she has not had access to repair measures, which makes evident the non-compliance of the reasonable proceeding deadline.

In this regard, we suggest the following recommendations to the Peruvian State:

- Develop and implement specialized protocols for the attention, investigation and judgment of cases of violence and discrimination against LGBTI persons, especially children, that take into account their needs.

## 1.3 The Need to Sanction Hatred Discourses and to Establish Limitations on Freedom of Expression and Freedom of Religion or Beliefs

In the country, there is a context of stereotyped prejudices against LGBTI persons, which is a premise for discrimination and violence against them. Recently, the 51st Prosecutors' Office of Lima With Jurisdiction Over Criminal Offenses ordered the investigation of pastor Rodolfo Gonzales Cruz, leader of the World Missionary Movement, for instigating a homicide. *"If you find two women having sex, kill them both (...) in the name of Jesus"*, he stated<sup>9</sup> as part of his encouraging speech to parents to participate in a march against the inexistent 'gender ideology'<sup>10</sup>. However, it is not the

<sup>9</sup> Available at: <http://larepublica.pe/impresia/sociedad/853535-con-mentiras-y-mensajes-de-odio-se-preparo-marcha-de-hoy>

<sup>10</sup> Misinformation marches that are taking place in the country as a form of protest against the inclusion of the gender approach in the National Basic Education Curriculum, which was recently approved.



first time that this happens. Political, religious (Evangelic or Catholic pastors or priests) and opinion leaders, who oppose any progress in the acknowledgment and protection of the rights of LGBTI persons, have issued discriminatory arguments that, in some cases, also induce to violence and discrimination, without receiving any sanction whatsoever.

In 2016, at an event with the former presidential candidate Keiko Fujimori, the Evangelic pastor Santana Leiva stated: *“The Holy Scriptures acknowledge homosexuality as a sexual vice (...) if a homosexual person is going to have rights, it is going to legalize (...) sodomy”*<sup>11</sup>. However, in spite of being reported, the 6th Appellate Prosecutors’ Office of Lima With Jurisdiction Over Criminal Offenses dismissed the accusation arguing that *“(…) his expressions cannot be considered as an alleged “promotion of discrimination”, but his exercise of freedom of religion and expression”*.

In this context, it is a matter of concern that even if the Criminal Code previously classified the encouragement of discrimination (Art. 323) as a crime, after its recent amendment, the foregoing has been eliminated; therefore, such discourses would remain unpunished even if the limitations to freedom of expression or religion have been notoriously exceeded.

In this regard, we suggest the following recommendations to the Peruvian State:

- Sanction as a criminal offense hatred discourses that promote violence and discrimination against LGBTI persons, establishing aggravated punishments in the case of political leaders or State public servants and set up mechanisms to promote and supervise the auto-regulation of content on the media to avoid the diffusion of discourses that promote violence and discrimination against LGBTI persons.

## 1.4 Violence and Discrimination against LGBT Children and Adolescents in Schools

According to a 2016 School Climate Survey<sup>12</sup> conducted in the country, 7 out of 10 LGBT students between the ages of 14 and 17 felt insecure in their schools due to their sexual orientation, and 29.3% because of their gender /identity. Furthermore, 58.8% reported having heard, by students and teachers, degrading comments such as ‘marica’ (fag), ‘rosquete’ (queer), ‘leca’ (dyke) or ‘machona’ (butch), and 40.6% heard comments like ‘traca’ (queen) or ‘travesti’ (transvestite). Additionally, 8 out of 10 (82.8%) said they had been victims of verbal harassment; 4 out of 10 (42%) victims of physical harassment, and half of them (53.2%) victims of sexual harassment.

Therefore, although the new National Basic Education Curriculum<sup>13</sup> indicates that the aim is for the students to *“relate with other people under a framework of rights, with no discrimination on the grounds of gender or sexual orientation and without violence”*, it is a matter of concern that members of the Congress of the Republic introduced bills to eliminate this objective and, mainly,

<sup>11</sup> See speech at: <http://www.americatv.com.pe/noticias/actualidad/keiko-fujimori-polemicas-declaraciones-pastor-que-redacto-compromiso-n229877> y <http://larepublica.pe/politica/767752-pastor-evangelico-que-apoya-keiko-fujimori-dice-que-homosexualidad-se-puede-curar-video>

<sup>12</sup> PROMSEX (2016) Estudio Nacional sobre Clima Escolar en el Perú: Experiencias De Adolescentes y Jóvenes Lesbianas, Gays, Bisexuales y Trans en el Ámbito Escolar (National School Climate Survey in Peru: Experiences of Lesbian, Gay, Bisexual and Transgender Adolescents and Youth in the School Climate). Available at: <http://promsex.org/images/docs/Publicaciones/IAEPeruWebGlesen.pdf>

<sup>13</sup> Approved by Ministerial Resolution No. 281-2016. Document available at: <http://www.minedu.gob.pe/curriculo/>



to overrule the curriculum for including a gender equality approach<sup>14</sup> and general guidelines on equality and non-discrimination.

In this regard, we suggest the following recommendations to the Peruvian State:

- Design and implement a policy of prevention, care, research and reporting of cases of violence and discrimination against LGBTI children and adolescents in schools and to create an observatory for school bullying cases at the national level.

## **1.5 Institutionalized Discrimination: Discriminatory Disciplinary Sanctions on the National Police Force (Recommendation No. 116.14 Repeal penal sanctions on homosexuality in the police force)**

On December 2016, Legislative Decree No. 1150 was repealed. This decree regulated the Disciplinary Code of the Peruvian National Police Force (PNP), which established offense MG-55 stipulating that “having sex with people of the same gender, making a scandal or undermining the institutional image” was sanctioned with forced retirement<sup>15</sup>. However, its validity during four (04) years implemented this disciplinary sanction, despite being discriminatory. According to the Peruvian National Police Force itself, **from 2013 to 2015 six (06) people were removed from their jobs on the basis of that offense**<sup>16</sup>.

In this respect, while Legislative Decree No. 1150 was repealed and it was established that the disciplinary administrative proceedings, initiated before the entry into force of the new Disciplinary Code of the PNP, shall continue to be governed by the same, except in cases when the new code favors the party under investigation; there was no reference to the cases in which said offense MG-55 was applied in a discriminatory manner.

In this regard, we suggest the following recommendation to the Peruvian State:

- To establish adequate mechanisms to review the cases of people that were removed from the PNP under the implementation of a sanction (offense MG-55) expressly provided for in the previous Disciplinary Code of the PNP.

## **2. The Situation of Sexual and Reproductive Rights Defenders. (Recommendation No. 116.72 Continue efforts to protect human rights defenders from threats and intimidation to ensure they can perform their functions properly)**

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<sup>14</sup> Bill No. 1043-2016/CR was introduced by members of the Congress from the political party Fuerza Popular and it proposes the elimination of the terms gender identity and sexual orientation from the National Curriculum. It can be reviewed at: [http://www.leyes.congreso.gob.pe/Documentos/2016\\_2021/Proyectos\\_de\\_Ley\\_y\\_de\\_Resoluciones\\_Legislativas/PL01043201703\\_09.PDF](http://www.leyes.congreso.gob.pe/Documentos/2016_2021/Proyectos_de_Ley_y_de_Resoluciones_Legislativas/PL01043201703_09.PDF). Likewise, Bill No. 1008/2016/CR, introduced by members of the Congress from the political party Acción Popular, proposes to overrule the National Curriculum on the grounds that “(...) in a State governed by the rule of law (...) minorities cannot expect their minority sexual option to be taken as a model to be extensively disseminated and taught in schools (...)”. It can be reviewed at:

[http://www.leyes.congreso.gob.pe/Documentos/2016\\_2021/Proyectos\\_de\\_Ley\\_y\\_de\\_Resoluciones\\_Legislativas/PL01008201703\\_02\\_.pdf](http://www.leyes.congreso.gob.pe/Documentos/2016_2021/Proyectos_de_Ley_y_de_Resoluciones_Legislativas/PL01008201703_02_.pdf)

<sup>15</sup> By Legislative Decree No. 1268, issued by the executive branch and published on December 19, 2016.

<sup>16</sup> Report No. 424-2016-DIREJPER-PNP/OFITCE-BD from the Database of the UNINFO-OFITCE-DIREJPER-PNP dated February 20, 2016, in response to the request to access public information requested by Susana Chávez Alvarado.





The devaluation and stereotyping of sexual and reproductive rights defenders legitimize the abuse of the judicial system or the supervisory competence of the legislative branch to investigate and criminally punish those defenders and/or their organizations. In the year 2015, the director of Promsex was reported for advocating for abortion, in response to a book that she did not write and did not present, and which gave information on safe abortion. However, these attacks continued with a stigmatization campaign that arose in the context of the discussion on the decriminalization of abortion in cases of rape. The work of the Organization was questioned and Catholic media accused it of “promoting the dismemberment of innocent children”<sup>17</sup>, in reference to abortion, and of being “salaried employees that corrupt local authorities in order to enjoy these sizable funds”<sup>18</sup>, on the misunderstanding that the incidence work would be a way to corrupt authorities.

In addition to this, the organizations also face a series of unjustified restrictions and attacks because of their work. In August 2014, public servants from the Peruvian Agency for International Cooperation (APCI), initiated an ex officio oversight of the organization’s project “Access to sexual and reproductive health care from a rights-based approach in Peru: Reducing the stigma and strengthening the debate”, known as the campaign “Déjala Decidir” (Let her decide) promoted by Promsex. This oversight was encouraged by the Commission of Foreign Affairs of the Congress, which had requested the monitoring of organizations that receive funds from international cooperation, with special emphasis on those who work on reproductive rights<sup>19</sup>.

Finally, in a context of national debate regarding the implementation of the National Basic Education Curriculum, through Ministerial Resolution 281-2016-MINEDU published on June 02, 2016, due to the opposition of certain groups linked to the most conservative sectors of the Catholic and Evangelical churches, grouped in the collective called “Con Mis Hijos no te Metas” (Don’t mess with my children); 3 women human rights defenders, who defended this public policy, were threatened by members of this collective<sup>20</sup>.

In this regard, we suggest the following recommendation to the Peruvian State:

- Create a Special Directorate in the Ministry of Justice and Human Rights entrusted with the design and implementation of the policy for the protection and defense of Human Rights defenders.
- Elaborate protocols for the protection of human rights defenders in the country.
- Investigate, and if this is the case, punish by procedures corresponding to the agents of the State who support, promote or facilitate acts of stigmatization, as well as to those who make statements that stigmatize women defenders.

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<sup>17</sup> Aciprensa, “Los corsarios del aborto” (The corsairs of abortion) on August 7, 2015, available at: <https://www.aciprensa.com/los-corsarios-del-aborto>

<sup>18</sup> Aciprensa, “Planned Parenthood invirtió 3 millones de dólares para promover aborto en Perú” (Planned Parenthood invested 3 million dollars to promote abortion in Peru), July 23, 2015, available at: <https://www.aciprensa.com/noticias/planned-parenthood-invirtio-3-millones-de-dolares-para-promover-aborto-en-peru-97481>

<sup>19</sup> La República, “Nueva ofensiva contra las ONG que defienden los derechos de la mujer” (New offensive against NGOs that defend the rights of women) October 10, 2015, available at: <http://larepublica.pe/imprensa/en-portada/709446-nueva-ofensiva-contra-las-ong-que-defienden-los-derechos-de-la-mujer>

<sup>20</sup> La República. “Defensoras del currículo escolar son amenazadas de muerte” (Women defenders of the school curriculum are threatened with death). March 7, 2017. Available at: <http://larepublica.pe/imprensa/sociedad/854284-defensoras-del-curriculo-escolar-son-amenazadas-de-muerte>



### 3. The Guarantee of Sexual and Reproductive Rights of Girls and Adolescents

#### 3.1 Sexual Violence, Forced Pregnancy and Maternal Death/Mortality in Girls and Adolescents (Recommendation No. 116.93 Continue action to reduce maternal and infant mortality)

In South America, Peru has the highest rate of complaints of sexual violence<sup>21</sup>. During 2014<sup>22</sup> and 2015<sup>23</sup>, 66% (7443) of the complaints concerned victims between the ages of 10 and 17. Added to this is the high number of forced pregnancies as a result of rape in girls between the ages of 11 and 14. According to the Comprehensive Health Insurance (SIS), it was reported that between 2011 and 2015 there was an **average of 2 thousand childbirths per year performed in girls** in that age range<sup>24</sup>, who were not able to access abortion services because it was criminalized in cases of rape.

Maternal mortality in girls and adolescents is one of the health indicators that evidence to a greater extent the inequality and exclusion. In 2012, it represented 17.6% of total deaths at the national level; in 2013, it dropped to 9.3%; in 2014, it was 13.3%; and in 2015, it was 12.1%<sup>25</sup>. **In the period of 2014-2015, 68 girls and adolescents died, mainly from bleeding (19), hypertensive disease of pregnancy (9), and infections (14)<sup>26</sup>, notwithstanding that this could have been avoided with access to therapeutic abortion.**

In this regard, we suggest the following recommendation to the Peruvian State:

- Develop and implement a Program for the Prevention of Maternal Death/Mortality in Girls and Adolescents.

#### 3.2 Access to Sexual and Reproductive Health Services for Girls and Adolescents (Recommendations No. 116.95 Ensure access to sexual and reproductive health services for adolescences, No. 116.97 Adopt and implement a national protocol to guarantee equal access to therapeutic abortion for women and girls as part of sexual and reproductive health services (Finland) and No. 116.98 Adopt the necessary measures to inform women and girls about their rights related to access to sexual and reproductive health services, including the possibility of abortion, as established by domestic legislation (Mexico))

Since 2009, the Emergency Oral Contraception (EOC) is not available to the public sector and, therefore, they have not provided information about it, especially addressed to girls and adolescents. Currently, the provision of EOC is temporary because of a precautionary measure

<sup>21</sup> According to data from the OAS Security Observatory until 2009 used in: Jaris Mujica (2011) Violaciones Sexuales en el Perú 2000 -2009: Un informe sobre el estado de la situación (Rape in Peru 2000-2009: A report on the situation)

<sup>22</sup> Statistical Yearbook 2014 of the Peruvian National Police Force (Directorate of Statistics). Available at:

<http://www.policia.gob.ni/cedoc/sector/estd/ae%202014.pdf>

<sup>23</sup> Statistical Yearbook 2015 of the Peruvian National Police Force (Directorate of Statistics). Available at: [https://www.pnp.gob.pe/anuario\\_estadistico/documentos/ANUARIO%20PNP%202015%20DIREST%20PUBLICACION.pdf](https://www.pnp.gob.pe/anuario_estadistico/documentos/ANUARIO%20PNP%202015%20DIREST%20PUBLICACION.pdf)

<sup>24</sup> Data used in: Team of Concerted Monitoring of Health Policies. Subgroup of Prevention of Pregnancy in Adolescents. *Prevención del embarazo en adolescentes: situación y perspectivas al 2021* (Prevention of pregnancy in adolescents: situation and forecast to 2021). Report No. 4-2016-SC/MCLCP PREVENCIÓN, page 7

<sup>25</sup> MINSA. Regional Directorate of Epidemiology. 2015. Available at: [http://www.dge.gob.pe/portal/index.php?option=com\\_content&view=article&id=532](http://www.dge.gob.pe/portal/index.php?option=com_content&view=article&id=532)

<sup>26</sup> Ministry of Health (MINSA) National Center for Epidemiology, Prevention and Control of Diseases. OFFICIAL COMMUNICATION No. 172-2016-CDC/MINSA, dated June 24, 2016, in response to a request to access public information requested by PROMSEX.



ordered by the First Constitutional Court of Lima, in the framework of a process for the protection of fundamental rights (amparo) submitted by a Peruvian citizen. It should be noted that the State still does not comply with request technical information to Pan-American Health Organization and the World Health Organization about the effects of the AOE in order to adapt their public policy, within the framework of the implementation of its National Plan on Human Rights 2014-2016<sup>27</sup>

In addition to this, Bill 387-2016/CR, which proposes the decriminalization of abortion in cases of rape, is still pending discussion in the Congress, **despite the fact that in 2011 the CEDAW Committee established the international responsibility of the State in the case of L.C. vs. Peru, stipulating as a preventive measure the decriminalization of abortion in cases of rape.** Likewise, even if the *Therapeutic Abortion Protocol* was adopted in 2014, one of the challenges of its effective implementation is for the interpretation of what is understood by the practice of abortion “when it is the only means to save the life of the pregnant woman or to avoid severe and permanent health complications” to stop being restrictive so that girls and adolescents victims of rape may access a legal abortion to prevent affecting their mental and even physical health<sup>28</sup>.

In this regard, we suggest the following recommendation to the Peruvian State:

- Ensure access to sexual and reproductive health information and services for adolescents, including access to modern contraceptive methods, especially for victims of rape.
- Ensure access to therapeutic abortion for girls and adolescents taking into account the effect that pregnancy may cause in their physical, mental, and social health.
- Decriminalize abortion when pregnancy is the result of rape.
- Request to the World Health Organization (who), the Pan American Health Organization (PAHO), or to a specialized agency of international prestige to report on the so-called antimplantatorio of the Oral emergency contraceptive effect, and on this basis to adapt their public policy.

### 3.3 Criminalization of Abortion in Girls and Adolescents

The treatment should not depend on the cooperation of the woman in the criminal prosecution, and in no case could it be used as evidence against her or against those who have performed the abortion<sup>29</sup>. However, Article 326 of the Criminal Code of Procedures<sup>30</sup> forces health practitioners to report women for the crime of abortion, in addition to stipulating the failure to report it<sup>31</sup> as a crime.

<sup>27</sup> In accordance with this Plan, was responsible to the Ministry of health (MINSa) as follows: "Request from the World Health (who) Organization, the Pan-American Organization of health (PAHO), or to a specialized agency of international prestige to report on the so-called antimplantatorio effect of the Oral emergency contraceptive and based upon this perform legal actions for public health on the subject policy" in order to achieve the objective No. 15 of the Plan.

<sup>28</sup> Even though grounds 11 of the protocol leaves open the possibility that women may have access to a therapeutic abortion through the substantiation of any other pathology; it is relevant to have in mind that inadequate training on this matter lets some physicians to have their own interpretations.

<sup>29</sup> Ibidem.

<sup>30</sup> Law 26842. General Health Law. Art.30.- The physician providing medical care is obliged, when there is evidence of criminal abortion, to report the case to the competent authority. Legislative Decree 957. New Criminal Code of Procedures. Art. 326.- Faculty and obligation to denounce: 1. Any person may report the criminal facts before the respective authority, whenever the exercise of the criminal act to prosecute them is public. 2. Notwithstanding the foregoing, people that must report are: a) Those who are obliged by express order of the Law. Especially the health care professionals for the crimes they are aware of in the performance of their duties, as well as educators for the crimes that would have taken place in the education center.

<sup>31</sup> Criminal Code. Article 407 Those who fail to inform to the authority about the information they have regarding the commission of a crime, when required to do so by their profession or employment, shall be punished with imprisonment for not more than two



This has caused, **during the period of 2014 - 2016, 269 complaints** to be filed in provincial, Family and Mixed Public Prosecutors' Offices, **against adolescents for the alleged commission of the crime of abortion**, the same that, currently, are involved in criminal investigations, and many of them would have been intercepted by police officers or prosecutors in the same health centers.

In this regard, we suggest the following recommendation to the Peruvian State:

- Amend its criminal legislation so that the constitutional obligations that protect professional secrecy prevail, and prevent that health care professionals report women for the alleged crime of abortion.
4. **Human Trafficking for the Purpose of Sexual Exploitation (Recommendation No. 116.42 Improve coordination on trafficking in persons investigations, increase funding for trafficking in persons victim services and No. 116.21. Continue to allocate appropriate budget and resources to address challenges such as trafficking in persons, sexual exploitation of children and extreme poverty in rural areas. (Thailand))**

## 1.1 The Need to Assist Victims of Trafficking in the Area of Health

Trafficking in persons is a crime provided for in the Peruvian Criminal Code. The main advances of the State have been on prevention and prosecution; however, there has been very little progress regarding care and protection of victims, since there is no budget nor a Health Protocol that would ensure the assistance to victims, families and witnesses<sup>32</sup>, mainly in the field of mental, sexual and reproductive health.

Most of the victims affected by the crime of human trafficking for the purpose of sexual exploitation are girls and adolescents, who bear consequences that are different than that of other victims. In 2014<sup>33</sup>, 41% were girls and adolescents under the age of 18 years, of which 34.9% was subjected to sexual exploitation, including providing services in brothels and serving as female escorts in pubs. In 2015, 526 cases were reported, this amount exceeds the number of cases reported in previous years.<sup>34</sup>

In this regard, we suggest the following recommendation to the Peruvian State:

- Develop and implement a health care Protocol that would take into account the characteristics of human trafficking and sexual exploitation in the country (illegal mining), and the needs of girls and adolescents.

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years. If the punishable act that was not denounced has defined by law more than five years of imprisonment, the punishment shall be not less than two nor more than four years. (...)

<sup>32</sup> CHS Alternativo 2015 Third Report: Assessment from the Civil Society on the Situation of Human Trafficking in Peru 2014 – 2015, page 74.

<sup>33</sup> Office of The Attorney General. Official Communication No. 685-2015-MP-FN-OBSERVATORIO Request to Access Public Information regarding human trafficking charges in the years 2013, 2014 and 2015 (2015)

<sup>34</sup> Office of The Attorney General. Official Communication No. 685-2015-MP-FN-OBSERVATORIO Request to Access Public Information regarding human trafficking charges in the years 2013, 2014 and 2015 (2015). Note: Information for 2015 is from January to December.



## 5.2 The Need of Prosecution with Gender Perspective to Avoid Impunity in the Case of Girls and Adolescents Victims of Human Trafficking for the Purpose of Sexual Exploitation

In 2016, it was known that the Permanent Criminal Chamber of the Supreme Court of Justice issued the Appeal for Annulment No. 2349-2014<sup>35</sup>, which confirmed the acquittal of a woman accused in a case of human trafficking and whose victim was a 14-year-old girl that was captured to work as an “escort” in a bar in the mining area of Mazuko in Madre de Dios.

The Chamber considered that there was no labor exploitation since *“being an escort (...), is not a labor that would exhaust the strength of the worker”*; nor sexual exploitation because she was only told once to have sex with customers. Such ruling assured impunity and affected the right to equality by issuing a sentence based on stereotyped prejudices about what constitutes sexual violence, disregarding the standards in the matter.

In light of this, the judges were reported to the National Council of Magistrates (CNM) for engaging in manifestly discriminatory treatment in the exercise of their position and not prompting the court decision. Unfortunately, so far, the CNM does not define the responsibility of the judges.

In this regard, we suggest the following recommendation to the Peruvian State:

- Supervise that the CNM acts with due diligence in the disciplinary processes against judges and ensure that they indeed comply with the proper motivation of their resolutions, implementing training on the use of the gender equality approach in the judicial role.

### 2. The Guarantee of the Right to Education within the Framework of the Principle of Equality and Non-Discrimination. (Recommendations No. 116.23 Intensify its efforts in the area of social, economic and cultural rights and give a more important role to gender and inter-culturality in public policies, in particular in education, No. 116.31 Eliminate effectively gender-based discrimination in accessing education and health care, particularly in rural areas and among indigenous communities and No. 116.32 Consider applying the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a guide to assist in policy development (Slovenia))

The Ministry of Education (MINEDU) through Ministerial Resolution 281-2016-MINEDU published on June 02, 2016<sup>36</sup> approved the new National Basic Education Curriculum, which consists of 7 cross-cutting approaches including the rights approach, the inclusive approach or approach of attention to diversity, the intercultural approach, the gender equality approach, among others.

<sup>35</sup> Available at: <http://kausajusta.blogspot.pe/2016/09/inaudita-confirmacion-de-absolucion-en.html>

<sup>36</sup> MINISTRY OF EDUCATION. Aprueban el Currículo Nacional de la Educación Básica (The National Basic Education Curriculum was Approved). Ministerial Resolution No. 281-2016-MINEDU. Available at: <http://busquedas.elperuano.com.pe/normaslegales/aprueban-el-curriculo-nacional-de-la-educacion-basica-resolucion-ministerial-no-281-2016-minedu-1388044-1/>



However, the inclusion of the gender equality approach has been questioned by collectives mobilized by the main Christian churches in the country and supported by members of the Congress of the Republic who are active in these churches or who legitimize what has been pointed out by them. These individuals and public authorities believe that the Curriculum includes what they call “gender ideology”, since it refers to terms such as “gender identity” or “sexual orientation”, which in their view promotes sexual relations at an early age and homosexuality in schools<sup>37</sup>. Unfortunately, this led the MINEDU to make changes to the curriculum and although the gender equality approach was not eliminated, gender identity was removed as a protected category in the rulings of<sup>38</sup>.

However, the situation is still troubling because this has been joined by the attacks by members of the Congress, who make use of their political power and the legislative function, advancing their prejudices and personal interests, to impose, through the adoption of laws, the elimination of the current Curriculum and prohibiting the inclusion of the gender equality approach, in addition to any reference to non-discrimination on the grounds of sexual orientation or gender identity in the elaboration of the next school curricula.

Thus far, 03 (three) legislative initiatives have been introduced in this regard: Bill No. 1043-2016/CR that proposes the elimination of the terms gender identity and sexual orientation from the National Curriculum<sup>39</sup>, Bill No. 1008/2016/CR that proposes to overrule the National Curriculum on the grounds that “(...) in a State governed by the rule of law (...) minorities cannot expect their minority sexual option to be taken as a model to be extensively disseminated and taught in schools (...)”, and Bill No. 1073-/2016-CR that proposes to “exclude from every Basic Education Curriculum any mention or reference to the cross-cutting approach of equality or gender identity”<sup>40</sup>.

In this regard, we suggest the following recommendations to the Peruvian State:

- Incorporate in the elaboration of every National Basic Education Curriculum guidelines on equality and non-discrimination, in particular, regarding sexual orientation and gender identity.
- Refrain from making legislative amendments that could constitute a step backwards in the protection of human rights, especially, of certain people, such as women and LGBTI persons.

## 1. The Guarantee of Sexual and Reproductive Rights in the Context of Natural Disasters

The country is experiencing an emergency situation in several departments that have been affected by the “Niño Costero” phenomenon, which has flooded several cities of Peru causing the unavailability of public (roads, schools, health centers, etc.) and private (homes, shopping centers,

<sup>37</sup>LEÓN, Jesica and LEYTON, Fernando. “Un intenso debate: ¿ideología de género o educación integral?” (A heated debate: Gender ideology or comprehensive education?). In *La República*, published on January 25, 2017. Available at: <http://larepublica.pe/impresasociedad/842614-un-intenso-debate-ideologia-de-genero-o-educacion-integral>

<sup>38</sup> Through Ministerial Resolution No. 159-2017-MINEDU, dated March 08, 2017.

<sup>39</sup> Available at:

[http://www.leyes.congreso.gob.pe/Documentos/2016\\_2021/Proyectos\\_de\\_Ley\\_y\\_de\\_Resoluciones\\_Legislativas/PL\\_0104320170309.PDF](http://www.leyes.congreso.gob.pe/Documentos/2016_2021/Proyectos_de_Ley_y_de_Resoluciones_Legislativas/PL_0104320170309.PDF) .

<sup>40</sup> Available at:

<http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2016.nsf/641842f7e5d631bd052578e20058a231/cd8d505fdb27e550052580e400615a80?OpenDocument>

etc.) infrastructures, in addition to death, and physical and psychological harm to people, who have also lost their homes. In this context, there is special concern regarding women and children who are in a situation of greater vulnerability, because during and after this type of disasters there's an increase in sexual violence, unplanned pregnancy, violence against women, human trafficking and diseases related to the Zika virus whose impact have been observed in pregnancies and newborns causing severe damage such as microcephaly and Guillain-Barre syndrome. However, given the emergency, people may not have access to quality services and prevention practices in the affected area.

In this respect, the State's strategy for intervention shall ensure access with no discrimination to health services, especially in the matter of prevention and attendance to sexual violence, access to contraceptive methods, including the Emergency Oral Contraception, and access to medicines. Furthermore, it shall consider that the context of crisis generates as a consequence an additional burden for women and girls since they are made responsible for the provision of care, food and water to households (community meals, for example).

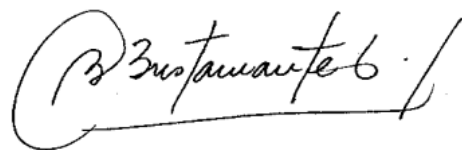
In this regard, we suggest the following recommendations to the Peruvian State:

- Ensure differentiated measures of prevention and protection, especially for children and adolescents, regarding sexual violence in temporary shelters for victims and other spaces.
- Provide free contraceptive methods, as well as guarantee the supply of health care kits for victims of sexual violence, including emergency oral contraception and medicine for the prevention of HIV and STIs.
- Provide specialized and understandable information on the prevention and the effects of the Zika virus in the sexual and reproductive health, as well as ensure access to health services to detect and treat, as a priority, the cases reported in pregnant women.

Sincerely,



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**Cecilia Bustamante García**  
Director of Centro Ideas - Piura



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