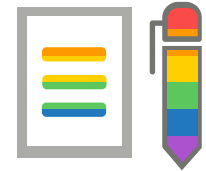


VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL AND TRANS (LGBT) PERSONS

Recommendations of the 2nd cycle of the UPR:

N.º 116.15 Consider enacting legislation that addresses crimes based on sexual orientation (Canada)

N.º 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)



Implementation of the recommendations:

In 2012, the Peruvian State committed to legislate to prevent violence against LGBT persons. However, after 5 years, the situation of LGBT persons has worsened in the following aspects:

A) Impunity of violence and discrimination, and increase of institutional violence that may constitute Torture, Cruel, Inhuman or Degrading Treatment.

During the period of 2015 - 2016, there were cases of discrimination perpetrated **by police officers and municipal security agents¹ in public spaces**, in order to expel non-heterosexual couples and repress their displays of affection by stating that “they are inappropriate for children” or that “it is not normal to kiss another man”². There were also reports of **damages of personal security, where trans women linked to sex work were the main victims of state agents (24 cases), including systematic practices such as** arbitrary arrests, beatings and transportation to desolated places, theft and sexual violence, all without sanction. In 2017, it was known that various municipalities of the city of Lima implemented a *citizen security* policy the “eradication of homosexuals” in the public highway³.

Nevertheless, there is no specific national policy to prevent, register, investigate and sanction discrimination and violence against LGBT persons, including acts perpetrated by state agents, which may constitute torture. **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), the Plenary Assembly of Congress of the Republic adopted the repeal of these modifications.**

B) The need to prevent and sanction hate speech that incites violence.

In recent years, there has been an increase in hate speeches from Evangelic Christian churches and Evangelic pastors who, in some cases, are also public officials¹. In 2017, the leader of the Worldwide Missionary Movement encouraged his community to mobilize against non-discrimination measures adopted by the Ministry of Education (MINEDU), instigating violence against lesbian women: “*If you find two women having sex, kill them both (...), in the name of Jesus*”, he indicated”¹. Likewise, a pastor, in an event of Coordinadora Cívica Cristiana Pro Valores, expressed the following: “*(...) if a homosexual person is going to have rights (...) it is going to legalize sodomy*”.

These speeches have had an impact on the protection of the rights of LGBT persons. **The Executive Branch amended the Criminal Code and eliminated the crime of incitement to discrimination, which was the only guarantee to denounce them.** In addition, the MINEDU **eliminated the term gender identity from the National Basic Education Curriculum⁴.**

¹ Security personnel in municipalities.

² Available at: <http://elcomercio.pe/lima/homofobia-san-isidro-serenos-botan-pareja-via-publica-275541>, <http://larepublica.pe/reportero-ciudadano/882833-pareja-homosexual-acusa-de-discriminacion-policias-en-miraflores>

³ Available at: <http://elcomercio.pe/lima/sucesos/discriminacion-municipal-distritos-contemplan-erradicacion-homosexuales-noticia-457704>

⁴ Available at: <http://elcomercio.pe/peru/minedu-modifica-curriculo-nacional-educacion-basica-143728>

C) School violence and fundamentalist opposition that jeopardizes policies that promote schools free from violence and discrimination for LGBT students.

In 2016, the Ministry of Education⁵ approved the National Basic Education Curriculum with a gender equality approach and prohibited discrimination based on sexual orientation, **thus fulfilling the recommendations of the 2nd cycle of the UPR**⁶. However, fundamentalist groups such as “*Con mis hijos no te metas*”⁷ (Don’t mess with my children) opposed these measures under the mistaken idea that the aim of the curriculum is to impose the ‘gender ideology’, to ‘homosexualize’ or to ‘indoctrinate’ children and to distort the concepts of man and woman⁸. The pressure exerted by this group prompted the group called “Padres en Acción” (Parents in Action) to present a Class Action lawsuit⁹ to have the Curriculum declared unconstitutional. **As a result, the First Civil Chamber of the Superior Court of Justice of Lima deleted the following paragraph from the conceptualization of the Gender Equality approach: ““While what we consider feminine or masculine is based on a biological sexual difference, these are concepts that we develop day to day, in our interactions”, considering that this “projects a vision and concept of sexuality that goes beyond the natural conception”, based on the biological difference**¹⁰. On the other hand, in the Congress of the Republic, three bills¹¹ aim to: (a) modify the General Education Act, so that the implementation of the Curriculum requires the prior and binding approval of parents; (b) eliminate the term “sexual orientation” from the Curriculum and the Guidelines for Comprehensive Sexual Education for Teachers; and (c) nullify the complete National Curriculum to develop a new one.

Recommendations suggested for the 3rd cycle of the UPR:

- Include sexual orientation and gender identity as prohibited grounds of discrimination in Article 323 of the Criminal Code, as well as criminally sanction hate speeches that incite violence, with aggravated punishments in the case of public officials.
- Incorporate in the Crime Observatory of the Office of The Attorney General and the Statistical Yearbook of the National Police Force a detailed record of violence and discrimination acts against LGBT persons.
- Implement specialized protocols for the attention, investigation and judgment of cases of violence and discrimination against LGBT persons, especially in cases regarding children and adolescents.
- Include in the System Specialized in Reports on Cases of School Violence (SiseVe Program) the possibility to denounce violence and discrimination based on gender identity.
- Implement the National Basic Education Curriculum published in the year 2016 without making modifications that eliminate the approach of gender equality and non-discrimination based on sexual orientation.

Suggested questions for the 3rd cycle of the UPR:

- **What are the measures being taken by the State to implement the gender equality approach and to eliminate discrimination based on sexual orientation and gender identity in schools?**
- **What measures have been taken to eliminate any strategy that mentions “eradication of homosexuals” from municipal citizen security plans?**

⁵ Approved by Ministerial Resolution 281-2016-MINEDU published on June 02, 2016.

⁶ Recommendation N°. 116.31 Eliminate effectively gender-based discrimination in the access to education and health care, particularly in rural areas and among indigenous communities. (Slovakia)

⁷ **Con mis hijos no te metas** (Don’t mess with my children) is an association that appeared in 2016. Its aim is to ensure that the Peruvian government eliminates the current National Curriculum 2017 that, according to its position, promotes the gender ideology, which would generate a sexual identity disorder” among students. According to its leaders, gender ideology is part of a conspiracy of the New World Order to “homosexualize” the country, disrupt the family unit and make individuals obedient to the government. Although they claim that their goal is not political nor religious; their association is mainly represented by evangelicals and members or supporters of political parties.

⁸ 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/impres/sociedad/842614-un-intenso-debate-ideologia-de-genero-o-educacion-integral>

⁹ The Class Action proceeds due to infringement of the Constitution and the law, against regulations, administrative rules, resolutions and decrees of a general nature, regardless of the authority from which they arise.

¹⁰ FIRST CIVIL CHAMBER OF THE SUPERIOR COURT OF JUSTICE OF LIMA. Docket: 11-2017-0-1801-SP-CI-01. Sentence (Resolution N°. 30) dated July 13, 2017, considering the SIXTEENTH.

¹¹ Bills N°. 1008/2016-CR, 1043/2016-CR and 1073/2016-CR. These bills were submitted by the political parties Acción Popular and Fuerza Popular during the month of March 2017.