

May 24, 2012

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

Dear Sirs or Madams:

Regarding the adoption of the List of Issues for Peru in the 105th 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 activities, who seek to ensure the integrity and dignity of individuals accessing sexual and reproductive health, justice, and human security, hereby submits relevant human rights information about Peru in three 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. Since Law No. 28704 became effective on April 6, 2006 (the first article of which reformed article 173 of the Criminal Code), all sexual encounters with or between teenagers ages 14 to 18 are automatically deemed as rape, regardless of whether or not there was consent.
2. As a result, teen sexual and reproductive health indicators have worsened because any sexual and reproductive healthcare for teens that is not aimed at promoting sexual abstinence is against criminal law, which includes the prevention of pregnancies as well as sexually transmitted disease and HIV/AIDS. In fact, prenatal care and institutional delivery care are at risk, as the existence of a teen pregnancy constitutes proof of rape. Statistics by the Ministry of Health, which have been poured into a technical document that was approved by Ministerial Decree No. 636-2009/MINSA, reveal this serious situation in an analysis of the effects of Law 28704, which can be summarized as follows:
 - Teen fertility has increased again since 2007.¹
 - Maternal mortality has increased in teens, even though maternal mortality in general has decreased.²
 - Teens represent a significant percentage of users that are unhappy with family planning.³

¹ MINISTRY OF HEALTH *Análisis de situación de salud de las y los adolescentes: ubicándolos y ubicándonos*. Lima: MINSA, 2009. pg. 55-57.

² *Idem*, pg. 65.

³ *Idem*, pg. 63.

- Teens are at an increased risk of exposure to sexually transmitted diseases (STDs).⁴
 - Teen demand of MINSA services has decreased between 2007 and 2008, even though the teen population has increased and healthcare coverage of this group is higher than in previous years.⁵
 - Coverage of institutional delivery care has decreased between 2007 and 2008, even though teen maternity has increased.⁶
3. This negative impact on access to sexual and reproductive health services results from the fact that healthcare professionals are obligated to report patients between the ages of 14 and 18, as any sexual activity on their part is considered a crime.⁷ As a result of the above, pregnant teens that see a doctor for outpatient checkups or who are hospitalized for institutional delivery are reported by authorities of the healthcare facility for interrogation by the Public Prosecutor; in some cases, it has been reported that teenage girls are held at these institutions as a means to ensure this investigation procedure.
4. The Ombudsman has revealed the negative effects this norm has had in the healthcare arena,⁸ which has not served the purpose of persuading teenagers to delay the initiation of their sexual activity nor decreased their exposure to sexual violence, which were the alleged purposes of this norm when it was being promoted.⁹

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.

5. Violence and discrimination in Peru is a serious problem; however, there is no legal framework for increasing penalties in discrimination related to hate crimes based on sexual orientation and

⁴ *Idem*, pg. 69-72.

⁵ *Idem*, pg. 85.

⁶ *Idem*, pg. 86.

⁷ New Criminal Procedure Code Article 326: Power and Obligation to Report [...] 2. Notwithstanding the above, the following have an obligation to file a report: a) Those who are expressly obliged to do so by Law. Healthcare professionals who should know of the commission of a crime by virtue of their profession as well as educators in facilities in which crimes may have been committed are particularly obligated to file reports [...].

General Health Law (*Ley General de Salud*), Law No. 26842. Article 30: Any physician who provides medical care to an individual that has been attacked with a sharp weapon, shot, suffered a car accident, or any other form of violence constituting a public offense or who sees indications of criminal abortion has the obligation to notify competent authorities.

⁸ OMBUDSMAN. Report of the Ombudsman No. 143, titled in Spanish: *Fortaleciendo la respuesta frente a la epidemia del VIH/SIDA: supervisión de los servicios de prevención, atención y tratamiento de VIH/SIDA* (2009), pg. 111-113, and Report of the Ombudsman No. 15, titled in Spanish: *Las recomendaciones del Comité de los Derechos del Niño al Estado peruano: un balance de su cumplimiento* (2011), pg. 187-189, 214-216.

⁹ Presuming that all teen sexual encounters constitute rape is also inconsistent with norms that enable marriage as early as the age of 16, as well as norms about recognition of paternity/maternity and norms that permit demanding the coverage of pregnancy and delivery costs, those that allow teens to be a party to extramarital affiliation suits, and suits aimed at gaining custody of their children and child support for their children as early as the age of 14 (Civil Code, articles 46, 241, and 244).

gender identity, nor existing public policies aimed specifically at the prevention and punishment of violence against LGBT individuals.

6. Based mainly on newspaper reports circulating on a national level, there were nineteen recorded cases of homicide of gay and trans victims¹⁰ and twenty two recorded injuries in the year 2009;¹¹ in addition, there were eighteen homicides and twenty nine injuries inflicted upon individuals of the LGBT community throughout the year 2010¹², and fourteen recorded cases of homicide and seventeen recorded injuries in the 2011¹³. To date, there are no exact numbers in terms of hate crimes against members of the LGBT community in Peru.¹⁴ As mentioned above, due to the lack of official government data, it is civil society organizations who record cases reported to the media, as a main source of information; and this information is later used to periodically develop approximate statistical data on this phenomenon.¹⁵

¹⁰ Trans: transvestite, transsexual, and transgender.

¹¹ JAIME BALLERO, Martín (narrator). *Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2009*. Lima: PROMSEX, 2010. pg. 67-70 and 76-78. Available at: <http://www.promsex.org/docs/Publicaciones/informeddhtlgb2009promsexredtlgb.pdf>

¹² JAIME BALLERO, Martín (narrator). *Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2010*. Lima: PROMSEX, 2011. pg. 11. Available at: <http://www.promsex.org/docs/Publicaciones/informeanualddhtlgb2010.pdf>

¹³ RAMÍREZ HUAROTO, Beatriz (coordinator). *Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2011*. Lima: PROMSEX, 2012. pg. 52-57. Available at: <http://promsex.org/docs/Publicaciones/INFORME-ANUAL-DDHH-TLGB.pdf>

¹⁴ For example, there are two official registries for recording cases of femicide (one of the clearest expressions of gender based hate crimes). The Ministry for Women and Social Development created the Registry of Victims of Femicide in Peru through Ministerial Decree No. 110-2009-MIMDES, on March 6, 2009. For its part, the Public Prosecutor's Office has created a registry with data gathered by prosecutors throughout the country; this data gathering, which was initiated through Directive No. 002-2009-MP-FN, approved by National Prosecutor's Decree No. 216-2009-MP-FN on February 25, 2009, is currently regulated through Directive No. 006-2009-MP-FN, approved through National Prosecutor's Decree No. 1690-2009-MP-FN, on November 2009.

¹⁵ There are several emblematic cases of hate crimes. In October 2007, Jefry Edgar Peña Tuanama, age 32, transvestite, was brutally attacked in the district of Ate Vitarte by five unknown subjects while working as a youth peer provider on sexual health and human rights for the Ministry of Health. She was intercepted by a group of strangers for no reason at all, who beat her and cut her with a knife and a broken bottle. At the hospital she received 180 stitches throughout her body and as a result of the attack she was incapacitated for several months. Two police officers from the Peruvian National Police who witnessed the attack failed to come to her aid, which placed her in a situation of increased vulnerability and impacted not only the severity of her injuries but also the possibility of identifying her attackers. JAIME BALLERO, Martín (narrator). *Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2008*. Lima: PROMSEX, 2009. pg. 88-89 and 102. Available at: <http://www.promsex.org/docs/Publicaciones/informeDHlow.pdf>. Luis Alberto Rojas Marín, age 26, was insulted, assaulted, and raped with a rubber pole by three police officers on February 25, 2008. He was held in a prison cell in a precinct of the Peruvian National Police (PNP) of the district of Casa Grande, located in the Province of Ascope (La Libertad), where PNP officers stole his money and other belongings and later stripped him naked and introduced a rubber pole in his anus while groping him sexually. The young man was forced to stay nude throughout most of the morning and at 6 in the morning his clothes were returned to him and he was released. No justice was done on a national level and his case is currently in the preliminary phase at the Inter-American Human Rights Commission. JAIME BALLERO, Martín (narrator). *Informe anual sobre derechos humanos de personas trans, lesbianas, gays y bisexuales en el Perú 2008*. Lima: PROMSEX, 2009. pg. 89-90 and 102-104. Available at: <http://www.promsex.org/docs/Publicaciones/informeDHlow.pdf>

7. To date, a draft resolution is pending discussion in Congress which proposes to increase penalties in cases of discrimination based crimes and to expressly include sexual orientation and gender identity as protected categories.¹⁶ In addition, is pending the discussion in Congress of a draft resolution which proposes measures against discrimination; this initiative includes sexual orientation and gender identity as prohibited causes of discrimination¹⁷.
8. Same sex families don't have any protection under Peruvian law. They don't have access to health services as heterosexual couples have, and in case of death the survivor doesn't receive a heritage or a social security pension because there are no laws that recognize their union as a family. This lack of protection also affects the access to properties only because heterosexual couples that are married or live together have a legal regimen called "sociedad de gananciales" that allow share patrimony during the relationship. In addition, homosexual, bisexual and trans parents don't have legal guarantees to protect their relation with their children: Peruvian Children and Adolescents Code, articles 77 and 78, establish that are causes to restrict and extinguish custody "give children orders, advices or examples that corrupt them"; for the discrimination environment and common prejudices many LGBT parents afraid to lose their legal rights with their daughters and sons.

Articles 3, 6 and 7. The Right to life and integrity free from discrimination: Inability to Access Therapeutic Abortion

9. Therapeutic abortion, which is defined in section 119 of the Criminal Code of Peru as the interruption of pregnancy to save the life of the gestational mother or safeguard her from greater permanent damage to her health¹⁸ has been unpunishable in Peru since 1924.¹⁹ Key elements for ensuring true discrimination-free access for all women in need of legal abortion are protocols and clinical practice guides. Throughout the world, including Peru, all medical procedures have protocols and clinical guidelines, which constitute standards of care for healthcare professionals and guide the timely care of healthcare users; in Peru, there are specific sexual and reproductive healthcare guidelines on a national level.²⁰ In countries in which abortion is legal, as is the case of therapeutic abortion in Peru, the public healthcare system has an obligation to provide this service and eliminate unnecessary risks to women

¹⁶ Bill Proposal No. 609/2011-CR submitted on December 6, 2011, awaiting resolution by the Congressional Justice and Human Rights Committee and plenary vote. Available at: <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2011.nsf>

¹⁷ Bill Proposal No. 756/2011-CR submitted on January 17, 2012, awaiting resolution by the Congressional Constitution Committee and plenary vote. Available at: <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2011.nsf>

¹⁸ Criminal Code of Peru. Article 119: Therapeutic Abortion. Any abortion carried out by a physician with consent from the pregnant woman or her legal representative, if applicable, is unpunishable if it is the only means available for saving the pregnant woman's life or for preventing greater permanent damage to her health.

¹⁹ The rationale behind therapeutic abortion is that there are a number of pregnancies occurring in women with pre-existing conditions in which gestation poses a threat to the woman's health or in women who develop pathologies during the gestational period that complicate its progression and pose a threat to the life or physical and mental health of the gestating woman.

²⁰ MINISTRY OF HEALTH *Guías Nacionales de Atención Integral de la Salud Sexual y Reproductiva*. Lima: MINSA, 2004.

who may require this kind of care.²¹ However, the Ministry of Health of the Peruvian State has failed, to date, to approve a protocol; even though it has acknowledged its obligation to do so and drafts have been submitted on multiple occasions.²²

10. In October 2005, the Human Rights Committee (HRC) issued a resolution in the K.L. v. Peru case. K.L. are the initials of a teenage girl who, in 2001, was carrying an anencephalic fetus and who was denied access to therapeutic abortion services by a Public Hospital of Lima despite the fact that her gynecologist, a staff member of that hospital, had indicated the need for abortion and the risk of severe and permanent damage to her physical and mental health. The Committee expressly recommended that the Peruvian State adopt measures for preventing similar cases in the future.²³
11. The absence of protocol has led to violations of the rights of other women and teenagers. L.C. are the initials of a 13 year-old girl who became pregnant as a result of rape and later tried to kill herself in 2007 by jumping off the roof of her home. After being transferred to a public hospital, her doctors recommended surgery for preventing permanent damage from the fall, however, when her pregnancy was confirmed her surgery was canceled. Even though therapeutic abortion was formally requested to the Hospital Board, the request was denied. The surgery for her spinal injuries was finally performed when L.C. suffered a miscarriage, almost three and half months after surgery had been identified as necessary treatment. In its decision of October 2011, the Committee for the Elimination of All Forms of Discrimination against Women established that the Peruvian State had violated the rights of L.C. and issued the following recommendations, which the Peruvian state has not yet expressed the will to implement:
 - To provide L.C. with remedies that include adequate compensation for moral and material injury as well as any rehabilitation services that are consistent with the severity of the violation inflicted upon her rights and with her state of health.
 - To establish a mechanism for effective access to therapeutic abortion under conditions that protect the physical and mental health of women and prevent similar rights violations in the future.
 - To take measures toward reproductive rights that are known and enforced at all healthcare facilities, including: i) Training and development programs to change the attitude and behavior of healthcare professionals toward teenage girls who request reproductive health

²¹Accordingly, the World Health Organization has published a guideline template known, in Spanish, as: "Aborto Sin Riesgos: Guía Técnica y de políticas para Sistemas de Salud," available at http://whqlibdoc.who.int/publications/2003/9275324824_spa.pdf

²² The requirement for a national therapeutic abortion protocol has had extensive media coverage, as can be inferred from the following articles: <http://www.andina.com.pe/Ingles/Noticia.aspx?id=jXRtUhw5Gy4=>; <http://peru21.pe/noticia/486496/peru-aplicarian-aborto-terapeutico>; <http://peru21.pe/impresia/noticia/piden-aprobar-protocolo-aborto-legal/2010-05-29/276174>; <http://www.larepublica.pe/archive/all/larepublica/20100908/23/node/288041/todos/13>; <http://peru21.pe/impresia/noticia/abortos-terapeuticos-no-cuentan-protocolos/2011-02-16/297203>

²³ The United Nations Human Rights Committee's recommendation is available at: <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/KL%20HRC%20final%20decision.pdf>

- services and to address needs that are specific to sexual violence, and ii) Guidelines or protocols for ensuring availability of and access to public health services.
- To examine the restrictive interpretation of therapeutic abortion.
 - To review existing legislation for decriminalizing abortion in cases of rape.^{24,25}
12. K.L. and L.C. are, unfortunately, not the only two existing emblematic cases. Toward late 2010, a similar case was reported to the Peruvian press of a woman who, despite needing cancer treatment, was denied accurate information and abortion; instead, she was subjected to chemotherapy while pregnant, which affected her health and unnecessarily prolonged her pregnancy.²⁶ In addition, in March 2012 was reported the case of a woman who received therapeutic abortion care at one public hospital, but only after that another healthcare facility where she had originally been evaluated denied medical care, thus posed a threat to her life as well as serious and permanent damage to her health.²⁷
13. In the First and Second Report regarding compliance with the Equal Opportunity between Men and Woman Law (*Ley de Igualdad de Oportunidades entre Mujeres y Hombres*), the Ombudsman, i.e. the national human rights defense body, urged the Ministry of Health to approve a therapeutic abortion protocol.²⁸ The same has been done in their 2006 to 2009 annual reports.²⁹ On the occasion of the L.C. case, the Ombudsman has once again requested the approval of the protocol.³⁰

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.

²⁴ The Committee's decision is available at: http://www2.ohchr.org/english/law/docs/CEDAW-C-50-D-22-2009_sp.pdf

²⁵ In its concluding observations for the Peruvian State, the Committee first expressed its concern regarding Peru's failure to follow the recommendations of the Human Rights Committee in the K.L. case and urged the State to comply with the Human Rights Committee's recommendations in the present case. CEDAW/C/PER/CO/6, paragraphs 24-25.

²⁶ Information available at: <http://www.larepublica.pe/impresame-negaron-aborto-terapeutico-2010-10-09> and <http://www.larepublica.pe/archivo/all/larepublica/20101011/21/node/294077/todos/13>.

²⁷ Information available at: <http://www.caretas.com.pe/Main.asp?T=3082&S=&id=12&idE=1004&idSto=0&idA=57425>

²⁸ OMBUDSMAN. Women's Rights Office. *First Report on Compliance with the Equal Opportunity between Men and Women Law*. Office Report No. 001-2008-DP/ADDM. Lima: Ombudsman, 2008, pg. 21, 28, 39; OMBUDSMAN. Women's Rights Office. *Second Report on Compliance with the Equal Opportunity between Men and Women Act*. Office Report No. 001-2009-DP/ADDM. Lima: Ombudsman, 2009, pg. 98-100. Available at: <http://www.defensoria.gob.pe/informes-publicaciones.php>

²⁹ OMBUDSMAN. *Tenth Annual Report of the Ombudsman (January-December, 2006)*, pg. 176-177; OMBUDSMAN. *Eleventh Annual Report of the Ombudsman (January-December, 2007)*, pg. 169-170; OMBUDSMAN. *Twelfth Annual Report of the Ombudsman (January-December, 2008)*, pg. 143 and 156; OMBUDSMAN. *Thirteenth Annual Report of the Ombudsman (January-December, 2009)*, pg. 155. Available at: <http://www.defensoria.gob.pe/informes-publicaciones.php>

³⁰ OMBUDSMAN. Press release No. 320/ DP/OCII/2011. Available at: <http://www.defensoria.gob.pe/modules/Downloads/prensa/notas/2011/NP-320-11.pdf>

- What steps is the State taking to modify the criminalization of adolescents' sexual relations?
- What is Peru doing to ensure that adolescents have adequate sexual and reproductive health care services without interference from third parties?

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.

- What steps is the Peruvian State taking to expedite specific legislation preventing and increasing penalties for discrimination based crimes against gays, lesbians, bisexuals, and trans, such as the Bill Proposal No. 609/2011-CR, and to implement public policies for preventing, recording, and punishing acts of violence against gay, lesbian, bisexual, and trans individuals?
- What steps is the Peruvian State taking to expedite specific legislation prohibiting discrimination against persons based on sexual orientation and gender identity in the exercise of all human rights, such as the Bill Proposal No. 756/2011-CR at the Congress?
- What future measures is Peru adopting to protect same sex families rights and gays, lesbians, bisexual and trans parents' rights respect their children?

Articles 3, 6 and 7. The right to life and integrity free from discrimination: Inability to Access Therapeutic Abortion

- What current or future measures is Peru adopting to ensure therapeutic abortion as per law? Particularly, what current measures have been adopted to issue a domestic protocol for legal abortion care that includes clear mechanisms for access to the procedure, consistent with a broad interpretation of its scope that includes the protection of the physical and mental health of women?
- Why has the State failed to comply with the Human Rights Committee's Recommendations in the K.L. v. Peru case and with those of the Committee for the Elimination of All Forms of Discrimination against Women in the L.C. v. Peru case?

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

Sincerely,



Rossina Guerrero
Director