

May 19, 2017

Re: Information relevant to the development of the “Study on the impact of fundamentalism and extremism in the cultural rights of women” of the United Nations Special Rapporteur in the field of cultural rights.

Dear Sir/Madam,

In the framework of the preparation of the annual report of the Special Rapporteur in the field of cultural rights, the **Center for the Promotion and Defense of Sexual and Reproductive Rights - PROMSEX**, provides the following comments and relevant information on different forms of fundamentalism and extremism in the enjoyment of women’s cultural rights in their diversity; thereby contributing with tools to support the gradual development of international standards on this matter.

The Center for the Promotion and Defense of Sexual and Reproductive Rights (PROMSEX) is a feminist non-governmental organization, comprising men and women, professionals and activists, seeking to contribute to the validity of the integrity and dignity of people on the non-discriminatory and egalitarian access to sexual and reproductive health, in a framework of the guarantee of human rights. Our organization has consultative status to the Organization of American States (OAS).

1. The Right of Every Woman to be Free from Discrimination and to be Valued Free of Stereotyped Patterns:

1.1 The 2017 National Basic Education Curriculum as a way to eradicate gender stereotypes to achieve an education free of discrimination: Questioning from the religious fundamentalism

The Peruvian Ministry of Education, through Ministerial Resolution 281-2016-MINEDU published on June 02, 2016¹, approved the National Basic Education Curriculum, which includes 7 approaches: the rights approach, the inclusive approach or approach of attention to diversity, the inter-cultural approach, the gender equality approach, the environmental approach, the common good approach and the approach of the pursuit of excellence.

After its approval, there was controversy due to the mobilization of some fundamentalist religious groups and conservative political parties. Thus, the collective “*Con mis hijos no te metas*” (Don’t mess with my children) was created, opposing the implementation of the aforementioned curriculum for including the gender equality approach, as well as the prohibition of discrimination based on sexual orientation, and opposing that children and adolescents may access comprehensive sexual education; under the misconception that the aim is to impose the “gender ideology”, 'homosexualize' children and distort the concepts of man and woman.²

The media and political pressure exerted by some fundamentalist religious groups and some members of the Congress led the Ministry of Education to make changes to the Curriculum, by Ministerial Resolution No. 159-2017-MINEDU, which established the deletion of the term “gender identity” that was part of the conceptualization of the proposed gender equality approach.

In this regard, it should be noted that the defense of school curricula that take into account the elimination of gender stereotypes and all forms of discrimination against women, including lesbian, bisexual or trans women, is important to counteract the fundamentalism and guarantee the right to live in a society free of discrimination at the school level where, currently, certain fundamentalist religious movements seek to impose a version of their religions that promotes macho and hetero/cisnormative cultural patterns that exclude non-regulatory sexual and gender diversity.

In the report of the previous Special Rapporteur on cultural rights, it was argued that cultural rights are empowering rights that offer important opportunities for the realization of other human rights³. In this respect, she stressed that education is one of the ways to fight against fundamentalism⁴, and that, therefore, States must ensure:

¹MINISTRY 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/>

²LEÓN, 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>

³ HUMAN RIGHTS COUNCIL, Report of the Special Rapporteur on Cultural Rights, A/67/287, 2012, paragraph 5. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?m=177&m=197

⁴ HUMAN RIGHTS COUNCIL, Report of the Special Rapporteur on Cultural Rights, A/HRC/34/56, 2017, paragraph 22. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?m=177&m=197

“there is a counterweight to fundamentalist (...) discourses by publicly challenging them and **by guaranteeing education** aimed at the objectives specified in article 13, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and article 26, paragraph 2, of the Universal Declaration (...), as interpreted by the Committee on Economic, Social and Cultural Rights in General Comment No. 19 **on the right to education.**”⁵

On the other hand, she stressed that viewing culture as something static obstructs the realization of the human rights of women and - we add - of LGBTI persons because it presupposes that particular values and practices are immutable⁶, when in fact the cultural norms are “*expressions of power relations that are often limited to the dominant voices*” where those “*contesting prevailing norms and practices to promote gender equality may be condemned as cultural traitors*”⁷, which occurred in the framework of the adoption of the Peruvian National Curriculum that meant the possibility of rebutting the hegemonic discourses and cultural norms imposed by certain fundamentalist groups.

An education without discrimination and free of stereotypes allows the perspectives and contributions of women in their diversity and LGBTI persons to subvert the margins of the cultural and public life that exclude them in order to take part in them. Therefore, the States have the obligation to “*take appropriate measures to remedy structural forms of discrimination so as to ensure that the underrepresentation of persons from certain communities in public life does not adversely affect their right to take part in cultural life*”⁸.

1.1 Hate speeches based on gender bias: Supposition to understand the obstacles in the exercise of women’s rights

According to article 6 of the Convention on the Prevention, Punishment and Eradication of all Forms of Discrimination against Women (Convention of Belem do Para), it is established the obligation of the State to guarantee **the right of all women to be free from discrimination and to be valued free of stereotyped patterns of behavior**. However, stereotypes related to women's sexuality are the most used to deny the recognition of their rights, mainly, when the exercise of their sexuality does not correspond with heteronormative expectations, or when their personalities question and subvert gender mandates placed historically, socially and culturally on women.

In Peru, conservative collectives allied with fundamentalist religious sectors, for the most part, Evangelic Christian churches and Evangelic pastors that, in some cases, are also public servants, conducted campaigns to oppose the adoption of the aforementioned School Curriculum. The strategies of such campaigns exceed the limits of freedom of expression and religion, through hate speeches against women and LGBTI persons, because, on the one hand, expressions of non-normative sexualities and identities are considered “dangerous” and, on the other hand, because a

⁵ Idem., paragraph 24

⁶ Idem., paragraph 17

⁷ Idem., paragraph 19

⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 21, paragraph 52.

better understanding of the body and sexuality of children and adolescents is contrary to public morality⁹.

These speeches are materialized in the case of Pastor Rodolfo Gonzales Cruz, leader of the Worldwide Missionary Movement, who encouraged the members of his community to mobilize against the Curriculum, through the **instigation of violence against lesbian women**: *“Homosexuals should die (...) because they are not the work of God. If you find two women having sex, kill them both. If you find a woman having sex with an animal, kill her and kill the animal, whether it is a dog or any other animal, in the name of Jesus”*¹⁰. On another occasion he said: *“Now, we Christians are the bad guys because we condemn these practices (homosexuality). We are not going to kill them, we cannot kill them, but a government does have the authority to kill them, God ordered to kill those who do awful things, bad things”*¹¹.

Nicanor Santana is another of the Evangelic pastors whose hate speech has remained with complete impunity, even when he promoted the idea that homosexual persons are sick, and who, in the framework of an event organized by Coordinadora Cívica Cristiana Pro Valores where a political pact was signed with a presidential candidate, expressed the following: *“The Holy Scriptures acknowledge homosexuality as a sexual vice against nature. There is no right to sexual aberration (...) Therefore, if a homosexual person is going to have rights (...) it is going to legalize sodomy”*.¹² Similarly, in an interview broadcasted on television over-the-air, and at the national level, pastor Santana said: *“Yes, they (homosexuals) can be cured. Thus, they need a treatment so, in this way, they can be restored (...)”*¹³.

However, not only Evangelical pastors contribute to promoting a widespread context of homophobia, transphobia or biphobia in the country, but also public servant Julio Rosas, congressman from the party Alianza Para el Progreso (APP) and leader of the church Alianza Cristiana Misionera, recently said that: *“gender ideology is a harmful ideology that seeks to redefine what has been already established by nature of our human species, it claims that the gender we were born with is not necessarily it, but one can change it based on the feelings (...)”*¹⁴.

However, the instigation of violence and discrimination cannot be justified in the right to freedom of religion. The Special Rapporteur on freedom of religion or belief, Mr. Ahmed Shaheed, by recognizing

⁹INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Violence against LGBTI Persons, OAS/Ser.L/V/II.rev.2, November 12, 2015, page 39

¹⁰LEÓN, Jéscica and SALINAS, Eduardo. “Con mentiras y mensajes de audio se preparó marcha de hoy” (Today’s protest was prepared with lies and audio messages) at *La República*, published on March 04, 2017. Available at: <http://larepublica.pe/impresasociedad/853535-con-mentiras-y-mensajes-de-odio-se-prepararon-marcha-de-hoy>

¹¹ Ibidem.

¹² COORDINADORA CÍVICA CRISTIANA-PRO VALORES. “Propuestas presidenciales Comunidad Cristiana 2016” (Presidential Proposals Christian Community 2016), published on May 10, 2016. Available at: <https://www.youtube.com/watch?v=1PBuhiv99c> (from minute 7:03)

¹³ AMÉRICA NOTICIAS. “Keiko Fujimori: las polémicas declaraciones del pastor que redactó el compromiso” (Keiko Fujimori: The controversial statements of the pastor who drafted the commitment) published on May 04, 2016. Available at: <http://www.americatv.com.pe/noticias/actualidad/keiko-fujimori-polemicas-declaraciones-pastor-que-redacta-compromiso-n229877>

¹⁴LAMULA EXTERNOS. “Julio Rosas contra la ‘ideología de género’”, (Julio Rosas against the ‘gender ideology’) published on February 28, 2017. Available at: <https://www.youtube.com/watch?v=tuf5Fg4h1tg>

that the members of the LGBTI community and women are exposed to discrimination on the basis of religion or belief¹⁵, determined that the *“right to freedom of religion or belief does not give the individual – as a right-holder – the power to marginalize, suppress or carry out violent acts against other individuals and those in vulnerable situations, such as women or members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, under the guise of manifesting their religion, or as constituting the “moral high-ground”*”¹⁶.

2. Right to access and to enjoy the benefits of scientific progress: Access to the Emergency Oral Contraception (EOC) and to safe, legal and timely abortion services

2.1 The Peruvian context: The need of access to sexual and reproductive health services

In Peru, sexual violence constitutes one of the main forms of violence against women. Only in 2015, there have been **5311 complaints for violation of sexual freedom**, the highest number of cases had as victims girls and adolescents between the ages of 10 and 17¹⁷. Whereas, in 2016, it was registered that **5 387 girls and adolescents under the age of 17 years** were victims according to the Ministry of Women Affairs and Vulnerable Populations¹⁸; showing that the most affected group is formed by girls and adolescents.

Likewise, according to the Comprehensive Health Insurance (SIS), it was reported that for the period of 2011-2015 there was an **average of 2 thousand childbirths per year performed in girls between the ages of 11 and 14**¹⁹. That is to say, **there is a high rate of girls who get pregnant as a result of rape and must assume a forced motherhood because they are not able to terminate their pregnancy in a safe, legal and timely manner. Additionally, motherhood puts girls at grave risk to their health and life**, as the pregnant girl or adolescent has not yet reached sufficient physical and emotional maturity²⁰; however, restrictive interpretations, on the part of health personnel, of the Therapeutic Abortion Protocol does not allow them to access a therapeutic abortion, which confirms the risk faced by girls and adolescents with a forced pregnancy.

The cases of maternal deaths and severe physical and psychological effects that girls and adolescents have to go through when they have a forced pregnancy as a result of rape or when carrying a fetus incompatible with life lead to raise as a reasonable measure the decriminalization of abortion and the free access to the emergency oral contraception to ensure the rights of women to have access to the scientific advances in the field of sexual and reproductive health.

Nonetheless the situation described, in Peru, the abortion is criminalized and it can only be legally performed for therapeutic purposes, that is, when the termination of the pregnancy is the only way to save the life of the pregnant woman or to avoid severe or permanent damage to her health. Likewise, temporarily, one can access the emergency oral contraception (EOC) free of charge in the

¹⁵ HUMAN RIGHTS COUNCIL, Report of the Special Rapporteur on freedom of religion or belief, A/HRC/34/50, paragraph 47. http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/50.

¹⁶ HUMAN RIGHTS COUNCIL, Report of the Special Rapporteur on freedom of religion or belief, A/HRC/34/50, paragraph 31. http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/50.

¹⁷ Statistical Yearbook 2015 of the Peruvian National Police Force, page 39

¹⁸ Ministry of Women Affairs and Vulnerable Populations. Statistics - Comprehensive Care of Victims of Family and Sexual Violence. Period of January-December 2016.

¹⁹Team 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

²⁰Team of Concerted Monitoring of Health Policies, Op. Cit, page 9.

public health service, by virtue of a precautionary measure that ordered to do so to the Ministry of Health; there is still no final judgment that guarantees access. This is because, in the year 2009, the Peruvian Constitutional Court prohibited the free distribution in the public sphere as a result of the process for the protection of fundamental rights (amparo) started by a fundamentalist organization called *Alas Sin Compenenda*. Notwithstanding that access to the EOC is a fundamental health service that must be guaranteed taking into account that “science and technology (can) contribute to improving human life, raising the standard of living and promoting other human rights”, such as the reproductive rights of women.

In our country, the criminalization of abortion remains because of opposition linked to religious fundamentalists with political power. This leads to negative positions on abortion and the social stigma toward women who terminate their pregnancy; and impede the suggestion of its decriminalization in cases of rape and severe fetal anomalies incompatible with life outside the womb, and even when their lives or health are in danger. In fact, the Therapeutic Abortion Protocol is also being taken to court by conservative and fundamentalist groups to prevent its implementation. Thus, through the criminalization of abortion, “*the conditions under which abortion is understood as something bad, reflecting its historical origin in the “sin”, which can and must be punished*”²¹, are being determined in our country.

The abovementioned shows the breach of the obligations of the State, meanwhile, the IACHR in its Report on Access to Justice for Women Victims of Violence in the Americas referred to the positive obligations contained in article 7 of the Convention of Belem do Para, and found that:

“the States, as part of the obligation of due diligence, must take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women. (...) this provision must be interpreted as requiring States to amend discriminatory laws, practices and public policies or those whose practical effect is to discriminate against women”²²

In accordance with the above, and as already mentioned, in the latest report of the Rapporteur it was noted that to ensure the effective exercise of cultural rights it is necessary to fight against fundamentalism, in order to eradicate preconceptions based on prejudices about sex, sexual matters or stereotyped notions about gender roles, emphasizing that access and enjoyment of the benefits of scientific development is one of the ways to deal with this problem.

In that regard, in our country, women’s right **to access and enjoy the benefits and contribution of scientific progress in conditions of equality and without discrimination**, is affected because the State does not guarantee the free distribution of the EOC to women who visit public services, which for the most part are the ones with fewer economic resources and the victims of rape²³, also producing a situation of discrimination related to those stereotyped patterns of women’s sexual behavior, which

²¹ COOK J., Rebecca. Significados estigmatizados del derecho penal sobre el aborto (Stigmatized meanings of criminal law on abortion). In: El aborto en el derecho transnacional. Casos y controversias (Abortion in transnational law. Cases and controversies). Fondo de Cultura Económica. 2016. Page 438.

²² IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II. Doc. 68 (2007), page 33

²³ It should be noted that by virtue of the judgment in the Docket No. 02005-2009-PA/TC of October 16, 2006, the Peruvian Constitutional Court prohibited the free distribution of the EOC by the Ministry of Health but not the sale to the general public in pharmacies. This situation remained until the granting of a precautionary measure that ordered the Ministry of Health to distribute Levonorgestrel as emergency oral contraception in public health centers. As it was mentioned, this is a temporary measure because a final judgment on this matter is pending, which we hope will follow this criterion.

are based on the idea that motherhood is the duty of women, and in the fulfilment of that duty, the viability of a pregnancy must prevail over the life and health of women.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Susana', written in a cursive style.

Susana Chavez

Director of PROMSEX