

October 15, 2018

Carta N° 403-2018

**Secretariat of the Committee against Torture
Human Rights Treaties Division
Office of the High Commissioner for Human Rights
Palais Wilson – 52, rue des Pâquis
CH-1201 Geneva (Switzerland)**

Re: Alternative Report on the Seventh Periodic Report Submitted by the Peruvian State

To Whom It May Concern:

The Center for the Promotion and Defense of Sexual and Reproductive Rights (PROMSEX), a feminist non-governmental organization comprising men and women seeking to contribute to the validity of the integrity and dignity of people on the access to sexual and reproductive health, justice and human security, provides additional information to the seventh periodic report submitted by the Peruvian State for its evaluation during the 65th Session of the Committee Against Torture, which will be held from November 12 to December 7, 2018 in Geneva.

This report aims to provide relevant and updated information regarding sexual and reproductive rights in Peru and the situation of LGBTI persons, in connection with Articles 12, 13 and 16, with special emphasis on: a) Prosecution in cases of torture of LGBTI persons; b) Discriminatory public policies against LGBTI persons; c) Inadequate implementation of the Therapeutic Abortion Protocol; d) Forced pregnancy in girls and adolescents; and e) Criminalization of abortion in cases of rape.

The report contains recommendations with respect to each of the issues presented, to be considered by the Committee, both at the time of the evaluation hearing scheduled for the 65th session, and when it issues its Final Observations.

I. Articles 12 and 13

Lack of official information

1. Currently, the Peruvian State does not have a mechanism for collecting qualitative information, and producing and recording unique official statistics that would show us, in a systematized matter, reported cases and sentences related to torture in its different modalities, at the national level. This was confirmed by the Peruvian State in paragraph 264 “[...] it is necessary to promote a greater management of information relating to the consolidation of statistical data in the matter of torture [...]”¹.
2. The States have an obligation to prevent and protect all persons from torture, as well as ensure that the victims obtain justice and compensation. Therefore, it is paramount to have a national register of complaints regarding torture and other cruel, inhuman or degrading treatments that would allow us to know the current situation of torture in the country. While the National Institute of Statistics reports about the complaints registered by year by crimes committed, filed in police stations and units specialized in criminal investigation, is not segregated by the crime of torture². Likewise, the Office of the Attorney General registers all the complaints filed

¹ CAT/C/PER/7, para. 264.

² National Institute of Statistics. National Censuses in Police Stations, 2013-2014. Complaints by crimes committed 2011-2016, complaints by crimes committed filed in police stations and units specialized in criminal investigation.

for the perpetration of any crime. Access to this information is limited because it is only provided to the requesting party if they are part of the process or are duly presented, and only regarding the case consulted³.

3. On the other hand, with regard to the designation of a National Mechanism for the Prevention of Torture (MNPT)⁴, the Peruvian State ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) through Supreme Decree 044-2006-RE, on July 25, 2006, undertaking the responsibilities and obligations established in the international regulations for the prevention of torture. By Law No. 30394, dated December 22, 2015, the competences of the Office of the Ombudsperson were extended, making it the national body in charge of the MNPT. However, the Executive Branch did not assign it an institutional budget for its proper functioning. In this regard, the Office of the Ombudsperson, pointed out that “it did not have the budgetary allocation necessary to adequately implement the work of the MNPT”⁵; nonetheless, “it has developed and approved a MNPT Action Protocol, which has a set of forms to gather information”⁶.

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

- To develop a mechanism for collecting qualitative and quantitative information, and producing and recording unique official statistics that would show us, in a systematized matter, reported cases and sentences related to torture and rape, at the national level.
- To provide an institutional budget for the Office of the Ombudsperson, entity responsible of overseeing the MNPT, for its proper performance in the prevention of torture and mistreatment.

Current Situation of LGBTI Persons

4. LGBTI persons suffer aggressions, that may entail torture and other cruel, inhuman or degrading treatments or punishments⁷, driven by the desire to punish those who are considered as defying gender regulations⁸. In this regard, the Special Rapporteur on the subject indicated that “indifference and inaction by the State provide a form of encouragement and/or permission to commit such acts”⁹.
5. Promsex and Red Peruana TLGB (2016) report that during the period from April 2014 to March 2015, 13 homicides of LGBTI persons were reported: six (6) gay, five (5) trans women, one (1) lesbian and one (1) person apparently bisexual¹⁰. These organizations also indicated that, between 2015 and 2016¹¹, there were eight (8) cases of discrimination perpetrated by police

³ Report for the CAT from Comisedh and CAPS, 52^oPS.

⁴ According to the report of the Office of the Ombudsperson on the MNPT, the tasks pending regarding the prevention of torture include: overcrowding in prisons, need to implement virtual hearings of persons detained under warrant, prolonged use of preventive custody, the rights of women in prisons and violation of rights in specialized psychiatric centers.

⁵ [Primer Informe Anual de la Defensoría del Pueblo sobre el Mecanismo Nacional de Prevención de la Tortura y otros tratos o penas crueles, inhumanos o degradantes](#) [First Annual Report of the Office of the Ombudsperson on the National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment], May 2017, p. 51.

⁶ Ibidem.

⁷ Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A/56/156. ONU. July 3, 2001, p. 17.

⁸ *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, p. 24.

⁹ Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A/HRC/31/57. January 5, 2016, p. 11.

¹⁰ Annual Report on the Human Rights of Trans, Lesbians, Gays and Bisexuals in Peru 2014-2015, May 2015, p. 31.

¹¹ 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 TLGB persons in Peru 2015 – 2016].

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”¹², that “it is not normal to kiss another man”¹³ or that they are considered “obscene acts.” Regarding the impact to their personal security that did not result in death, it was reported that trans women linked to sexual work were the main victims of state agents (24 cases). These acts have become systematic practices of municipal security agents, 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.

6. According to the Annual Report from the Observatory of LGBT Rights of Cayetano Heredia University, the observatory recorded, from January to December 2016, 416 cases of LGBT rights violations, most of them involving individualized populations, trans women and gay men¹⁴.
7. The Ministry of Women Affairs and Vulnerable Populations (MIMP) has published the number of victims of violence against LGBTI persons that were treated by Emergency Centers for Women (CEM) from January to August 2018, reporting 36 cases of LGBTI people treated¹⁵. It should be noted that the small percentage of complaints regarding acts of discrimination is due to the low credibility of justice operators and distrust toward state institutions.
8. The LGBTI Thematic Report 2018¹⁶, prepared by Promsex, showed the seriousness of institutionalized homotransphobia, following an analysis of the content of 44 citizen security plans for Metropolitan Lima and its districts, for the year 2017, that established the “eradication of homosexuals and trans persons.” Among the results, we have: 11 plans (25%) refer to the eradication of homosexuals or transvestites; 12 plans (27.3%) directly mention the exercise of prostitution; four plans (9.1%) refer to crimes usually associated with the exercise of prostitution and 17 plans (38.6%) do not contain any reference to the eradication of gays, transvestites or sex workers¹⁷.
9. The inclusion of transsexual and gay persons in the security plans gives us an alarming message, on the one hand, it reveals that municipal officers and workers prevent the LGBTI collective from enjoying public spaces because they consider that their presence is ‘suspicious’ or ‘dangerous’; on the other hand, it feeds the homotransphobia of the citizens, since each municipality presents to its inhabitants the eradication of LGBTI persons from public spaces as something ‘desirable’¹⁸. In addition, there is a high probability of violations of the right to freedom of transit and physical integrity. This is also related to cases of persecution of trans women who perform sexual work.

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

- To 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 LGBTI persons.

¹² La Mula.pe. Municipio de Miraflores despidió a dos serenos que discriminan a parejas del mismo sexo [The municipality of Miraflores fired two municipal security agents who discriminated against couples of the same sex], dated January 13, 2016.

¹³ Record of the facts: <https://youtube.com/watch?v=ON92QIHTLcO>

¹⁴ [Informe Anual del Observatorio de Derechos LGBT 2016](#) [Annual report from the observatory of LGBT rights], Cayetano Heredia, September 2016.

¹⁵ Ministry of Women Affairs and Vulnerable Populations (MIMP). [Boletín estadístico agosto 2018](#) [Statistical bulletin August 2018]. Report of cases treated regarding people affected by acts of violence against women and men in the CEM centers at the national, from January to August 2018.

¹⁶ PROMSEX, [Informe Temático LGBT 2018: Derecho a la igualdad de las personas LGBT en el Perú: Perspectivas jurídicas y políticas](#) [LGBT Thematic Report 2018: LGBT persons’ right to equality in Peru: Legal and political perspectives], March 2018.

¹⁷ Ibidem.160-163

¹⁸ Ibidem, 164

- To adopt general regulations at all government levels that contemplate administrative sanctions for public officers who discriminate or use violence or force against LGBTI people.
- To adopt comprehensive mechanisms to guarantee that LGBTI people 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.
- To implement specific measures for the protection of vulnerable groups against police abuse, both when designing policies and in the control of police actions, for the prevention and detection of police abuse. In this regard, to review the municipal plans of public safety that establish the eradication of gay and trans persons.
- To review the National System of Citizen Security and to repeal those that turn up to be discriminatory and/or infringing upon the rights of LGBTI persons.

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

10. In paragraph 26 of the list of issues prior to the presentation of the seventh periodic report of Peru, the State was requested to “provide detailed information on the outcome of criminal investigations and prosecutions, including the sentences and sanctions imposed to members of the armed forces, police officers, members of municipal security forces and agents for attacks against lesbian, gay, bisexual y transsexual persons”¹⁹. The Peruvian State neglected to report on this issue in its seventh periodic report.
11. 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.
12. 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 a lesbian adolescent who suffered physical and psychological violence since childhood. When her mother, who is a member of an Evangelical church, and her stepfather found out her sexual orientation, the aggressions increased, they stopped paying for her studies and harassed her so she would go to the Evangelical church to “save her soul” and find a “cure.”
13. The first time the adolescent went to report the violence, 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 they have an obligation to receive any report, and not to discourage the victims nor revictimize them. Finally, when she was able to file the report, they only provided her with protective measures that prohibit her parents to approach her. Until now, although it is a case of family violence, her aggressors have not been sanctioned and she has not had access to remedial measures, which makes evident the non-compliance of the reasonable proceeding deadline.
14. It should be noted that one of the main challenges of LGBTI persons is the access to justice. In this regard, the Office of the Ombudsperson noted “there is strong rejection and distrust in taking these crimes to the justice system, because it is perceived ineffective in investigating these facts, or that it is also imbued with negative stereotypes and prejudices”²⁰. Some of the main obstacles in the access to justice are: prejudices and negligence on the part of the authorities, stereotypes, revictimization, assessment of evidence, few and inadequate

¹⁹ CAT/C/PER/QPR/7, par. 26; CCPR/C/PER/CO/5, par. 8.

²⁰ Office of the Ombudsperson. Report of the Ombudsperson No. 175. [Derechos humanos de las personas LGBTI: Necesidad de una política pública para la igualdad en el Perú](#) [Human Rights of LGBTI Persons: The Need of a Public Policy for Equality in Peru]. Lima, 2016, p. 185.

protective measures and impunity. In addition to this, the unnecessary delay in the judicial processes, which in many cases takes years, without offering protection to the victim during the investigation.

15. The following are some representative processes that show the persistence of cases of torture against LGBTI persons, and the rulings issued by judicial bodies that do not guarantee victims the access to justice.

- a) The case of Yefri Peña Tuánama, a 32-year-old transsexual woman²¹. On October 28, 2007, she was waiting for a taxi to go home, when five individuals showed up, attacking and inflicting physical and psychological torture on her. When her aggressors escaped, she requested the help of two police officers, who ignored her plea of help. The individuals took advantage of this situation to make deep cuts in her back and face with a broken glass bottle. In addition to this situation, she was taken to a health center where they did not provide her a timely medical attention and she was discriminated because of her gender identity. A complaint was filed for the crime of omission to assist a person in danger and, in March 2010, the Second Criminal Court of Chosica sentenced the non-commissioned officers to four years of suspended imprisonment and the payment of civil damages. In March 2015, we presented a complaint for the crime of torture.

On September 7, 2018 (three years after the beginning of the complaint) the prosecutor in charge decided to not denounce the act of torture and closed the complaint, and only formalized a criminal complaint for serious injuries in the form of Commission by omission²². This shows us the apathy of justice operators when investigating cases of torture, which was reaffirmed, previously, by the Office of the Ombudsperson “the lack of response from the State with regard to acts of violence against trans people generates an environment of impunity, which instead of discouraging these behaviors, it shows it as permissive”²³; “her case was poorly investigated and the perpetrators were never identified, which demonstrates the lack of response by the State”²⁴.

- b) Azul Rojas Marín, transsexual woman, was illegally and arbitrarily detained by municipal security agents (local government security forces) and a police agent, when she was on her way home the morning of February 25, 2008. During her stay at the police station, she was the victim of beatings and verbal grievances, then she was forcefully stripped naked, while a third person introduced a rubber stick in her rectum on two occasions, causing injuries; all of this related to insults due to her sexual orientation. Given the ineffectiveness of the justice system and the unnecessary delays, we resort to the IACHR, supporting the exception of exhaustion of domestic remedies and demanding for the State to be held responsible for the violation of Articles 5, 1, 11, 25 of the ACHR and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish

²¹ PROMSEX. Electronic Portal - Incidencia Internacional y Litigio estratégico, [case Yefri Peña](#) [International Advocacy and Strategic Litigation, the case of Yefri Peña].

²² Press Release from Promsex, [Fiscal Marcelita Gutierrez archiva la denuncia contra dos policías que torturaron a Yefri Peña](#) [Prosecutor Marcelita Gutierrez closed the complaint against the two police officers who tortured Yefri Peña], September 24, 2018. In light of this decision, we have submitted a ‘queja de derecho’ [request to reconsider the denial of an appeal] (for closing the claim of torture) and another complaint against the prosecutor for breach of duty, filed with the Decentralized Office of Internal Control (ODCI) of the Office of the Attorney General. On September 19, 2018, the ODCI notified us about Resolution No. 1911-2018 by which it was decided to open a preliminary investigation against the prosecutor in charge of the case for serious misconduct incurring in an unjustified delay/excessive duration of the investigation.

²³ Office of the Ombudsperson. Report of the Ombudsperson No. 175. [Derechos humanos de las personas LGBTI: Necesidad de una política pública para la igualdad en el Perú](#) [Human Rights of LGBTI Persons: The Need of a Public Policy for Equality in Peru]. Lima, 2016, p. 34.

²⁴ Ibidem, 186.

Torture²⁵. On August 27, 2018, the IACHR presented the case to the Inter-American Court of Human Rights, “considering that the existence of serious acts of physical and psychological violence, including various forms of violence and rape, against Azul Rojas Marín was confirmed”²⁶. Likewise, the Commission also deemed that what happened to Azul “must be understood as violence by prejudice, and that, in addition, there are elements that constitute torture”²⁷. This is the first case in which the IACHR takes to the I/A Court a case in the matter of violence against LGBTI persons²⁸.

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

- To develop and implement specialized protocols for the attention, investigation and judgment in cases of violence and discrimination against LGBTI persons, especially children, that consider their needs.
- To ensure the execution of effective judicial processes conducted by independent and impartial courts in cases of torture.

The Need to Punish Hate Speech

16. 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 Prosecutor's Office of Lima with Jurisdiction over Criminal Offenses ordered the investigation of pastor Rodolfo Gonzales Cruz, leader of the World Missionary Movement, for instigating homicide. "If you find two women having sex, kill them both (...) in the name of Jesus", he stated²⁹ as part of a speech to encourage parents to participate in a march against the inexistent 'gender ideology'³⁰. However, it is not the 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 uttered discriminatory arguments that, in some cases, also induce to violence and discrimination, without receiving any sanction whatsoever.
17. In 2016, at an event with the former presidential candidate Keiko Fujimori, the Evangelic pastor Santana Leiva stated: “The Holy Scriptures acknowledge homosexuality as sexual vice. (...) if a gay person is going to have rights (...) it is going to legalize sodomy”³¹. 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 rather his exercise of freedom of religion and expression.”
18. It should be noted that the Peruvian Political Constitution does not establish the prohibition of discrimination on the grounds of sexual orientation and gender identity. Similarly, the Code of Constitutional Procedure in the Article No. 37 Subparagraph 1) explicitly states “The protection of fundamental rights (amparo) in defense of the following

²⁵ Report No. 99/14 Petition 446-09. [Informe de Admisibilidad de Luis Alberto Rojas Marín vs. Perú](#) [Report on Admissibility of Luis Alberto Rojas Marín vs. Peru].

²⁶ Press Release from the IACHR, [CIDH presenta caso sobre Perú ante la Corte IDH](#) [The IACHR takes a case involving Peru to the I/A Court], August 27, 2018.

²⁷ Ibidem.

²⁸ Ibidem.

²⁹ La República, [con mentiras y mensajes de odio se preparo marcha de hoy](#) [Today's march was put together with lies and hate speech], March 4, 2017.

³⁰ 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.

³¹ Link to the discourse in: <http://www.americatv.com.pe/noticias/actualidad/keiko-fujimori-polemicas-declaraciones-pastor-que-redacto-compromiso-n229877> and <http://larepublica.pe/politica/767752-pastor-evangelico-que-apoya-keiko-fujimori-dice-que-homosexualidad-se-puede-curar-video>

rights: equality and non-discrimination on the grounds of origin, sex, race, sexual orientation, (...)”³². In this respect, the Code of Constitutional Procedure only protects sexual orientations, but not gender identities. On the other hand, the Peruvian State signed on October 25, 2016 the Inter-American Convention against All Forms of Discrimination and Intolerance, which includes sexual orientation and gender identity. However, it is yet to be debated and ratified by the Congress of the Republic.

19. In addition, the Congress of the Republic has maintained a conservative agenda denying any possibility of recognizing the rights of the LGBTI population. Between the year 2011 and September 2018, the members of congress rejected the possibility of including sexual orientation and gender identity as protected categories. It should be noted that legislative debates on the protection of the rights of LGBTI persons have not succeeded; for this reason, many proposals were rejected, among them: Bill No. 3584/2009-CR, Law against hate crimes; Bill No. 609/2011-CR, Law against criminal actions arising on the grounds of discrimination; Bill No. 1697/2016-CR, Law that promotes equality before the law, and non-discrimination on the grounds of sexual orientation and gender identity, and that amends Paragraph 2 of Article No. 2 of the Peruvian Political Constitution, which was not processed because the member of congress who was the author of the bill withdrew it on October 3, 2017.
20. In contrast, there are other initiatives pending discussion at the Congress of the Republic, Bill No. 790/2016-CR, Law on gender identity aiming to guarantee the right of transsexual persons to receive from the Public Administration a comprehensive attention to their needs in equal treatment, this initiative has been in the Commission on Women and Family since December 22, 2016; Bill No. 1378/2016-CR, Law on hate crimes, the Commission on Justice and Human Rights does not issue its opinion since August 13, 2017; Bill No. 1704/2016-CR, Law that promotes equality before the law and non-discrimination on the grounds of sexual orientation and gender identity, which has been in the Commission on Constitution and Bylaws since August 15, 2017; Bill No. 961/2016-CR, Law on equal civil marriage, the Commission on Justice and Human Rights does not issue its opinion since February 16, 2017, among other legislative initiatives.
21. The Peruvian State indicated in Paragraph 170 of the seventh periodic report, “by Legislative Decree No. 1323, sexual orientation and gender identity were included as prohibited grounds in the crime of discrimination”³³. It is worth noting that, by Law No. 30506 dated September 30, 2016, in the framework of delegation of powers, the Congress of the Republic grants the Executive Branch the power to legislate in the matter of citizen security³⁴. This is why, the Executive Branch issues Legislative Decree No. 1323 that incorporates into the criminal law clarifications to the regulations in order to strengthen the fight against femicide, family violence and gender-based violence, and to protect in an effective manner the vulnerable groups of women, children and adolescents from family violence and any other form of violence and discrimination³⁵. The Plenary Assembly of Congress, with a large majority from the party Fuerza Popular, voted to repeal part of Legislative Decree No. 1323 “Strengthens the fight against femicide, family violence and gender-based violence”, which proposed to amend Articles No. 46 (aggravating and mitigating circumstances) and No. 323 (crime of discrimination) of the Criminal Code, in order to punish gender-based violence on the grounds of sexual orientation and gender identity, which, thus far, were not acknowledged in the legislation. This was contested by the Executive Branch and returned to the Congress of the Republic, where, so far, it has not

³² [The Peruvian Code of Constitutional Procedure](#) (in Spanish).

³³ CAT/C/PER/7, par. 170.

³⁴ Law that delegates to the Executive Branch the power to legislate in the matter of economic revival and formalization, citizen security, fight against corruption, water and sanitation, and reorganization of Petroperú S.A. Link <https://busquedas.elperuano.pe/normaslegales/ley-que-delega-en-el-poder-ejecutivo-la-facultad-de-legislar-ley-n-30506-1439097-1/>

³⁵ El Peruano, the Legislative Decree that strengthens the fight against femicide. [Decreto legislativo N°1323](#) [Legislative Decree No. 1323].

been seen in a Plenary Assembly; and, while it is at risk of enforcing its repeal, this Decree remains in force, due to the active participation of civil society to prevent this from happening.

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

- To 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 to 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.
- To include within the crime of discrimination in the Criminal Code, sexual orientation and gender identity as prohibited categories of discrimination, as well as to criminally sanction hate speeches that incite violence.

Violence and Discrimination against LGBT Children and Adolescents in Schools

22. According to an online School Climate Survey, conducted by Promsex (2016), with the participation of 321 LGBTI students between the ages of 14 and 17, it was found that 7 out of 10 students felt unsafe in school because of their sexual orientation, and 3 out of 10 because of their gender expression/identity. Indicating that 72% of students suffered verbal harassment because of their sexual orientation and 58% due to their gender expression³⁶. Likewise, a study conducted by Cayetano Heredia University (UPCH) on homophobic bullying in Peruvian educational institutions indicated that 44% of respondents claimed to have experienced some kind of bullying or harassment at school and 68% confessed having been victims of bullying for being gay³⁷.
23. Cuba and Osoreo³⁸, analyzing the results of the Survey of School Community (2013)³⁹, highlight that 4.7% of people who suffered school violence experienced homophobic violence, and 77% of victims of homophobic violence are men. They also point out that identifying as men is the variable that relates more with this violence, where more than 80% of those affected by homophobic violence were insulted by their peers, 60% were hit by a peer, and more than half were subjected to mockery and insults by electronic means. In cases where the aggressors are adults in school, 32% was subjected to homophobic violence with insults, and 28% with mockery. An alarming finding of the survey is that being a victim of rape by a school peer is twice as likely when being affected by homophobic violence than when being affected by school violence in general.
24. In 2016, the National Curriculum of Regular Basic Education (CNEB)⁴⁰ was submitted, after being approved by Ministerial Resolution No. 281-2016-MINEDU and modified by Ministerial Resolution No. 159-2017-MINEDU⁴¹. It incorporates the gender equality approach within a set of cross-cutting approaches for the development and attainment of a graduate profile of the students. The CNEB expressly mentions the inclusive approach or attention to the diversity of children and young people, who have the right to equal educational opportunities, regardless of their cultural, social, ethnic, religious, or gender

³⁶ PROMSEX (2016) Estudio Nacional sobre Clima Escolar en el Perú: Experiencia de adolescentes y jóvenes LGBT en el Ámbito Escolar [National School Climate Survey in Peru: The Experience of LGBT Adolescents and Youth in the School Setting].

³⁷ Caceres, Carlos and Salazar Ximena. "Era como ir, todos los días al matadero..." El bullying homofóbico en instituciones educativas públicas de Chile, Guatemala y Perú ["It was like going every day to the slaughterhouse..."] The homophobic bullying in public educational institutions in Chile, Guatemala and Peru. Link: http://www.pe.undp.org/content/dam/peru/docs/ODMs/pe.PNUD_UNESCO_BULLYING_Chile_Guatemala_Peru.pdf

³⁸ Cuba, L and Osoreo, T. Violencia homofóbica y construcción de la masculinidad en la escuela: una exploración cuantitativa [Homophobic violence and construction of masculinity in school: A quantitative exploration]. Available at: <http://www.siep.org.pe/wp-content/uploads/Mesa-23.21.pdf>

³⁹ With a sample of 47,114 students in their last year of high school.

⁴⁰ Ministry of Education (MINEDU). [Currículo Nacional de Educación Básica](#) [National Curriculum of Basic Education], 2016.

⁴¹ Ministry of Education. [Resolución Ministerial N.º 159-2017-MINEDU](#) [Ministerial Resolution No. 159-2017-MINEDU].

differences; in “this sense, the attention to diversity means eradicating exclusion, discrimination and inequality of opportunities”⁴². However, the First Civil Chamber of the Superior Court of Justice of Lima declared the lawsuit of class action filed by a group called “Padres en Acción” (PEA)⁴³ partly founded, annulling the definition of gender as a social construct and taking the biological consideration⁴⁴. The resolution has been taken to the Supreme Court of Peru, entity that will decide whether to ratify or revoke the annulment of the aforementioned text.

25. The Ministry of Education has jeopardized the implementation of this norm, developing support materials with some content that reinforces sexist stereotypes such as the objectification of women, making women responsible for the preservation of sexual and reproductive health care for women, offering a trivial treatment of violence against women and stereotyping the defense of the rights of women and the LGBTI population⁴⁵. Which, after a large protest of civil society, will be withdrawn from schools where they were already being used since 2017⁴⁶.
26. The judicialization of the National Curriculum of Regular Basic Education affects the ability of the country to banish, through an educational policy, multiple forms of discrimination, stereotypes and gender roles, which are part of a complex learning process and that are at the base of multiple forms of violence that are present in school, social and work environments, and are a form of torture against girls, women and LGBTI persons.

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

- 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, investigations and judgment of cases of violence and discrimination against LGBT persons, especially in cases regarding children and adolescents.
- To design and implement a policy of prevention, attention, research and reporting of cases of violence and discrimination against LGBTI children and adolescents in schools, and to create an observatory of school bullying cases at the national level.
- To implement comprehensive sex education programs in all educational centers. In addition, the rectification of the contents in materials that allude to sexist stereotypes, and the inclusion of information that responds to the need of preventing gender-based violence is an obligation of the Ministry of Education.
- To modify Law No. 29719, “Law that Promotes the Coexistence without Violence in Educational Institutions”, with the purpose to diagnose, prevent, avoid, punishment and eradicate violence, harassment and bullying among students; to also include the aggression of teachers to students and of students to teachers because of their sexual orientation, gender identity and gender expression⁴⁷.

⁴² Ministry of Education (MINEDU). [Currículo Nacional de Educación Básica](#) [National Curriculum of Basic Education], 2016, page 23.

⁴³It should be noted that, following the adoption of the National Curriculum of Regular Basic Education, many groups such as “Con mis hijos no te metas” (Don’t mess with my children) have been formed opposing the gender approach arguing that it intends to “homosexualize” their children through what they call “the gender ideology.” The media campaigns that this group has conducted in public spaces have caused a great impact on the population, since they have had the economic and logistic support of Christian and Evangelical churches, with lobbies within the Congress of the Republic through legislative representatives that hold a permanent anti-rights agenda. One way in which this rejection to all public materials and policies that include the word “gender” (regardless of its meaning and context) has been materialized is through the lawsuit filed by a recently formed group, called “Padres en Acción” (Parents in action), against the Ministry of Education to repeal the Ministerial Resolution No. 281-2016-MINEDU which approved the National Curriculum of Regular Basic Education.

⁴⁴ [Sentencia de la Corte Superior de Justicia de Lima Primera Sala Civil](#) [Sentence of the First Civil Chamber of the Superior Court of Justice of Lima], dated July 13, 2017.

⁴⁵ Letter prepared by PROMSEX, addressed to the Minister of Education, June 12, 2018.

⁴⁶ PROMSEX’s Electronic Portal, [COMMUNICATION ADDRESSED TO MINEDU](#) (in Spanish), dated June 27, 2018.

⁴⁷ Ibidem.

- To improve the platform of the System Specialized in the Report of Cases of School Violence “SiseVe”, and to include as a category in bullying, school harassment because of sexual orientation, gender identity and/or gender expression⁴⁸. Furthermore, to create an observatory of cases of school harassment at the national level, containing a registry of bullying because of sexual orientation, gender identity and gender expression.

II. Article 16:

A. Obstacles to the Access to Sexual and Reproductive Health Services for Girls and Adolescents

Inadequate Implementation of the Therapeutic Abortion Protocol

27. The Peruvian State indicated in Paragraph 249 of its seventh periodic report that “in 2014, it approved the National Technical Guide for the standardization of the procedure of comprehensive care of pregnant women in the voluntary termination of pregnancy of less than 22 weeks with informed consent”⁴⁹. It should be noted that, on June 27, 2014, the “National Technical Guide for the standardization of the procedure of comprehensive care of pregnant women in the voluntary termination of pregnancy by therapeutic indication with informed consent” was adopted⁵⁰.
28. In relation to the levels of implementation, there is little or no information. In this regard, the Ministry of Health (MINSA) reported about the number of women who have had a voluntary termination of pregnancy by therapeutic indication, between July 2014 and 2016, registering 153 in 2014, 453 in 2015, and 311 in 2016⁵¹. However, the Ministry of Health informed us that they don’t have data for the year 2017, “those data are in the process of validation (...) and there is no registry of requests for the realization of a voluntary termination of pregnancy by therapeutic indication because the Information System only registers treatments and not requests”⁵².
29. There are several barriers identified in the implementation of this National Guide.
 - a) Having included a limit of 22 gestational weeks, even when the Article No. 119 of the Criminal Code does not establish this time limit⁵³, which is particularly serious considering that a therapeutic abortion is a treatment in which the pregnancy is putting at serious risk the life or health of women, causing serious and permanent damage or even death. It should be noted that, according to information from the Ministry of Health itself, 33% of maternal deaths are due to indirect causes; that is, because of the presence or worsening of diseases not related to pregnancy; in this regard, these are deaths that could have been prevented with access to a therapeutic abortion.
 - b) The implementation of this Guide is made under a restrictive interpretation of therapeutic abortion, since it does not pay attention to the potential serious impacts on the health of women. On the one hand, it is a guide lacking a childhood approach, and, in the practice, there is no guarantee on the availability of therapeutic abortion for girls victims of rape whose pregnancies endanger their lives, and mental, physical and social health, forcing them to continue with forced pregnancies and motherhoods⁵⁴.

⁴⁸ National Study on School Environment in Peru 2016. PROMSEX, June 2016, page 63.

⁴⁹ CAT/C/PER/7, par.249.

⁵⁰ [Guía de Interrupción Voluntaria Embarazo](#) [Guide of Voluntary Termination of Pregnancy].

⁵¹ Ministry of Health, number of women who have had a voluntary termination of pregnancy by therapeutic indication, divided by months, and departments (territorial subdivision), from July 2014 to 2016.

⁵² Response of the Ministry of Health to our request for public information No. 027-2018, dated February 9, 2018, through Official Communication No. 649-2018-DGIESP-MINSA, dated March 12, 2018.

⁵³ Universal Periodic Review (UPR), [Desafíos en materia de igualdad y no discriminación para mujeres y personas LGBT en Perú](#) [Challenges in the matter of equality and non-discrimination of women and LGBT persons in Peru], PROMSEX, 2016.

⁵⁴ Many of the cases have remained in impunity, despite the fact that the Committee on the Elimination of Discrimination against Women (CEDAW) established the responsibility of the Peruvian State in the violation of the rights of L.C. for denying a therapeutic

- c) In 2017 and 2018, three cases depict this critical situation in which the impact on the comprehensive health was not assessed, including the mental health of girls who were raped by family members and could not access health services to prevent or interrupt a pregnancy. These are some cases:
- a) In Jaén (Cajamarca) a 10-year-old girl was raped by her uncle, and became pregnant as a result. In August 2017, it was found that she was 6 months pregnant and the pregnancy was diagnosed as a high risk; nonetheless, a therapeutic abortion was not performed⁵⁵.
 - b) In Piura (northern Peru), NCMC, a 12-year-old girl, was raped by a close relative. As a result, she became pregnant when she was in the third grade of primary education. The health center she visited in several occasions during her pregnancy did not inform her about her right to access to a therapeutic abortion. She had a complicated delivery because of her age, and currently cares for her child, without any support or interest from the State.
 - c) In Madre de Dios (southeastern Peru), J.N.L.J, an 11-year-old girl, was raped and as a result she became pregnant. Because of this, the girl's mother asked the Director of Hospital Santa Rosa for a therapeutic abortion, and on May 14, 2018, she was notified of the denial of her request without further explanation, and J.N.L.J had to continue with her pregnancy⁵⁶.
30. On the other hand, the same barriers are observed in pregnancy cases of fetal malformation incompatible with life⁵⁷, related to the absence of an assessment of the damage to the mental health of women. In this regard, a research study was conducted, "Fetal malformations incompatible with life"⁵⁸, describing the experiences of 10 interviewed women An(19), S(37), N(32), G(41), K(22), P(39), A(32), Ge(26), M(32), Na(35), who also experienced obstetric violence during their treatment. Some forms of obstetric violence included cruel treatments toward women like making them listen to the fetal heartbeats; or sharing care and recovering spaces with other women and their newborns⁵⁹.
31. In this regard, the Ombudsman's Office reported that obstetric violence is one of the factors that influence maternal mortality rates, which in 2017 rose to 377 cases⁶⁰. Likewise, with Report No. 001-2017-DP/ADM "Right to Maternal Health", published in 2017, it concluded that "the interviews inform about maltreatment to pregnant women during pregnancy and delivery, violence that increases when such women are Quechua-speakers, resulting in many of the pregnant women not returning to the health service facilities"⁶¹.
32. Furthermore, there are other women who entered into litigation to gain access to a

abortion to the girl LC; L.C v. Peru⁵⁴. One of several recommendations of the CEDAW Committee to the State was the review of the legislation to eradicate the criminalization of abortion on the grounds of rape, a recommendation that has not yet been implemented by the State.

⁵⁵ Ibidem.

⁵⁶ Our institution filed a complaint with the Ombudsman's Office in Madre de Dios against Hospital Santa Rosa of Puerto Maldonado, on May 17, 2018.

⁵⁷ In this regard, in the year 2001, K.L a 17-year-old young woman was forced to give birth and to breastfeed an anencephalic fetus who survived four days. In spite of having requested a therapeutic abortion, the director of Hospital Nacional Arzobispo Loayza was opposed to it. The Human Rights Commission found the Peruvian State responsible for having denied to the adolescent girl KL a therapeutic abortion, forcing her to continue the pregnancy of an anencephalic fetus even if this situation would pose a serious risk to her physical and mental health. This case shows that the unrestricted interpretation of the National Technical Guide affects in a serious and permanent manner not only the physical health, but also the mental health of women, as is the case of K.L.

⁵⁸ Research Study performed by the NGOs Promsex and Flora Tristán. To this effect, 10 pregnant women with pregnancies that presented malformations incompatible with life were interviewed last year; the interviews took place between December 15, 2017 and January 15, 2018.

⁵⁹ The forms of obstetric violence include the following: Lack of information or provision of truthful information, misinformation regarding pregnancy prognosis, birth possibilities and/or survival rates, and the refusal and/or delay in their rights to access a therapeutic abortion, exposure to common spaces with other pregnant women and/or their newborns.

⁶⁰ Press Release from the Office of the Ombudsperson. [Propuesta de Defensoría del Pueblo para la implementación de una norma que prevenga la violencia obstétrica](#) [Proposal of the Office of the Ombudsperson for the implementation of a standard to prevent obstetric violence], accepted by Minsa, February 16, 2018.

⁶¹ Derecho a la Salud Materna. Seguimiento de las recomendaciones defensoriales a establecimientos de salud en Arequipa, Junín, Lima, Piura y Puno [The Right to Maternal Health. Follow-up of advocate recommendations to health facilities in Arequipa, Junín, Lima, Piura and Puno]. Report No. 001-2017-DP/ADM, December 2016, p. 150.

therapeutic abortion, but were untimely granted, the following are some of the cases:

- d) B. G (25 years old), she submitted a request for the therapeutic termination of her pregnancy, on July 2018, due to severe health risk because of a “Severe Oligohydramnios, associated chromosomopathy, and polycystic kidney disease.” The request was denied arguing that the patient’s pregnancy was over 22 weeks, then, she filed a petition to reconsider the decision, which was admitted on August 10, 2018⁶², and they assigned the physician who would be in charge of the therapeutic termination.
 - e) E. C (13 years old), submitted a request for the therapeutic termination of her pregnancy, on June 22, 2018, because of severe mental risk, which was certified by a psychiatrist who determined she suffered from depression. The request was initially denied, so she submitted a petition for reconsideration. After two months they accepted the request⁶³, approving the therapeutic termination of the pregnancy at Clínica San Pablo.
 - f) The case of Vanessa (pseudonym) vs. Clínica El Golf. The National Institute for the Defense of Free Competition and the Protection of Intellectual Property (Indecopi) sanctioned Clínica El Golf with a fine of 20 Peruvian Tax Units (UIT) by Resolution 1884-2017/SPC-INDECOPI for the inappropriate processing of an abortion request supported by the “National Technical Guide for the termination of pregnancy by therapeutic indication.” The request for therapeutic abortion was submitted by Vanessa (36 years old) on December 2014 because of severe detriment to her mental health. For the first time, an internal court issued a decision for the lack of guarantee of the right to access a therapeutic abortion when the petitioner alleges detriment to her mental health.
33. This restrictive interpretation of the right of women to protect their health and life through a therapeutic abortion is supported, to a great extent, by the coexistence of a legal therapeutic abortion, and the general rule of criminalization of abortion in Peru, where self-abortion, abortion on the grounds of rape and for “eugenic” causes are still considered a crime.”⁶⁴

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

- To inform women and girls about their rights regarding the effective access to sexual and reproductive health services and to guarantee their enforcement.
- 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.
- To guarantee the availability of therapeutic abortion for girls that are victims of rape and for pregnant women with prognosis of fetal malformation incompatible with life; as well as, to complement the Therapeutic Abortion Protocol with the standardization of the procedure for pregnancies of over 22 weeks.
- To harmonize the abortion law, leading to decriminalize abortion when pregnancy is the result of rape or if there is a prognosis of fetal malformation incompatible with life, to prevent forced and unwanted pregnancies and motherhoods.

⁶² Letter No. 140-2018-DG/INMP, dated August 10, 2018, specifically reads “[...] Dr. Juan Chinchayan Sanchez - Head of the Gynecological Obstetric Service for Ambulatory Attention, has been assigned to coordinate with you to provide the necessary attention and evaluation to indicate the corresponding procedure for your prognosis.”

⁶³ Thereafter, by Letter No. 186-2018-DM-CHSP/CSP, dated June 28, 2018, the new composition of the Medical Board was approved.” By Letter No. 197-2018-DM-CHSP/CSP, dated July 5, 2018, the request for the therapeutic termination of the pregnancy was approved by Ministerial Resolution No. 486-2014/MINSA.

⁶⁴ The Peruvian Criminal Code states in Article 114.- Self-abortion. The woman who causes her abortion, or allows someone else to practice it, shall be punished with imprisonment for not more than two years or with the provision of community service for the duration of fifty-two to one hundred and four work periods. Likewise, as it reads in Article 120.- Sentimental and eugenic abortion. The abortion shall be punished with imprisonment for not more than three months: 1. When the pregnancy is the result of rape outside of marriage or non-consented artificial insemination and outside of marriage, whenever the facts have been reported or investigated, at least by the police; or 2. When it is probable that the being in formation would have, at birth, severe physical or psychic defects, whenever there is a medical prognosis. Link http://spij.minjus.gob.pe/content/publicaciones_oficiales/img/CODIGOPENAL.pdf

- To incorporate, among public policies, the prevention of obstetric violence; which may constitute cruel, inhuman, degrading and inhuman treatment by health personnel in the context of pregnancy, delivery and post-delivery care services provided to women; as well as, during the pregnancy termination process.
- Ensure the implementation of comprehensive education on sexuality in all spaces in order to expand the prospects of girls and adolescents, but especially to empower in the knowledge and usage of their sexual and reproductive rights.

B. Forced Pregnancy in Girls

33. In Peru, each day five girls of less than 15 years of age become mothers, most of them were victims of rape⁶⁵. In the last decade, the number of mothers of less than 15 years of age went from 936 cases in 2005 to 1,702 cases in 2016⁶⁶. Furthermore, 13 of every 100 adolescents between the ages of 15 and 19 are mothers or are pregnant for the first time; 71% of these pregnancies were unwanted⁶⁷.
34. In spite of the impact to their life and health, they had to continue with an unwanted pregnancy. According to the Ministry of Education (2015), 8 of every 10 pregnant girls and adolescents drop out from school⁶⁸.
35. Between 2014 and 2017, the average of maternal deaths in girls of less than 19 years of age was 13.8% of the total cases”, the girls between 10 and 14 years of age being the ones with four times more risk of dying during delivery than an adult woman⁶⁹. In this respect, the Ministry of Health observed that 14.9% of the deceased women were adolescents between the ages of 12 and 19⁷⁰; only in 2017, 98 cases of maternal deaths were reported⁷¹. Furthermore, it noted that, between 2014 and 2017, the average of maternal deaths in girls of less than 19 years amounted to 13.8% of the total number of cases⁷².
36. The Ministry of Women Affairs and Vulnerable Populations reports that 34% of girls and adolescents between 10 and 19 years of age, victims of sexual rape, became pregnant⁷³. Likewise, the Ministry of Health (MINSA) informed that, from 2012 to January 2018, “the Comprehensive Health System (SIS) covered the attention expenses of over 150 thousand pregnant girls, whose ages went from 9 to 17, meaning that per day SIS financed the deliveries of 68 to 70 girls, youngsters and adolescents”⁷⁴.
37. According to information collected by the Ministry of Health, in the year 2016 up to March 2017, of the 2832 girls and adolescents who accessed public health services, only 26 had access to the Emergency Oral Contraception (EOC), or some other contraception method⁷⁵.
38. In this regard, since October 2009, by decision of the Constitutional Court, access to Emergency Oral Contraception (EOC) was forbidden in public establishments, even for victims of rape; but the sale was not forbidden in private pharmacies. From August 23,

⁶⁵ PROMSEX, Brochure: Niñas, NO MADRES [Girls, NOT MOTHERS]. In 2017, 6,593 cases of sexual violence against girls, boys and adolescents were treated through the Emergency Centers for Women (CEM). They represent 73% of the total number of sexual violence cases attended in CEMs (9,012 cases). Source: Roundtable for the Fight Against Poverty. Pregnancy in adolescents and girls in Peru. Alert No. 1-2018- Follow-up agreed upon between the State and Civil Society, p. 12.

⁶⁶ PROMSEX, Brochure: Niñas, NO MADRES [Girls, NOT MOTHERS]. Source: National Registry of Identification and Civil Status (RENIEC) 2016, Registry of newborns registered in the year 2016 of minor mothers.

⁶⁷ Roundtable for the Fight against Poverty. Pregnancy in adolescents in Peru. Alert No. 1-2018- Follow-up agreed upon between the State and the Civil Society, p. 4. INEI, ENDES 2017.

⁶⁸ PROMSEX. Brochure: Niñas, NO MADRES [Girls, NOT MOTHERS]. Source: Ministry of Education. EDUCATOS No. 20 La deserción escolar en las adolescentes embarazadas del Perú [School desertion in pregnant adolescents in Peru], 2015.

⁶⁹ Response of the Ministry of Health to our request for public information, made by Letter No. 08-2017-SIS/OGIIT, Database of the 2016 Comprehensive Health System.

⁷⁰ Universal Periodic Review (UPR), [Desafíos en materia de igualdad y no discriminación para mujeres y personas LGBTI en Perú](#) [Challenges regarding equality and non-discrimination of women and LGBTI persons in Peru], PROMSEX, 2016.

⁷¹ Response of the Health Ministry to our request for public information No. 027-2018, dated February 9, 2018, by Official Communication No. 649-2018-DGIESP-MINSA, dated March 12, 2018, from the Ministry of Health (MINSA), page 7.

⁷² Comprehensive Health Insurance. Newborns registered in the year 2016 from minor mothers, 2016.

⁷³ United Nations Population Fund, AECID and others (2009). Hoja de datos, 3. Violencia contra las mujeres adolescentes [Data sheet, 3. Violence against adolescent women].

⁷⁴ Press release from the Ministry of Health, SIS treated over 150 thousand pregnant girls, at the national level, February 1, 2018.

2016, to this date, the supply of EOC in public services is taking place in a temporary manner due to a precautionary measure ordered by the 1st Constitutional Court of Lima, in the framework of the action for the protection of fundamental rights (amparo) filed by a Peruvian citizen with the legal advice of PROMSEX.

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

- To implement urgent measures for the prevention of rape, such as the incorporation of screenings on victimization in health services and education institutions.
- To guarantee access to comprehensive care for girls and adolescents victims of rape; which includes information and services regarding sexual and reproductive health, access to Emergency Oral Contraception (EOC), access to a therapeutic abortion; and to specialized treatment during pregnancy and delivery when the decision is to continue the pregnancy.
- To incorporate girls and adolescent mothers in all social programs, including, as one of its results, the decrease of school desertions and return to school.
- To decriminalize abortion on the grounds of rape.

C. Criminalization of Abortion

39. Abortion in Peru is allowed when the life or health of the woman is at risk, it is criminalized for the cases of congenital malformations and rape⁷⁶; even though the criminal sanction is identified as “symbolic”, it still stigmatizes and confines women to illegality and recurring to clandestine abortions, which imply a severe risk to their lives and health.
40. The criminalization of abortion affects the rights of women, such as the right to the free development of their personality and to their physical and moral integrity. Forcing women to continue a pregnancy is a discriminatory measure, as there is no other circumstance in the life of persons in which an imposition of such importance is admitted.
41. The foregoing has led to 1,158 complaints to be filed, with the Criminal and Mixed District Prosecutors’ Offices at the national level⁷⁷, against adolescents for the alleged commission of an abortion crime, in the period of 2016-2017. Likewise, the Peruvian Police Force (PNP) registered from January to December 2017, 287 complaints for abortion crimes⁷⁸, which would be currently in criminal investigations; and, in the year 2014 and 2015, at least 20 women were deprived of their freedom for having practiced an abortion, and three more persons received sentences that established restrictive sanctions for this type of crimes⁷⁹.

Hereafter, are some cases of women criminalized due to abortion:

- a) The case of L.S.V, girl that at present is 14 years old, who was a victim of rape, on repeated occasions, by her father, and consequently became pregnant. She was admitted in the hospital for an “abdominal pain similar to a cramp” but, after 11 hours at the hospital, she was diagnosed with an incomplete abortion. The Second Civil and Family District Prosecutor's Office of Abancay (Fiscal File No. 06-2018-MP-2daFPCF-Abancay) attributed to L.S.V the alleged infraction to the criminal law against life, body and health in the modality of self-abortion and, alternatively, sentimental abortion. In the hearing conducted on August 16, 2018, the Second Family Court of Abancay (File

⁷⁶ The Peruvian Criminal Code states in Article 114.- Self-abortion. The woman who causes her abortion, or allows someone else to practice it, shall be punished with imprisonment for not more than two years or with the provision of community service for the duration of fifty-two to one hundred and four work periods. Likewise, as it reads in Article 120.- Sentimental and eugenic abortion. The abortion shall be punished with imprisonment for not more than three months: 1. When the pregnancy is the result of rape outside of marriage or non-consented artificial insemination and outside of marriage, whenever the facts have been reported or investigated, at least by the police; or 2. When it is probable that the being in formation would have, at birth, severe physical or psychic defects, whenever there is a medical prognosis. Link http://spij.minjus.gob.pe/content/publicaciones_oficiales/img/CODIGOPENAL.pdf

⁷⁷ Response to the request to access information from the Office of the Attorney General Official Communication No. 810-2017-MP-FN-GG-OCPLAP/03, dated May 16, 2017.

⁷⁸ Source: Regions and Peruvian Police Force Sources. Elaborated by: DIRTIC-PNP/DIVEST 2017

⁷⁹ Official Communication No. 091-2015-INPE/07-04, dated October 14, 2015, submitted by the Statistics Unit of the National Penitentiary Institute and Letter No. 133-2016-INPE/09, dated June 27, 2016, submitted by the General Administration Office of the National Penitentiary Institute (INPE)

No. 490-2018) found L.S.V responsible for the infraction to the criminal law against life, body and health in the modality of sentimental abortion, and issued protective measures. Such resolution has been appealed by our institution and up to now no response has been received. The Mixed Court of Abancay is yet to set the hearing date for the cause.

- b) The case of E.M.P (17 years old). On October 27, 2016 E.M.P. was sentenced as author of the infraction of the law against life, body and health -abortion-; this decision has been appealed. By Resolution No. 4, dated June 14, 2017, the Second Chamber Specialized in Family Matters ordered to revoke the appealed decision and, modifying it, granted the remission of E.M.P's process and excluded her immediately and definitively from the process, which is declared extinct, and canceling any other generated precedent.
42. The criminalization of abortion also affects the attention provided to women in an obstetric emergency related with post-abortion attention. An example of that is that, in September 2017, a poster was reported at the emergency area of Hospital II of Abancay in Apurímac, which stated the following: "Any patient with diagnosis of incomplete abortion must be reported to the Police Agent on Duty (National Police Force of Peru - PNP)" with the approval of the Head of the Gynecological-Obstetric Service of Essalud. This decision is quite worrisome, since MINSA personnel acts as persecutors of crime, instead of attending the obstetric emergencies that led to death. An incomplete abortion is an obstetric emergency and can lead to maternal mortality, according to the Guides of Clinical Practice for the Attention of Obstetric Emergencies. In this regard, MINSA reported that during the period of 2014 to 2016, 86 women died because of abortions not treated in time, 6 of which were girls and adolescents⁸⁰.
43. Article 30 of the General Health Law stipulates that health professionals must report evidence of crime, violence or signs of abortion⁸¹. This means that, medical personnel have the obligation of reporting to the authorities if a patient shows evidence of having practiced a clandestine abortion. The obligation of making such report is not intended to protect public or private health, and it does not agree with the professional secrecy, which is present in the context of an intimate and trustworthy relation; or to guarantee justice for the patients with regards to crimes of a public nature, or to protect their health, but rather with the purpose of pursuing a criminal case. It can be thus mentioned that the legal regulations in force are contradictory and ambiguous, protecting on one side the professional secret (contained in Article 2.18 of the Political Constitution of Peru) and leaving at the same time open the possibility of its violation by express mandate of the judicial authority (Article 44 and 138 of the Constitution)⁸² and it contradicts what has been established by the I/A Court in the case of De La Cruz Flores vs. Peru, "information obtained by the doctors, while exercising their profession, is protected by professional secrecy and condemns the obligation that exist among physicians to report the criminal conducts of their patients."⁸³
44. What is established in Article 30 of the General Health Law is also a measure against the prevention of maternal mortality, because the threat for the women who attend the public health service of being reported by those providing the service, becomes a barrier for the non-discriminatory access to services required to save lives.
45. In October 2016, Bill No. 387-2016/CR was submitted, proposing the decriminalization of abortion in cases of rape; non-consensual artificial insemination or transfer of ovules, and malformations incompatible with life, matter which has not been debated yet by the

⁸⁰ Response of the Ministry of Health to the request for public information made by PROMSEX No. 151-2016: File No. 16-051635-001.

⁸¹ General Health Law, Law No. 26842. Article 30, "The doctor who provides medical care to a person wounded by a sharp instrument used as a weapon, bullet wound, transit accident or any other type of violence that is a crime punishable by law or when there are signs of criminal abortion, is obliged to report such occurrence to the competent authority."

⁸² There are a series of regulations linked to the professional secrecy and to overlying obligations, which make their application difficult. Art. 165 CP; Art. 165, Subparagraph b) of the New Code of Criminal Procedures; Art. 14, section 1 of the Code of Criminal Procedures. Furthermore, it allows the possibility of violating professional secrecy, among them we have: Art 326 of the New Code of Criminal Procedures; Art 15 and 30 of the General Health Law.

⁸³ Loayza Tamayo, Carolina, Sandoval, Ysabel. El derecho de las médicas y los médicos al Secreto Profesional en la Jurisprudencia de la CorteIDH [The right of doctors to Professional Secrecy in Case Law of the I/A Court]. Page 50.

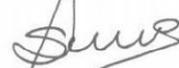
Congress of the Republic. Proposal based on initiative No. 389/2014-CR⁸⁴, which was closed in the last legislation (2015); in spite of having the favorable legal opinion of several sectors, including: The Judiciary, the Office of The Attorney General, the Office of the Ombudsman, the United Nations System and the Forum of Civil Society regarding Health. It is worth mentioning that in 2011 the United Nations Committee for the Elimination of Discrimination against Women (CEDAW) established the international responsibility of the State in the case of L.C vs. Peru and set, as a measure not to be repeated, the decriminalization of abortion in cases of rape.

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

- To decriminalize abortion when the pregnancy is a result of rape, and when it entails fetal malformations incompatible with extrauterine life.
- To modify the legislation so the constitutional obligations that protect the professional secrecy prevail, and to prevent health professionals from reporting women for the alleged crime of abortion.

We appreciate the time you have provided to consider this report.

Sincerely,



Susana Chávez
Director



EG/mm

⁸⁴ This legislative initiative was submitted to the National Electoral Board with 102,000 signatures. The National Registry of Identification and Legal Status (RENIEC) considered the validity of 644,261 signatures, certifying the compliance with the minimum requirement to submit a bill to the Congress of the Republic, which must exceed 0.3% of the voting population according to Article 11 of Law No. 26300.