



13 Dic 2021

Letter No.528-2021 -2021-PROMSEX

**Human Rights Committee**

Office of the High Commissioner for Human Rights (OHCHR)  
Palais Wilson  
52, rue des Pâquis  
CH-1201 Geneva, Switzerland

**Re: Alternative report on the sixth periodic report submitted by  
Peru**

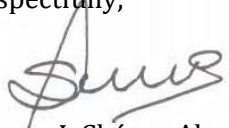
To whom it may concern:

The **Center for the Promotion and Defense of Sexual and Reproductive Rights -PROMSEX**, a feminist non-governmental organization 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 on the sixth periodic report submitted by Peru in the framework of the compliance with the provisions of the International Covenant on Civil and Political Rights.

This report is intended to provide relevant and updated information regarding: (a) The guarantee of the sexual and reproductive rights of women, adolescents and girls; (b) The right to life, the prohibition of torture or other cruel, inhuman or degrading treatment: An obstacle to the access to therapeutic abortion; (c) The situation of violence and discrimination against LGBTI persons from the principle of equality and non-discrimination; (d) The situation of trafficking in persons for sexual exploitation and its impact on girls and adolescents; and (e) Exposure to negative impacts in the context of the health emergency due to COVID-19; lastly, recommendations will be suggested to the Peruvian State in each section.

Thank you in advance for your attention.

Respectfully,

  
Susana I. Chávez Alvarado  
Directora Ejecutiva



EG/mm



## ALTERNATIVE REPORT ON THE SIXTH PERIODIC REPORT SUBMITTED BY PERU

### Acronyms and abbreviations

<b>AURORA</b>	<b>National Program for the Prevention and Eradication of Violence Against Women and Members of the Family Group</b>
<b>HRC</b>	<b>Human Rights Committee</b>
<b>CEM</b>	<b>Emergency Centers for Women</b>
<b>CONACOD</b>	<b>National Council Against Discrimination</b>
<b>I/A Court HR</b>	<b>Inter-American Court of Human Rights</b>
<b>CP</b>	<b>Criminal Code</b>
<b>CPP</b>	<b>Political Constitution of Peru</b>
<b>HR</b>	<b>Human Rights</b>
<b>DGDH</b>	<b>General Directorate of Human Rights</b>
<b>DGDPAJ</b>	<b>General Directorate of the Public Defense Service and Access to Justice</b>
<b>DP</b>	<b>Office of the Ombudsperson</b>
<b>ENDES</b>	<b>Demographic and Family Health Survey</b>
<b>UPR</b>	<b>Universal Periodic Review</b>
<b>INEI</b>	<b>National Institute of Statistics and Computer Science</b>
<b>MINJUSDH</b>	<b>Ministry of Justice and Human Rights</b>



<b>MIMP</b>	<b>Ministry of Women Affairs and Vulnerable Populations</b>
<b>MPFN</b>	<b>Office of the Attorney General - Prosecutor's Office</b>
<b>ICCPR</b>	<b>International Covenant on Civil and Political Rights</b>
<b>PJ</b>	<b>The Judiciary</b>
<b>PNDH</b>	<b>National Plan for Human Rights 2018-2021</b>
<b>PNP</b>	<b>National Police of Peru</b>
<b>RETA</b>	<b>System of Registry and Statistics on Trafficking in Persons and Related Crimes of the National Police of Peru</b>

**PROMSEX**  
Salud. Sexualidad. Solidaridad.



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## I. Introduction and description

1. This report was prepared by the Center for the Promotion and Defense of Sexual and Reproductive Rights - PROMSEX, on the basis of the list of issues prior to submission CCPR/C/PER/QPR/6 dated 4 September 2017<sup>1</sup>, and the sixth periodic report submitted by Peru to the Human Rights Committee (*hereinafter "Committee" or "HRC"*) on 5 February 2020, pursuant to Article 40 of the Covenant in accordance with the optional reporting procedure<sup>2</sup>.
2. The document comprises four sections, with recommendations made to the Peruvian State<sup>3</sup>, among them: (a) **The guarantee of the sexual and reproductive rights of women, adolescents and girls** (arts. 2, 3, 6, 24 of the HRC) and **violence against women** (arts. 6, 7, 14 and 26); (b) **The right to life, the prohibition of torture or other cruel, inhuman or degrading treatment: An obstacle to the access to therapeutic abortion** (arts. 3, 6, 7, 9, 14, 19); (c) **Principle of equality and non-discrimination and violence against LGBTI persons** (arts. 2 (para. 1), 3, 6, 7, 24, 25 and 26); and (d) **The situation of trafficking in persons for sexual exploitation and its impact on girls and adolescents** (arts. 7, 8, 14 and 24).

### **The guarantee of the sexual and reproductive rights of women, adolescents and girls (arts. 2, 3, 6, 24) and violence against women (arts. 6, 7, 14 and 26)**

CCPR/C/PER/QPR/6	"13. (...) Please also report on the steps taken to ensure the accessibility of sexual and reproductive health services for all women in all areas of the country"
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3. According to the United Nations Population Fund (*hereinafter "UNFPA"*) in Peru, many women, young women and adolescents, still do not have all the resources necessary to access the services and information that would allow them to exercise this right, and this has been affected by regulatory, territorial and cultural barriers<sup>4</sup>. Meanwhile, the Office of the Ombudsperson in Report No. 0011-2018-DP/ANA<sup>5</sup> reiterated to the Ministry of Health (MINSA) the need to adopt updated guidelines for sexual and reproductive health care, and to amend the regulations on differentiated health services for comprehensive care and thus closing access gaps (territorial, rural, ethnic, disability, sexual orientation, among others).
4. Particularly women and girls with disabilities in the country suffer from multiple forms of discrimination, not only because they live with a disability, but also because they are women and because of the socio-economic conditions of exclusion in which they live, condemning them to suffer disadvantages in a society and State that also invisibilizes their issues and does not meet their needs. According to the Demographic and Family

<sup>1</sup> CCPR/C/PER/QPR/6, List of issues prior to submission of the sixth periodic report of Peru dated 4 September 2017.

<sup>2</sup> CCPR/C/PER/6 dated 27 February 2020. In addition, information from the concluding observations on the fifth periodic report of Peru, adopted by the Committee at its 107th Session (11 to 28 March 2013), CCPR/C/PER/CO/5 dated 29 April 2013.

<sup>3</sup> The impact on health systems as a result of the Covid-19 health pandemic is undeniable, this is why this report contains references to the *ex ante* situation, and the impact during the pandemic.

<sup>4</sup> United Nations Population Fund (UNFPA) website, [Sexual and reproductive health](#)

<sup>5</sup> United Nations Population Fund (UNFPA) and the Office of the Ombudsperson, '[Resultado de la supervisión defensorial a los servicios de salud diferenciados para la atención integral adolescente](#)' [Outcome of the Ombudsperson supervision of differentiated health services for the comprehensive care of adolescents'], 15 July 2018, p. 57.



- Health Survey - ENDES (2017), the use of a contraceptive method among women with disabilities is 43.8% and without disabilities is 54.6%<sup>6</sup>. This is in addition to ‘challenges such as lack of training for teachers on teaching sexuality to children and adolescents with disabilities and on care protocols when they detect abuse, groping, violence and rape’<sup>7</sup>.
5. Likewise, although the CEDAW Committee recommended to Peru to “strengthen the gender and intercultural approach in the delivery of health services (...)”<sup>8</sup>, a regional survey on the sexual and reproductive health of indigenous young people in 2018 showed that rural youth (Aymaras, Kakataibos, Quechuas, and Ashanincas) are twice at risk of becoming pregnant as those living in urban areas “*more than 40% indicate that they have never asked for sexual health information at their health center because of the lack of discretion of health personnel, more than 15% indicated that they were required to be accompanied by an older person, and 10.06% of the total reported that their pregnancy was a result of rape*”<sup>9</sup>.
  6. On 16 March 2020, the former president of Peru, Martín Vizcarra, declared the state of emergency of public health, which has implied a series of health, economic, social and personal measures of great impact for the entire Peruvian population. Since the declaration of the health emergency, sexual and reproductive health services were inactive and/or suspended, preventing women from accessing pregnancy check-ups and childbirth care services; family planning services including Emergency Oral Contraception (EOC), STI and HIV prevention services, and therapeutic abortion care. While these services have been progressively reactivated<sup>10</sup>, their availability nationwide, especially regarding sexual and reproductive health services for adolescents, is still not guaranteed.
  7. According to a report, as of 4 April 2021, Peru ranked as the country with the highest mortality rate in the world with more than 1,000 deaths per million inhabitants<sup>11</sup>. Since the declaration of the health emergency until February 2021, the Peruvian State published norms and health directives, five of them referring to sexual and reproductive services, among them: (1) Health Directive No. 094-MINSA/2020/DGIESP<sup>12</sup> (hereinafter “*Health Directive*”) to **‘Guarantee the health of**

<sup>6</sup> The National Institute of Statistics and Computer Science (INEI), developed the report ‘*Caracterización de las Condiciones de Vida de la Población con Discapacidad*’ [Characterization of the living conditions of the population with disabilities] (2017) Executive Summary - Women in childbearing age, para. 39.

<sup>7</sup> Final report from ODISEX “*Promoción y defensa de los derechos sexuales y reproductivos y prevención del Zika en mujeres con discapacidad en Piura*” [Promotion and defense of sexual and reproductive rights, and the prevention of Zika for women with disabilities in Piura], 2018.

<sup>8</sup> CEDAW Committee, *Concluding Observations to Peru*, 2014, *supra* note 62, para. 33.

<sup>9</sup> Regional Survey on Indigenous Youth and Sexual Education 2018. Conducted by Asociación Chirapaq in Ayacucho, Junín, Puno and Ucayali.

<sup>10</sup> ‘Only at the beginning of June, some first-level sexual and reproductive health services have been reactivated with emphasis on third-trimester care and childbirth care, as well as some family planning services. At present, a percentage of face-to-face services are working (the percentages vary in the different regions and could range from 20% to 70% according to the respondents interviewed). These services operate with a reduced supply due to safety measures and the availability of health professionals’. PROMSEX. ‘*Informe de la Situación del Acceso a los Servicios de Salud Sexual y Reproductiva durante la pandemia de Covid-19 en el Perú*’ [Report on the situation of the access to sexual and reproductive health services during the Covid-19 pandemic in Peru], November 2020. p.11.

<sup>11</sup> Financial Times, ‘*Coronavirus tracker: The latest figures as countries fight the Covid-19 resurgence*’, 6 April 2021.

<sup>12</sup> Ministry of Health (MINSA), *Health directive to guarantee the health of pregnant women and the continuity of family planning care in light of the COVID-19 infection, Health Directive No. 094 -MINSA/2020/DGIESP*, dated 23 April 2020. This has been repealed by *Health Directive No. 131 MINSA-2021 ‘Health directive for sexual and reproductive health care services during the COVID-19 pandemic’*, adopted on 31 March 2021.



***pregnant women and the continuity of family planning care in light of the COVID-19 infection'*** dated 23 April 2020, which was repealed; (2) Health Directive No. 097-MINSA/2020/DGIESP<sup>13</sup> '***Prevention and care of pregnant women and newborns at risk or infected with COVID-19'*** dated 30 April 2020; (3) Health Directive No. 098-MINSA/2020 '***Directive for monitoring extreme maternal morbidity'***<sup>14</sup> dated 2 May 2020; (4) Technical Health Standard No. 164-MINSA/2020 '***Technical health standard for the comprehensive care of women and family members affected by sexual violence'***<sup>15</sup> published in August 2020; and (5) Health Directive No. 131-MINSA/2021 '***Health directive for sexual and reproductive health care services during the COVID-19 pandemic'*** dated 31 March 2021<sup>16</sup>. In addition to the adoption of the "Technical health standard for the adequacy of the organization of health services with emphasis on the first level of health care in the face of the Covid-19 pandemic in Peru"<sup>17</sup>, which adopted the telehealth format for the provision of reproductive counseling, but its coverage is less than 50%<sup>18</sup>.

a) Despite the adoption of these health directives and standards, they do not contemplate all sexual and reproductive health services, nor do they adopt prevention, control and care actions for people living with HIV/AIDS; nor do they provide directives to improve prevention and treatment care of oncological diseases. In addition, there is the context of the health emergency, with social immobility and mandatory distancing, making it difficult to access health services (which collapsed due to COVID-19). Furthermore, these health directives and standards, in practice, do not meet their initial objectives, as mentioned:

- ***Health Directive No. 097 -MINSA***, 'with the purpose to reduce the possibility of maternal-neonatal morbidity and mortality associated with the risk of infection with COVID-19, through the prevention and home care of the mother and the newborn'<sup>19</sup>. According to the Maternal and Neonatal Health Sub-Working Group, 'when analyzing the causes of maternal deaths in 2020 and until April 2021, we found that many could have been prevented, such as hemorrhage and hypertension, but also

<sup>13</sup> Ministry of Health (MINSA), through [Ministerial Resolution No. 245-2020-MINSA](#), issued the *Directive of prevention and care of pregnant women and newborns at risk or infected with COVID-19*, [Health Directive 097-MINSA/2020/DGIESP](#), dated 30 April 2020.

<sup>14</sup> Ministry of Health (MINSA) through [Ministerial Resolution No. 249-2020/MINSA](#), issued Health Directive No. 098-MINSA/2020 '*Directive for monitoring extreme maternal morbidity*', in May 2020.

<sup>15</sup> Ministry of Health (MINSA), through [Ministerial Resolution No. 649-2020/MINSA](#), approved *Technical health standard for the comprehensive care of women and family members affected by sexual violence*', in August 2020.

<sup>16</sup> Ministry of Health (MINSA), through [Ministerial Resolution No. 450-2021/MINSA](#), issued Health Directive No. 131-MINSA-2021 '*Health directive for sexual and reproductive health care services during the COVID-19 pandemic*', on 31 March 2021.

<sup>17</sup> Ministry of Health (MINSA), through Ministerial Resolution No. [160-MINSA/2020](#), issued the "*Technical health standard for the adequacy of the organization of health services with emphasis on the first level of health care in the face of the Covid-19 pandemic in Peru*, in May 2020.

<sup>18</sup> PROMSEX. '[Informe de la Situación del Acceso a los Servicios de Salud Sexual y Reproductiva durante la pandemia de Covid-19 en el Perú](#)' [Report on the situation of the access to sexual and reproductive health services during the Covid-19 pandemic in Peru], November 2020. p.8. Among other standards associated with the adoption of telehealth format for the provision of reproductive and sexual right services. (See Annex 2).

<sup>19</sup> Ministry of Health (MINSA), through [Ministerial Resolution No. 245-2020-MINSA](#), issued the *Directive of prevention and care of pregnant women and newborns at risk or infected with COVID-19*, [Health Directive 097-MINSA/2020/DGIESP](#), dated 30 April 2020.



- they were related to the COVID-19 disease, the latter being the third cause of maternal mortality in 2020 and the main cause in 2021<sup>20</sup>.
- **Health Directive No. 098 -MINSA**, with the purpose to reduce extreme maternal mortality in health establishments. In this regard, 'hospitals decreased their ability to provide complex obstetric and neonatal services in order to focus on the treatment of Covid-19 patients'<sup>21</sup>. 'This is worrying since at least 65% of pregnant women who enter the Intensive Care Unit (ICU) have complications. Also knowing that comorbidities in pregnant women have increased, as well as the birth of preterm newborns of mothers with Covid-19, who require ICU'<sup>22</sup>. While in 2020, maternal deaths amounted to 440, 45.7% more than in 2019. Up to week 13 of 2021, maternal deaths amounted to 136, which represents 65.6% more than in 2020, in the same period<sup>23</sup>.
  - **Health Directive No. 164 -MINSA** is intended to provide guidelines for the timely care of sexual violence cases through the promotion, prevention and care of victims: Mental health, sexual and reproductive health; such as the provision of the sexual violence care Kit. Between January and October 2020, 910 emergency kits were delivered, 61% of women victims who accessed the kit were adolescents under the age of 18; however, 'only 5% of the victims receive comprehensive care'<sup>24</sup>.
- b) After some incidence work by civil society organizations, in March 2021, **Health Directive No. 131-MINSA** was approved, with the purpose of '*reducing maternal morbidity and mortality by ensuring the access to sexual and reproductive health services in the context of the emergency*'<sup>25</sup>. This directive stipulated measures for the delivery of sexual and reproductive health services (home visits, shelter for pregnant women, and provision of medicines), and established a new organization of sexual and reproductive health services for prenatal care, emergency obstetric care, postpartum care, family planning<sup>26</sup>. We are vigilant to its implementation.
8. During the period of health emergency, external consultations were suspended in 8 thousand health facilities, and this meant the neglect of pregnant women, and women who required access to the sexual violence emergency kit and EOC, as well as family planning services. In this regard, UNFPA noted that in Peru unplanned births will increase to between 50 thousand and 100 thousand between the years 2020 and 2021<sup>27</sup>, this is due to the pandemic and the measures of closure and social isolation

<sup>20</sup> Roundtable for the Fight Against Poverty (MCLCP). Alert No. 1-2021-SC/GT Salud-MCLCP, '*Perú: Mortalidad Materna sigue en aumento en el contexto de COVID-19*' [Peru: Maternal mortality keeps increasing in the context of COVID-19], 29 April 2021, p. 2.

<sup>21</sup> Ibid. p. 9.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid. p. 2.

<sup>24</sup> RPP Noticias, '*Qué es el kit de emergencia y por qué es clave que todas las víctimas de violencia sexual lo reciban?*' [What is the emergency kit and why is it important for all victims of sexual violence to receive it?], 26 November 2020.

<sup>25</sup> Ministry of Health (MINSA), through *Ministerial Resolution No. 450-2021/MINSA*, issued Health Directive No. 131 MINSA-2021 'Health directive for sexual and reproductive health care services during the COVID-19 pandemic', on 31 March 2021.

<sup>26</sup> Ibid. p. 3.

<sup>27</sup> Official newspaper 'Diario Oficial El Peruano'. *UNFPA: Pandemia incrementaría en 40% nacimientos no planificados en el país durante 2020-2021* [UNFPA: The pandemic would increase unplanned births by 40% in the country during 2020-2021], 6 May 2020.





- resulting in the interruption of the access to services such as maternal, sexual and reproductive health, as well as gender-based violence prevention and protection services, with devastating effects on existing social inequalities<sup>28</sup>.
9. Additionally, care was suspended at the Women's Emergency Centers (CEMs), these are public care services for victims of family and sexual violence. At the national level and as a substitute, 209 traveling teams were formed to provide at-home care for victims of violence<sup>29</sup>, this is not enough to address cases of violence nationwide.
  10. Added to this are the attack strategies of fundamentalist and conservative sectors, who object to the Resolutions adopted by MINSA and question abortion and the provision of the EOC<sup>30</sup>. All these actions affect the right to a sexuality free from discrimination and/or violence, and the right to information of women and adolescents.
  11. On the other hand, in the light of the general elections in our country, which were held on 11 April 2021, an exploratory analysis of government plans<sup>31</sup> showed that 'not all issues regarding sexual and reproductive rights, the rights of LGBTI people, and trafficking in persons are addressed in the political agenda<sup>32</sup>, (...) there is an incomplete agenda that lacks the issues of forced child pregnancy, provision of the emergency kit for victims of rape, hate crimes and gender identity'<sup>33</sup>, of the entire cluster of political parties only two organizations refer to these issues, however, such plans do not elaborate on how they would implement their proposals.

- **Differentiated impact on women, and in particular, on children and adolescents in times of Covid-19**

12. Peru has 7.5 million adolescents between the ages of 10 and 24, who represent a quarter of its population<sup>34</sup>. There is no doubt that the Covid-19 pandemic has caused a negative impact on the physical, social and mental health of children and adolescents, even more so because of the measures implemented during the mandatory quarantine. Among the devastating effects we have: An increase in cases of violence against children and adolescents. According to the Ministry of Women and Vulnerable Populations (MIMP) from 16 March to 31 August 2020 (mandatory confinement), there were 784 cases of sexual violence against children and adolescents<sup>35</sup>, and by the end of 2020, out

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<sup>28</sup> Ibidem.

<sup>29</sup> Efeminista. [Las otras cifras de la Covid en Perú: 12 feminicidios y 226 violaciones](#) [The other statistics of Covid in Peru: 12 femicides and 226 rapes], 13 May 2020.

<sup>30</sup> Ojo Público, [Lobbies y estrategias ultraconservadores durante la pandemia en América Latina](#) [Lobbies and ultra-conservative strategies during the pandemic in Latin America], 10 June 2020.

<sup>31</sup> Dador, J. [Análisis de Planes de Gobierno. Elecciones Generales](#) [Analysis of government plans. General elections]. PROMSEX (2021).

<sup>32</sup> Of the 18 political organizations that submitted their government plans, only 4 (26.6%) have proposals for the care of maternal death (p. 6), teenage pregnancy (p. 8), equal marriage (p. 25), and trafficking in persons (p. 32); 2 political parties (13.3%) address the access to contraceptive methods (p. 10), and gender identity laws and the punishment of hate crimes; 8 (53.3%) plans refer to comprehensive sexual education (p. 13); 7 (46.6%) present proposals concerning abortion - although not all are close to the international human rights standard (p. 17); 12 (80%) address sexual violence against children and adolescents (p. 30).

<sup>33</sup> Dador, J. [Análisis de Planes de Gobierno. Elecciones Generales](#) [Analysis of government plans. General elections]. PROMSEX, 2021, p. 36

<sup>34</sup> UNFPA Peru. [Consecuencia Socioeconómicas del embarazo y la maternidad adolescente en Perú](#) [Socioeconomic consequences of adolescent pregnancy and motherhood in Peru], p. 5.

<sup>35</sup> Press release. Office of the Ombudsperson. [Defensoría del Pueblo: urge reforzar estrategias de prevención de la violencia hacia las niñas en el contexto de pandemia](#) [Office of the Ombudsperson: It is imperative to reinforce the strategies to prevent violence against girls in the context of the pandemic], 11 October 2020.



- of the 13,841 cases of sexual violence that were reported, 9582 (69.2%) were cases involving children and adolescents.<sup>36</sup>
13. In addition to the obstruction of the access to sexual and reproductive health services, especially due to the lack of provision of contraceptive methods. According to an exploratory study (2020), 11% of respondents needed a sexual and reproductive health services since beginning of the pandemic; the demand for these services was mainly among young people between the ages of 18 and 34 (30%), women (15%), men (6%). Of those who were unable to access them or who struggled to access them, 37% of them had problems accessing contraceptive methods, 26% gynecological health services, 20% newborn check-ups, 16% childbirth care, 11% HIV-related consultation, 11% prenatal check-ups, and 4% family planning<sup>37</sup>.
  14. On the other hand, due to the saturation and discontinuity of the health system, there was an increase in out-of-hospital births. According to a regional report, in 2020 there was an increase of 69% in births outside of health facilities, and 54% in home births, compared to 2019<sup>38</sup>.
  15. Especially taking into consideration that 'adolescent pregnancy and motherhood constitute the intergenerational transmission of poverty, vulnerability, exclusion, discrimination and gender inequality', which compromises the opportunities of development of adolescents<sup>39</sup>. According to a UNFPA report (2020), the total cost of opportunity associated with adolescent motherhood in Peru is USD 329, 416, 367 million<sup>40</sup>. Women who had their first child in adolescence receive an annual income 13.8% lower than those who were mothers between the ages of 20 and 29<sup>41</sup>, which leads to a higher rate of unemployment and labor informality (the rate of inactivity in adolescent mothers is 26.8%, while in women who had children as adults is 19.1%)<sup>42</sup>; and to lower access to higher and post-graduate education (women who had children as adults had greater access to education (26.0%) in comparison with adolescent mothers (18.8%))<sup>43</sup>.
  16. In this regard, ENDES (2019) noted that in the poorest quintile the percentage of adolescent women who are pregnant or are already mothers is 24.9%, while in the richest quintile this percentage is only 3.2%<sup>44</sup>.

<sup>36</sup> Ministry of Women and Vulnerable Populations (MIMP), *Informe Estadístico: Violencia en Cifras (enero a diciembre 2020. Casos de Violencia Sexual* [Statistical Report: Violence in figures (January to December 2020). Cases of sexual violence].

<sup>37</sup> Roundtable for the Fight Against Poverty (2020). *Informe Nacional Sobre el Impacto del COVID-19 en las dimensiones económica, social y en salud en el Perú* [National report on the impact of COVID-19 on the economic, social and health dimensions in Peru] including the findings of 16 regional roundtables. Report No. 1-2020-SC/Grupo de Salud-MCLCP. The quantitative study was conducted between August and September 2020. Through telephone surveys, 1,208 interviews were conducted with people over 18 years of age in 24 regions, 145 provinces and 387 districts of the country at the urban and rural levels.

<sup>38</sup> 179th Session of the IACHR. Speech of the thematic hearing on "*Derechos sexuales y reproductivos en el contexto de la pandemia del Covid-19 en la región*" [Sexual and reproductive rights in the context of the Covid-19 pandemic in the region], conducted on 26 March 2021.

<sup>39</sup> UNFPA Peru. *Consecuencia Socioeconómicas del embarazo y la maternidad adolescente en Perú* [Socioeconomic consequences of adolescent pregnancy and motherhood in Peru], 2020. p. 6.

<sup>40</sup> Ibid., p. 29.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> National Institute of Statistics and Computer Science (INEI), Peru. *Demographic and Family Health Survey (ENDES)*, published in May 2020. [INEI, ENDES, 2019]



17. Added to this is the issue of child marriage and unwanted early marriages which may be a space for sexual violence and forced motherhood<sup>45</sup>. According to UNFPA, the impact of Covid-19 could be translated into an additional 13 million child marriages between 2020 and 2030<sup>46</sup>. Furthermore, the representative of UNFPA Peru Adolescents and Youth Program, Carmen Murguía, said that this harmful practice ‘creates gender inequalities because, as they don’t have other alternatives for their life project, they end up accepting these marriages to help the family’<sup>47</sup>.
18. Additionally, the Covid-19 pandemic demonstrated the unequal way in which the care of households, dependents, maintenance of social relations or psychological support for family members is organized, creating a gap in occupational and wage inequality; and it was precisely women and girls who assumed responsibility for care work<sup>48</sup>. This is on top of the poorly-paid or unpaid work as housekeepers performed by girls under the age of 16<sup>49</sup>, who are often exposed to gender-based violence in the context of the confinement.

**19. Recommendations suggested to the Peruvian State:**

- a) **Guarantee** the access to sexual and reproductive health services for all women regardless of geographic location, ethnicity, disability, sexual orientation, gender identity, age, among others.
- b) **Adopt** the necessary measures to inform women and girls massively about their rights related to access to sexual and reproductive health services, doubling the efforts to guarantee these rights.
- c) **Incorporate and strengthen** comprehensive sexual education in schools, in the framework of the recognition of sexual and reproductive rights and the gender perspective of children and adolescents, including the prevention of sexual violence.
- d) **Adopt** regulatory and budgetary policies to ensure that indigenous and rural women have access to health services without fear of being victims of obstetric violence by health officials.

**In times of COVID-19:**

- e) **Promote** policies, plans and guidelines during the health crisis to guarantee the access to sexual and reproductive health services for women and girls nationwide.
- f) **Reopen** first level care services differentiated from the Covid-19 services, in order to restore preventive care in the field of sexual and reproductive health.

<sup>45</sup> UNFPA. *‘Contra mi voluntad: desafiar las prácticas que perjudican a las mujeres y niñas e impiden la igualdad’* [Against my will: Defying the practices that harm women and girls and undermine equality] (2020), p. 148.

<sup>46</sup> Tweet UNFPA Peru, 1 July 2020.

<sup>47</sup> La República. *‘Matrimonio infantil en Perú pandemia por coronavirus podría provocar el aumento de uniones tempranas advierte UNFPA’* [Child marriage in Peru. UNFPA warns that the coronavirus pandemic could increase early marriages], 30 August 2020.

<sup>48</sup> Alayza, A. and others. Oxfam. *‘Tiempos de Cuidado. Desigualdades, economía feminista y trabajo de cuidado en el Perú. Aportes para transformar un sistema en crisis’* [Time of care. Inequalities, feminist economy and care work in Peru. Contributions to transform a system in crisis], dated January 2021, p. 14.

<sup>49</sup> Ibid., p. 33.



- g) **Implement** a telemedicine appointment system to access sexual and reproductive health counseling, as well as an appropriate system for the provision of family planning methods.
- h) **Ensure** that the measures taken to contain the COVID-19 pandemic, such as restrictions on freedom of movement and/or distancing, do not limit access to sexual and reproductive health care services.
- i) **Promote** policies and programs to reduce the inequality gap associated with forced motherhood and adolescent pregnancy in girls and adolescents.
- j) **Prioritize and guarantee** in the budgetary allocation, activities to provide contraceptive methods as a cost-effective measure to prevent unwanted pregnancies, especially in adolescents under 15 years of age.

- **Sexual violence and forced pregnancy against women, adolescents and girls**

CCPR/C/PER/CO/5	<i>"10. The State party should strengthen its efforts to prevent and combat all forms of violence against women, including by ensuring the effective implementation of the existing relevant legal and policy frameworks. (...) The State party should also facilitate complaints from victims; ensure that all reports of violence are investigated and perpetrators brought to justice; and ensure that victims have access to effective means of protection, including an adequate number of shelters available in all parts of the country"</i>
CCPR/C/PER/QPR/6	<i>"(...) please report on the measures taken to prevent, punish and eradicate sexual and gender violence, including rape and femicide. Please also provide information on complaints, investigations, judicial rulings, punishments and measures of assistance, protection and redress for victims of violence, including domestic violence".</i>

20. According to the National Police of Peru, in 2018; 4,641 minors reported that they had been victims of rape<sup>50</sup>. Furthermore, ENDES (2018) reported that 10.9% of women between the ages of 15 and 49 suffered physical and sexual violence<sup>51</sup>, while in its 2019 report<sup>52</sup>, it reported 57.7% cases. That is, the number was five times higher compared to the previous period, and it registered that 3.1% of adolescents between the ages of 15 and 19 indicated that they had suffered sexual violence<sup>53</sup>. According to the INPE report (February 2020), the crime of rape of minors is in second place (9,561) representing 10.4%<sup>54</sup> of the prison population, and rape is sixth (4,242) representing 4.6%<sup>55</sup>.

21. According to the National Survey on Social Relations (ENARES) 2019<sup>56</sup>, 68.9% of children between the ages of 9 and 11 were victims of family violence (psychological

<sup>50</sup> National Police of Peru - PNP (2018): Statistical Yearbook of the National Police of Peru 2018.

<sup>51</sup> National Institute of Statistics and Computer Science (INEI), *Perú: Encuesta Demográfica y de Salud Familiar 2018* [Peru: Demographic and Family Health Survey], May 2019, p. 294. [INEI, ENDES, 2018]

<sup>52</sup> National Institute of Statistics And Computer Science (INEI), presentation of the subject of *Violencia Familiar en el Perú: Mitos y Realidades* [Family violence in Peru: Myths and realities], by INEI Chief Dante Carhuavilca Bonett, September 2020.

<sup>53</sup> National Institute of Statistics and Computer Science (INEI), Peru. *Encuesta Demográfica y de Salud Familiar (ENDES)* [Peru: Demographic and Family Health Survey - ENDES], May 2020. Chapter 12. Violence against women and children. [INEI, ENDES, 2019]

<sup>54</sup> National Penitentiary Institute (INPE). *'Statistical Report February 2020'*, p. 30.

<sup>55</sup> Ibid.

<sup>56</sup> National Institute of Statistics and Computer Science (INEI), *Encuesta Nacional sobre las Relaciones Sociales ENARES* [National Survey on Social Relations - ENARES] (2019), main results. Accessed on March 2021 from



- and/or physical)<sup>57</sup>, while 78% of adolescents between the ages of 12 and 17 were victims of family violence<sup>58</sup>. Likewise, regarding the social tolerance index toward children and adolescents (2019), 46.1% of people believe that the only people who have the right to beat children are their parents, and 26.9% believe that physical punishment should be used without injuring the child<sup>59</sup>; and with regard to the index of violence against women (2019), 33.2% of people agree that an unfaithful woman must have some form of punishment from their partner, and 27.2% of people consider that if a woman disrespects her husband or partner, she deserves punishment<sup>60</sup>.
22. For its part, the MIMP reported that in 2019, at the national level, 154,602<sup>61</sup> cases of violence against women were handled in the CEMs, and violence against girls and adolescents also increased to 29,995<sup>62</sup>, representing 60% of cases of sexual violence<sup>63</sup>. While from January to December 2020, there were 9,582 (69.2%) reported cases of children and adolescents victims of sexual violence<sup>64</sup>.
23. While there are also more CEMs in the country nationwide, from 396 in 2019<sup>65</sup> to 416 CEMs up to February 2021<sup>66</sup>, the figures show that violence against women continues to increase. According to a report by the Office of the Ombudsperson, only during the first semester of 2019, the *Provincial Provisional Prosecutors' Offices Specialized in Violence Against Women and Members of the Family Group* (FPE) received 2,006 complaints<sup>67</sup>, and between January and 30 November 2020, the MIMP reported 98,164 cases, of which 11,782 were cases of sexual violence<sup>68</sup>; regarding femicide, 121 cases were recorded, 15% of which correspond to victims who are girls and adolescents<sup>69</sup>. In the same period, Línea 100<sup>70</sup> answered 218,218 telephone enquiries, with 79% of the calls being made by women<sup>71</sup>.
24. It should be noted that in 2019, 80.4% of girls and adolescents between the ages of 9 and 17 who were pregnant and victims of rape did not access medical or psychological

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<sup>57</sup> Ibid., p. 8.

<sup>58</sup> Ibid., p. 14.

<sup>59</sup> Ibid., p. 27.

<sup>60</sup> Ibid., p. 30-31.

<sup>61</sup> Ministry of Women and Vulnerable Populations (MIMP), *Informe Estadístico: Violencia en Cifras* [Statistical Report: Violence in figures] (Newsletter: No. 12 -2019), December 2019, p. 3. [MIMP, Statistical Report, December 2019]

<sup>62</sup> Ibid.

<sup>63</sup> Ministry of Women and Vulnerable Populations (MIMP), *National Program for the Prevention and Eradication of Violence Against Women and Members of the Family Group – AURORA*, Statistical Newsletter. January-December 2019.

<sup>64</sup> Ministry of Women and Vulnerable Populations (MIMP), *Informe Estadístico: Violencia en Cifras (enero a diciembre 2020. Casos de Violencia Sexual* [Statistical Report: Violence in figures (January to December 2020). Cases of sexual violence].

<sup>65</sup> MIMP, Statistical Report, December 2019, *supra* note 8, p. 1.

<sup>66</sup> Press release. *MIMP: Inaugura un nuevo CEM en la región Ancash para atender y prevenir casos de violencia* [MIMP: Opens a new CEM in the Ancash region to address and prevent cases of violence], 26 March 2021.

<sup>67</sup> Office of the Ombudsperson, *Supervisión de Fiscalías Provinciales Especializadas en Violencia contra las Mujeres y los Integrantes del Grupo Familiar* [Monitoring of Provincial Prosecutors' Offices Specialized in Violence Against Women and Members of the Family Group], *Report No. 12-2019-DP/ADM*, Serie igualdad y no violencia N°19 [Equality and Non-Violence], (December 2019), p. 38.

<sup>68</sup> Official newspaper 'Diario Oficial El Peruano', *MIMP: Más de 98,000 casos de violencia fueron atendidos en los Centros de Emergencia Mujer* [MIMP: More than 98,000 cases of violence were handled in the Women Emergency Centers], 22 December 2020.

<sup>69</sup> Ibid.

<sup>70</sup> Línea 100 is a free telephone service to receive information, guidance and counseling for people who have been affected by family or sexual violence. The institution in charge of its supervision, monitoring and registry is the Ministry of Women and Vulnerable Populations (MIMP).

<sup>71</sup> Ibid.



- care before arriving to a CEM<sup>72</sup>. This is especially worrying considering that 46.9% of them have a connection with the aggressor<sup>73</sup>.
25. **In the context of the health emergency**, violence against children and adolescents has worsened, according to the *Office of the Ombudsperson*, approximately 400 girls were raped between March and June 2020, most of the aggressors being their relatives. Furthermore, it showed that MINSA failed to deliver immediately the emergency kit in cases of rape<sup>74</sup>.
26. In 2020, approximately 1,181 girls under the age of 15 became mothers; that is, every day 4 girls under the age of 15 gave birth<sup>75</sup>. In addition to this total, 26 girls under the age of 10 became mothers (a figure three times higher in comparison to the previous year). In addition, there was a 18% increase in sexual violence against girls and adolescents, in comparison with the 15% reported in 2019<sup>76</sup>.
27. Likewise, according to MIMP between March (**start of quarantine**) and July 2020, 11,743 cases of sexual violence were registered, of which 2,678 were against children and adolescents (22%)<sup>77</sup>. In addition to this, during the declaration of the national emergency in response to COVID-19 (16 March to 10 May), there was an *increase* of 57.9% in the calls made to Línea 100 by children and adolescents asking for help; there were 3,012 cases of violence against women, 39% of which involved children and adolescents; and 171 cases of sexual violence against children and adolescents were reported<sup>78</sup>. Furthermore, MIMP also indicated that the calls answered regarding violence against minors almost doubled during 2020 at the national level, in comparison with 2019<sup>79</sup>.
28. Meanwhile, between January and December 2019, Línea 100 of the MIMP received 119,786 calls regarding acts of violence against women and members of the family group<sup>80</sup>, and 235,791 calls in the same period in 2020<sup>81</sup>, this represents an increase of 97% in comparison with the year 2019<sup>82</sup>, being the months of mandatory social isolation due to the health emergency when there were a higher number of calls. The Office of the Ombudsperson indicated that, during 2020, there were 132 femicides and

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<sup>72</sup> National Observatory on Violence against Women and Members of the Family Group - OBS. Violencia (2019): *'Embarazo forzado en niñas y adolescentes menores de 18 años por violación sexual: Cifras de los casos atendidos en los CEM'* [Forced pregnancy in girls and adolescents under 18 years of age as a result of rape: Figures regarding the cases seen in the CEMs].

<sup>73</sup> Ibid.

<sup>74</sup> Office of the Ombudsperson, Press release No. 518/OCII/DP/2020, *'Defensoría del pueblo expresa preocupación sobre la atención de casos de violación sexual de niñas, niños y adolescentes'* [The Office of the Ombudsperson expresses concern about the handling of the cases of rape of children and adolescents], 3 July 2020.

<sup>75</sup> 179th Session of the IACHR. Speech of the thematic hearing on *"Derechos sexuales y reproductivos en el contexto de la pandemia del Covid-19 en la región"* [Sexual and reproductive rights in the context of the Covid-19 pandemic in the region], conducted on 26 March 2021.

<sup>76</sup> Ibid.

<sup>77</sup> Office of the Ombudsperson, Press release No. 518/OCII/DP/2020, *'Defensoría del pueblo expresa preocupación sobre la atención de casos de violación sexual de niñas, niños y adolescentes'* [The Office of the Ombudsperson expresses concern about the handling of the cases of rape of children and adolescents], 3 July 2020.

<sup>78</sup> Congress of the Republic. *Extraordinary Session of the Commission on Women and Family*, 12 May 2020.

<sup>79</sup> La República, *MIMP: Casos de violencia contra menores de edad se duplicaron durante el 2020 respecto al año anterior* [MIMP: Cases of violence against minors doubled during 2020 compared to the previous year], 2 October 2020. According to MIMP, between January and August 2019, 29, 909 cases were reported and 43,906 cases were reported in 2020.

<sup>80</sup> Ministry of Women Affairs and Vulnerable Populations (MIMP). *Statistical Newsletter, January to December 2019*. Línea 100.

<sup>81</sup> Ministry of Women Affairs and Vulnerable Populations (MIMP). *'Línea 100 del MIMP incrementó en 97% las atenciones de llamadas durante el 2020'* [Calls answered by Línea 100 of the MIMP increased in 97% in 2020], 21 January 2021.

<sup>82</sup> Ibid.



- 204 attempted femicides, of which 110 were committed during the mandatory isolation declared by the State from 16 March to 31 May<sup>83</sup>.
29. Between January and October 2020, 5,209 cases of family and sexual violence were handled, among them, the group that received the most care by the MIMP national program Aurora were children (1939)<sup>84</sup>, through its different aid and prevention services.
  30. Even though the Peruvian State issued prevention and care measures for cases of violence against women, mainly through the request for assistance made to Línea 100, it cannot be stated that this channel is accessible to women, children and adolescents in situation of vulnerability, taking into account language barriers, poverty, age and difficulty accessing information. On the other hand, at the start of the quarantine, there were only 14 temporary shelters nationwide, consequently, taking into account the number of cases reported, it is clear that this amount is inadequate<sup>85</sup>.
  31. And on 26 April 2020, the Executive Branch issued Legislative Decree No. 1470<sup>86</sup>, which stipulates rules to speed up the provision of protective measures in cases of violence against women and the family group, and mentions that the intervention of service operators must respect human rights, prohibiting acts of discrimination on the grounds of sexual orientation and gender identity. Despite the importance of this Decree, it is necessary to improve the strategies to make effective the complaint in the cases of violence against children and adolescents.

- **Forced pregnancies in girls and adolescents**

CCPR/C/PER/QPR/6	<i>"13. Describe the measures taken to reduce the high rates of adolescent pregnancy and maternal mortality, particularly in rural areas."</i>
CCPR/C/PER/CO/5	<i>"14. The Committee is further concerned about the high rates of adolescent pregnancies (...). The Committee recommends that the State party: ...c) Increase its efforts to reduce adolescent pregnancy and maternal mortality, in particular in rural areas, and ensure that adequate sexual and reproductive health services, which include emergency oral contraceptives, are accessible in all regions of the country (...)."</i>

32. Adolescent pregnancy in Peru is a public health problem that violates human rights and has been lasting for approximately 30 years. According to official data, 13 out of every 100 adolescents between the ages of 15 and 19 are already mothers or are pregnant for the first time, 71% of these pregnancies were unwanted<sup>87</sup>. According to ENDES (2019), 12.6% of adolescents between the ages of 15 and 19 at the national level are already

<sup>83</sup> Press release. *Defensoría del Pueblo: se registraron 132 feminicidios en el 2020* [Office of the Ombudsperson: There were 132 femicides in 2020], 31 December 2020.

<sup>84</sup>Official newspaper 'Diario Oficial El Peruano', *Servicio de Atención Urgente atendió más de 5,200 casos de violencia contra las mujeres* [Urgent care services handled more than 5,200 cases of violence against women], 19 October 2020.

<sup>85</sup> La Ley, *"El Ángulo Legal de la Noticia. Violencia contra las mujeres en tiempo de cuarentena"* [The legal aspect of the news. Violence against women in times of quarantine], 21 April 2020.

<sup>86</sup>Official newspaper 'Diario Oficial El Peruano', *Decreto Legislativo N°1470: 'Decreto legislativo que establece medidas para garantizar la atención y protección de las víctimas de violencia contra las mujeres y los integrantes del grupo familiar durante la emergencia sanitaria declarada por el COVID-19'* [Legislative Decree No. 1470: Legislative decree that establishes care and protective measures for victims of violence against women and members of the family group during the health emergency of COVID-19], dated 26 April 2020.

<sup>87</sup> Roundtable for the Fight Against Poverty, Health Policies Combined Monitoring Team, Sub-Group on 'Prevention of Pregnancy in Adolescents', Alert No. 1-2018-SC/MCLCP, *Embarazo en Adolescentes Peruanas Aumentó* [Increase in adolescent pregnancy in Peru], 12 June 2018, p. 4.



- mothers or are pregnant<sup>88</sup>, and 24.9% of adolescents are in the poorest quintile<sup>89</sup>. Therefore, it is not surprising that the regions with the highest poverty rate have the highest rate of adolescent pregnancy, such as: Loreto (20%); Huancavelica and Ucayali (18%); San Martín (16%) and Cajamarca (14%)<sup>90</sup>.
33. According to UNFPA, seven out of ten adolescent mothers did not want to become pregnant<sup>91</sup>. These data are alarming considering that in Peru *every sexual relationship with a child under the age of fourteen is considered rape*<sup>92</sup>, so a pregnant girl under the age of 14 is a girl victim of rape with a forced pregnancy, and by not providing them with services for the voluntary termination of pregnancy, the State imposes an unwanted maternity on them. Added to this are the adverse effects on their physical and mental health. According to a regional study, 24% of Peruvian minors had complications at the time of delivery, such as hemorrhage and infections, and girls and adolescents who gave birth had symptoms of depression, anxiety, and post-traumatic stress, especially those who had been sexually abused<sup>93</sup>. This is particularly serious because these conditions are preventable with access to the termination of pregnancy, as established in ground 11 of the '*Guide to for the Voluntary Termination by Therapeutic Indication*' "[applies to] any pathology that puts the life of the pregnant woman at risk or generates a serious and permanent health complication"<sup>94</sup>, however, the application of this *Guide* is restrictive (see paragraph 65).
34. Similarly, MINSA reported that, from 2012 to January 2018, the Comprehensive Health Insurance (SIS) covered the expenses of more than 150 thousand pregnant girls and adolescents, between the ages of 9 and 17, which means that every day the SIS financed the childbirth of 70 girls and adolescents<sup>95</sup>. In addition, in 2019 it registered 1,303 childbirths by girls under the age of 15<sup>96</sup>.
35. Similarly, according to the MINSA report on the situation of adolescent pregnancies in Peru, between January and July 2020, treatment was provided for 26,400 childbirths to girls under the age of 19<sup>97</sup>. Meanwhile, between January and December 2019, RENIEC registered 27,799 cases of newborns with child and adolescent mothers in the range of 10 to 17 years old, and in 499 of those cases, the mothers were between 10 and 13 years old<sup>98</sup>.

<sup>88</sup>National Institute of Statistics and Computer Science (INEI), Peru. *Encuesta Demográfica y de Salud Familiar (ENDES)* [Peru: Demographic and Family Health Survey - ENDES], May 2020. [INEI, ENDES, 2019]

<sup>89</sup> Ibid.

<sup>90</sup> INEI, ENDES, 2018, *supra* note 4, p. 105. At the other end are those located in the upper quintile of wealth (3.3%)

<sup>91</sup> UNFPA 2019. See the site: [Promsex. Adolescent pregnancies in Peru.](#)

<sup>92</sup> Legislative Decree No. 632. *Criminal Code*, published on 8 April 1991. Article 173:

<sup>93</sup> Planned Parenthood Global: '*Vidas robadas. Un estudio multipaís sobre los efectos en la salud de las maternidades forzadas en niñas de 9-14 años*' [Stolen lives. A multi-country study on the health effects of forced motherhood on girls 9-14 years old].

<sup>94</sup> Ministry of Health, *Guía Técnica Nacional para la Estandarización del Procedimiento de la Atención Integral de la Gestante en la Interrupción Voluntaria por Indicación Terapéutica del embarazo menor de 22 semanas con consentimiento informado en el marco de lo dispuesto en el artículo 119° del Código Penal* [National Technical Guide for the standardization of the procedure of comprehensive care of pregnant women in the voluntary termination of pregnancies of less than 22 weeks by therapeutic indication with informed consent in the framework of that provided for in Article 119 of the Criminal Code], approved by Resolution No. 486-2014/MINSA, dated 27 June 2014.

<sup>95</sup> Ministry of Health, press release, '*Más de 150 mil menores embarazadas atendió el SIS a nivel nacional*' [SIS treated more than 150 thousand pregnant minors nationwide], 1 February 2018.

<sup>96</sup> Ministry of Health - MINSA (2020a): Mothers under the age of 15. Online Registration System of Certified Live Births (CNV)

<sup>97</sup> Ministry of Health - MINSA (2020): Online Registration System of Certified Live Births (CNV)

<sup>98</sup> RENIEC (2020)





36. In 2019, the Online Registration System of Certified Live Births registered 21,767<sup>99</sup> births to mothers under the age of 17, from January to December 2020, there were 20,443<sup>100</sup> childbirths, and as of February 2021, there were 2,481<sup>101</sup> births to child and adolescent mothers under the age of 17.
37. **The mandatory confinement due to the health emergency of COVID-19** only worsen the access to sexual and reproductive health services, and furthermore, 30% of health centers suspended external consultations. According to MINSA, 26,400 births to children under the age of 19 were registered as of July 2020<sup>102</sup>. Pursuant to a study presented in July 2020, during the declaration of emergency, the number of adolescent pregnancies increased by 12%<sup>103</sup>. This has a direct impact in the increase of maternal death of girls and adolescents who are forced to continue an unwanted pregnancy.

**38. Recommendations suggested to the Peruvian State:**

- a) **Address** adolescent pregnancy in the framework of a multi-sector policy to provide comprehensive care to adolescents and prioritize investment through a budgetary program considering the multiple social factors and determinants that explain the problem.
- b) Considering the end of the period of the National Plan of Action for Children and Adolescents (PNAIA) 2012-2021 and the Multi-Sector Plan for the Prevention of Adolescent Pregnancy (PMPEA) 2013-2021. **Design, approve and implement** the updated PNAIA and PMPEA, taking into account the recognition of the sexual and reproductive rights of children and adolescents and **guarantee** a plan of elaboration, implementation and accountability through the participation of regional governments, local governments and civil society organizations.
- c) **Articulate** the Multi-Sector Plan for the Prevention of Adolescent Pregnancy with its respective budget, to guarantee the implementation of its objectives, and at the same time, **incorporate** a budgetary allocation clause for each sector and institution involved.
- d) **Adopt** regulatory and budgetary policies to reduce the rate of forced pregnancy for girls and adolescents.
- e) **Implement** urgent measures for the prevention of rape, with the introduction of victimization screenings in health services and educational institutions.
- f) **Guarantee** the access to the therapeutic termination of pregnancy for all pregnant girls under the age of 14, on the grounds of being victims of sexual violence and for the physical and mental health consequences of continuing the pregnancy to full term.

**In times of COVID-19:**

- g) **Ensure** the timely care of pregnant women with prenatal check-ups and childbirth care meeting quality standards, without barriers to access such as

<sup>99</sup> Ministry of Health - MINSA: Online Registration System of Certified Live Births (CNV): [Certificate of live birth \(2019\)](#). See the characteristics of the mothers.

<sup>100</sup> Ministry of Health - MINSA: Online Registration System of Certified Live Births (CNV): [Certificate of live birth \(2020\)](#).

<sup>101</sup> Ministry of Health - MINSA: Online Registration System of Certified Live Births (CNV): [Certificate of live birth \(2021\)](#).

<sup>102</sup> See the site: [Promsex. Adolescent pregnancies in Peru](#), (2020) Current figures and recommendations.

<sup>103</sup> Cladem, Peru. ["#EmbarazoInfantilEsTortura"](#) [Child pregnancy is torture]. 8 August 2020.



the need of having been tested for COVID-19 in order to receive the services; as well as including the right to terminate a pregnancy on the grounds of health, and access to the provision of emergency oral contraception (EOC), without discrimination and revictimization by health officials.

- h) **Develop** a family and sexual violence care system, reaching girls and adolescents, with a system that provides specialized care without revictimization.
- i) **Develop and implement** a specific care guide to support children and adolescents victims of sexual violence, providing differentiated care for girls under 14 years of age.

- **Maternal mortality in girls and adolescents**

CCPR/C/PER/CO/5	"14. The Committee expresses concern at the high percentage of abortion-related maternal deaths; that abortion resulting from rape or incest is still criminalized and at the lack of a national protocol regularizing the practice of therapeutic abortions (...). The Committee recommends that the State party, (c) Increase its efforts to reduce adolescent pregnancy and maternal mortality, in particular in rural areas, and ensure that adequate sexual and reproductive health services, which include emergency oral contraceptives, are accessible in all regions of the country (...)"
CCPR/C/PER/QPR/6	"13. Describe the measures taken to reduce the high rates of adolescent pregnancy and maternal mortality, particularly in rural areas."

39. Despite decreasing in the last 20 years, maternal deaths are still a serious public health problem, even before the pandemic<sup>104</sup>. Information gathered by UNFPA indicates that every day a Peruvian woman dies from causes related to pregnancy and childbirth that could have been prevented, and this is due to limited access to sexual and reproductive health services<sup>105</sup>.

40. According to MINSA, in 2018 there were 362 cases of maternal death nationwide, 49 of them were girls and adolescents under the age of 19, with girls between the ages of 10 and 14 being four times more at risk of dying during childbirth than an adult woman<sup>106</sup>. While in 2019 the percentage of maternal mortality was reduced to 10.9%, the rate of maternal deaths in children under the age of 19 increased to 6.1%<sup>107</sup>, and up to week 53 of 2020, it was reported that 7.2% (31) of maternal deaths occurred in women under the age of 17, 41.5% (178) in women between the ages of 18 and 29, and 51.3% (220) in women between the ages of 30 and 59<sup>108</sup>.

<sup>104</sup> PROMSEX. *'Informe de la Situación del Acceso a los Servicios de Salud Sexual y Reproductiva durante la pandemia de Covid-19 en el Perú'* [Report on the situation of the access to sexual and reproductive health services during the Covid-19 pandemic in Peru], November 2020. p. 17.

<sup>105</sup> UNFPA. Sexual and reproductive health. Accessed on 18 March from <https://peru.unfpa.org/es/temas/salud-sexual-y-reproductiva-5>.

Maternal mortality also has pronounced geographical differences in the country; the maternal mortality rate in Sierra (highlands) and Selva (rainforest) is four times higher than in the coast, and according to the General Directorate of Epidemiology of the Ministry of Health, in rural areas obstetric hemorrhage causes more than 50% of cases of maternal mortality (General Directorate of Epidemiology: *Muerte materna en el Perú 2001-2011* [Maternal deaths in Peru 2001-2011]. Lima MINSA-UNFPA, 2013.)

<sup>106</sup> Response of the Ministry of Health to a request for public information through Official Communication No. 761-2019, dated 14 April 2019, p. 4

<sup>107</sup> Ministry of Health (MINSA), *Peru Epidemiological Bulletin, SE 52-2019*, p. 1337.

<sup>108</sup> Ministry of Health (MINSA). National Center for Epidemiology, Prevention and Control of Diseases of MINSA. *Peru Epidemiological Bulletin 2020*. Volume 29-SE 53, p. 768.



41. Maternal mortality has marked geographical differences within the national territory. According to the General Directorate of Epidemiology of MINSA, 'up to week 53 of 2020, the departments that reported the highest number of maternal deaths are: Metropolitan Lima (68), Loreto (38), Ucayali (27), Lambayeque (26), among others, comprising 52.9% of total deaths in that period, with the departments of Loreto and Cusco reporting the highest increase of deaths nationwide'<sup>109</sup>.
42. In 2019, 62.3% of maternal deaths were a result of direct causes, the main one being obstetric hemorrhage with 26.0%; and 37.7% were due to indirect causes. Up to week 53 of 2020, 55.7% of reported maternal deaths were a result of direct causes, hypertensive disorders having the highest rate with 21.5%, followed by obstetric hemorrhages with 18.1%. Likewise, 44.3% were a result indirect causes, the COVID-19 disease being the most frequent with 15.4%<sup>110</sup>. And the direct causes of maternal death in girls between the ages of 10 and 14 are related to hypertension, hemorrhages and infections, and among the indirect causes, suicide is the main cause. In 2019, 9.1% of maternal deaths in girls under 19 was suicide, and in 2020, the percentage increased to 16.7%<sup>111</sup>.
43. Among the causes of maternal death in adolescents are the delay in going to health services and the barriers to finding health services to treat them. The delay in health care is associated with, among others: Lack of availability of services due to non-compliance with opening hours; untrained personnel; non-compliance with protocols; and in many cases, this delay is imposed as "punishment"<sup>112</sup>.
44. Furthermore, early motherhood is a risk factor that affects the health of adolescents, not only because abortion is among the top five causes of death among women between the ages of 15 and 19<sup>113</sup>, but also because of the increase of suicide among pregnant adolescents<sup>114</sup>. In this regard, the National Center for Epidemiology, Prevention and Control of Diseases indicated that, in 2018, the main indirect cause of death in children under the age of 19 are self-inflicted injuries and/or poisoning (10%), and suicide emerges as a cause of maternal death at age 20 and older.<sup>115</sup>
45. **At the beginning of the health emergency due to COVID-19** (16 March), the Peruvian State decreed the state of emergency, thus discontinuing maternal health care, including prenatal and postnatal care, childbirth assistance and emergency obstetric care. External consultations were also suspended in the 8 health centers and first aid posts, which are the services that are closest to the population. While the COVID-19 epidemic was spreading in Peru, at the time there were no clear protocols or directives

<sup>109</sup> Ministry of Health (MINSA). National Center for Epidemiology, Prevention and Control of Diseases of MINSA. [Peru Epidemiological Bulletin 2020](#). Volume 29-SE 53, p. 767.

<sup>110</sup> Ibid. (See Table 3. p. 771)

<sup>111</sup> Sub-Working Group on Maternal and Neonatal Health, and the Prevention of Adolescent Pregnancy. [Prevención del embarazo en adolescentes en el actual contexto de emergencia por COVID-19 -un problema de salud pública, desarrollo, desigualdad y derechos humanos](#) [Prevention of adolescent pregnancy in the current context of the emergency of COVID-19. A public health, development, inequality and human rights problem]. Report 3-2020-SC/Grupo de Salud, 20 October 2020, p. 14.

<sup>112</sup> PROMSEX. *Historias para no olvidar* [Stories to never forget], *supra* note 27.

<sup>113</sup> INEI. Perú: *'Situación Social de las Madres Adolescentes (2007)'* [Peru: The social situation of adolescent mothers (2007)]. Lima: INEI, March 2010, p. 8.

<sup>114</sup> Ibid.

<sup>115</sup> Ministry of Health (MINSA). National Center for Epidemiology, Prevention and Control of Diseases of MINSA. Maternal death by causes in the 20-34 age group, Peru, 2018.



- to provide health care for pregnant women<sup>116</sup>. Prenatal check-ups were suspended and thus the possibility of detecting high-risk complications.
46. For a month and a half, health personnel did not have a protocol on how to treat pregnant women. It was not until 23 April that the aforementioned Health Directive was approved, stating that hospitals and health centers must guarantee childbirth care 24 hours a day,<sup>117</sup> ensuring the availability of resources<sup>118</sup>; however, the response was slow and has not been fully implemented.
  47. According to the Executive Director of the Directorate of Sexual and Reproductive Health of MINSA, Guillermo Atencio la Rosa, MINSA offers, free of charge, thirteen contraceptive methods in 8000 health establishments nationwide in order to reduce maternal mortality rates by preventing unplanned pregnancies and their complications<sup>119</sup>; however, this institution registered in its Epidemiological Report (2020) that, up to week 53 of 2020, there was an increase of 42.1% (+127) maternal deaths, in comparison with 2019<sup>120</sup>; registering 63 maternal deaths due to the COVID-19 disease<sup>121</sup>.
  48. The Obstetricians Association confirms that, since the beginning of the health emergency, pregnant women did not receive check-ups, resulting in high risk of increasing maternal and neonatal mortality rates; in addition to the 40% decrease in the number of obstetricians<sup>122</sup>. The fact that a large number of pregnant women did not have access to prenatal check-ups increases the risk of complications and not being able to detect them in time, and thus also an increase in maternal and neonatal mortality. It also indicated that 550 thousand pregnant women are treated per year; of that total, 15% have high-risk pregnancies; meaning, about 82,500 are expected to be at great risk<sup>123</sup>. In addition, the National Center for Epidemiology, Prevention and Control of Diseases of MINSA noted that, up to the third week of June 2020, more than 2,320 pregnant women had been infected with COVID-19, and nine died from this disease<sup>124</sup>.
  49. According to the Obstetricians Association, as of 9 March 2021, more than 30.9% (38) maternal deaths were reported, in comparison with 2020<sup>125</sup>. Meanwhile, MINSA registered an increase in maternal deaths, going from 302 in 2019 to 429 in 2020<sup>126</sup>. This increase has exceeded what has been registered in the last 8 years<sup>127</sup>.

<sup>116</sup> Ojo Público, '[Nacer en tiempos de pandemia sin equipos de atención](#)' [Birth in times of the pandemic without health care equipment], 9 June 2020.

<sup>117</sup> MINSA, *Health directive to guarantee the health of pregnant women and the continuity of family planning care in light of the COVID-19 infection*, Health Directive No. 094 -MINSA/2020/DGIESP, 23 April 2020, *supra* note 112.

<sup>118</sup> *Ibid.*

<sup>119</sup> Ministry of Health, *Minsa garantiza continuidad de atención en planificación familiar durante la emergencia* [MINSA guarantees the continuity of family planning care during the emergency], 3 August 2020.

<sup>120</sup> Ministry of Health. National Center for Epidemiology, Prevention and Control of Diseases of MINSA. *Peru Epidemiological Bulletin 2020*, Volume 29-SE 53. See conclusions. p. 771.

<sup>121</sup> *Ibid.*, p. 766

<sup>122</sup> Ministry of Health. Obstetricians Association of Peru, March 2021.

<sup>123</sup> PROMSEX. *Informe de la Situación del Acceso a los Servicios de Salud Sexual y Reproductiva durante la pandemia del Covid-19 en el Perú* [Report on the situation of the access to sexual and reproductive health services during the Covid-19 pandemic in Peru], November 2020, p. 25.

<sup>124</sup> UNFPA, *Resiliencia y compromiso nuestra respuesta al COVID-19. Maternidad segura en tiempos de pandemia* [Resilience and commitment, our response to COVID-19. Safe motherhood in times of the pandemic]. Accessed on 20 March 2021 from <https://peru.unfpa.org/es/respuesta-COVID19>

<sup>125</sup> Ministry of Health. Obstetricians Association of Peru, March 2021.

<sup>126</sup> Ministry of Health. National Center for Epidemiology, Prevention and Control of Diseases of MINSA. *Peru Epidemiological Bulletin 2020*, Volume 29-SE 53. See Figure 1.

<sup>127</sup> *Ibid.* (See Figure 1. p. 766)

50. Despite the adoption of Health Directive No. 098-MINSA/2020 - Health Directive for monitoring extreme maternal morbidity, which instructs to prioritize coordination and articulation actions to prevent maternal death, and Health Directive No. 94-MINSA/2020 which establishes that hospitals must guarantee childbirth care 24 hours a day, 'it cannot be known for certain which of these provisions have been implemented and to what extent'<sup>128</sup>.

**51. Recommendations suggested to the Peruvian State:**

- a) **Adopt** preventive measures against maternal mortality and morbidity in girls and adolescents.
- b) **Prepare and implement** a National Plan to address maternal death, including girls and adolescents.
- c) **Guarantee** the availability of therapeutic abortion for women, adolescents and girls victims of rape whose pregnancies affect their life or physical, mental and social health.

**In times of COVID-19:**

- d) **Implement** protocols to care for pregnant women and adolescents nationwide, in a manner that is relevant to the different realities of health networks and services available in urban and rural areas, and addressing the peculiarities of women.
- e) **Perform** prenatal check-ups on all pregnant women and adolescents to identify high-risk complications.

● **Access to modern contraceptive methods and full range of information**

CCPR/C/PER/CO/5	<p>"14. (...) the Committee regrets the decision adopted by the Constitutional Court prohibiting the free distribution of emergency oral contraceptives (arts. 2, 3, 6, 17 y 26)".</p> <p>"The Committee recommends that the State party:</p> <p>(...) (d) Increase and ensure the effective implementation of educational and awareness-raising programmes at the formal (schools and colleges) and informal (mass media) levels on the importance of contraceptive use and on sexual and reproductive health rights."</p>
CCPR/C/PER/QPR/6	<p>"13. (...) Please also report on the steps taken to ensure the accessibility of sexual and reproductive health services for all women in all areas of the country and to ensure the <u>availability of emergency oral contraceptives. Please describe the implementation of educational and awareness-raising programmes on the use of contraceptives and on sexual and reproductive health rights, in particular for adolescents</u>". (Underlined by us)</p>

52. According to a World Bank report on the use of contraceptive methods, Peru ranks second to last in the region with 77% of women between the ages of 15 and 49 who use contraceptive methods (any method), and last place with 55% of women in the same age range who use modern contraceptive methods<sup>129</sup>. According to ENDES (2019), the

<sup>128</sup> PROMSEX. *Informe de la Situación del Acceso a los Servicios de Salud Sexual y Reproductiva durante la pandemia del Covid-19 en el Perú* [Report on the situation of the access to sexual and reproductive health services during the Covid-19 pandemic in Peru], November 2020, p. 9.

<sup>129</sup> UNFPA Peru. *Consecuencia Socioeconómicas del embarazo y la maternidad adolescente en Perú* [Socioeconomic consequences of adolescent pregnancy and motherhood in Peru], p. 15. Traditional methods include the calendar or rhythm method; while modern contraceptives are temporary or permanent, highly effective procedures that will prevent a person from having children, among them: Combined oral contraceptives, progestin pills, implants, copper IUD, combined contraceptive patch, emergency contraception pills, intrauterine devices, among others (WHO. [Family planning](#), 22 June 2020).



- indicator dropped to 44.8% in adolescents between the ages of 15 and 19 in a relationship<sup>130</sup>, and only 18.9% of women in a relationship in this age range speak frequently with their partners about the use of family planning methods while 10.8% never do.<sup>131</sup>
53. According to information from MINSA, from 2016 to March 2017, of the 2,832 girls and adolescents between the ages of 12 and 17 who were victims of rape, *only 26 had access to the EOC* or to some other contraceptive method<sup>132</sup>. Likewise, it was also reported that, in 2018, 1,509 girls and adolescents between the ages of 12 and 17 had access to the EOC<sup>133</sup>.
54. An inspection by the Office of the Ombudsperson (2018) to 91 comprehensive health care facilities for adolescents found that only 18.7% provide EOC<sup>134</sup> and 36.3% do not have training for health operators regarding adolescent sexual and reproductive health<sup>135</sup>. Also, 25.3% requires the presence of parents<sup>136</sup>.
55. It is important to remember that since October 2009, the EOC was not available in the public sector because of a decision by the Constitutional Court<sup>137</sup> in a process promoted by a religious NGO. Currently, the obligation to provide the EOC is due to a precautionary measure ordered by the First Constitutional Court of Lima in August 2016, which was confirmed through a judicial ruling of that same court in 2019, in the framework of a process for the protection of fundamental rights (amparo) accompanied by PROMSEX<sup>138</sup>. However, in October 2020, following an appeal by the aforementioned NGO, the First Civil Chamber of Lima annulled the first instance ruling guaranteeing the free distribution of the EOC nationwide; nonetheless, precautionary measure requiring MINSA to distribute the EOC is still in effect, pending the ruling of the Constitutional Court (TC). In light of this situation, PROMSEX has filed a constitutional appeal to bring the case to the Plenary Session of the Constitutional Court. The docket has been assigned to the Second Chamber of the Constitutional Court, once they determine whether they should make a decision on the matter, it will be brought to the Plenary Session of the Constitutional Court so that the judges of this court can issue a decision<sup>139</sup>. We look forward to the response of the Constitutional Court to be in line with the need to ensure the access and distribution of the EOC to all women without any kind of discrimination.

<sup>130</sup> Ojo Público, '[La última ruta para la distribución gratuita de la anticonceptivo oral de emergencia](#)' [The last route for the free distribution of emergency oral contraception], 2 March 2021. Rossina Guerrero. Reference Statistical Compendium INEI Peru 2020. Accessed on 15 March 2021 from [https://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitales/Est/Lib1758/cap06/ind06.htm](https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1758/cap06/ind06.htm)

<sup>131</sup> National Institute of Statistics and Computer Science (INEI), Peru. '[Encuesta Demográfica y de Salud Familiar \(ENDES\)](#)' [Peru: Demographic and Family Health Survey - ENDES], May 2020. [INEI, ENDES, 2019]

<sup>132</sup> Answer of the Ministry of Health to the request for public information No. 027-2018 dated 9 February 2018, through Official Communication No. 649-2018-DGIESP-MINSA dated 12 March 2018 MINSAs, p 7.

<sup>133</sup> Response of the Ministry of Health to a request for public information, through Official Communication No. 652-2019 dated 22 March 2019.

<sup>134</sup> Office of the Ombudsperson. '[Resultados de la supervisión defensorial a los servicios de salud diferenciados para la atención integral a adolescentes](#)' [Results of the inspection by the Office of the Ombudsperson to comprehensive health care services for adolescents]. Report No. 0011-2018-DP/ANA, July 2018, p. 47.

<sup>135</sup> Ibid. p. 37.

<sup>136</sup> Ibid. p. 43.

<sup>137</sup> Constitutional Court, Judgement, [Docket No. 02005-2009-PA/TC \(2009\)](#), Lima, 16 October 2009.

<sup>138</sup> First Specialized Court of Lima with Jurisdiction over Constitutional Matters, [Docket No. 30541-2014-0-1801-JR-CI-01](#), Lawsuit for the protection of fundamental rights (amparo), Judgement No. 47, Lima, 02 July 2019.

<sup>139</sup> Press release. '[La última ruta para la distribución gratuita de la anticoncepción oral de emergencia](#)' [The last route for the free distribution of emergency oral contraception], Promsex, 03 March 2021.



56. The prohibition of the free distribution of the EOC impacts the fundamental rights of the poorest women and women victims of rape, who are mostly minors (71%) and are exposed to forced pregnancies as a result of this violence<sup>140</sup>. Thus, the Office of the Ombudsperson *urged MINSA to adopt the necessary measures to guarantee the execution of the judgement of the Judiciary that orders it to report on, and distribute free of charge the EOC*<sup>141</sup>.
57. Thus, in 2019, the *Health Directive for the use of the care KIT for cases of sexual violence*<sup>142</sup> was adopted, stating that all hospitals and health centers must guarantee health care in cases of sexual violence with the emergency KIT, which *provides the EOC as a scientific resource for the care of victims of rape*. Despite this and the fact that Supreme Decree No. 009-2016-MIMP orders the Institute of Legal Medicine (IML) to provide these resources to the victims, *the IML refuses to comply with this stating that it is not its jurisdiction, causing thousands of rape victims to not access the EOC, infringing upon their right to health*<sup>143</sup>. According to the National Directorate of Sexual and Reproductive Health of MINSA, in 2020, 1,325 kits were delivered to victims of sexual violence, an increase compared to 2019 with the delivery of 334 emergency kits<sup>144</sup>.
58. **The health emergency as a result of COVID-19** has intensified the difficulty to access modern contraceptive methods in Peru. The provision of contraceptive methods in the public health system has been interrupted since March 2020 with the implementation of the quarantine, and this will result in an increase in unplanned or unintended pregnancies.
59. The UNFPA representative in Peru noted that “the use of modern contraceptive methods in Peru is 55%, a rate significantly lower than the regional average of 70%. Out of that 55% who use modern contraceptive methods, 54.2% of women receive them through public services and 45% through private services; among the latter, 8 out of 9 acquires them in pharmacies.”<sup>145</sup>
60. According to MINSA, the number of couples using protection dropped by 20% between 2019 and 2020, and the number of adolescents starting to use modern methods decreased by 36.5%<sup>146</sup>. This is partially because the provision of contraceptive methods was interrupted since the beginning of the health emergency, while private pharmacies continued to operate, however, there was an unusual increase in the cost of medicines,

<sup>140</sup> Office of the Ombudsperson, Decision 05/DP/2016, '*Defensoría del Pueblo reitera su posición institucional sobre la distribución de la AOE*' [The Office of the Ombudsperson reiterates its institutional position on the distribution of the EOC], 16 August 2016.

<sup>141</sup> Office of the Ombudsperson. Press release. No. 202/OCII/DP/2019, '*Defensoría del Pueblo: Ministerio de salud debe ejecutar fallo que le ordena distribuir gratis “píldora del día siguiente”*' [Office of the Ombudsperson: Ministry of Health must execute the judgement that orders it to distribute free of charge the “morning after pill”], 4 July 2019.

<sup>142</sup> Ministerial Resolution No. 227-2019/MINSA dated 8 March 2019, which adopts *Health Directive No. 083-MINSA/2019/DGIESP “Health directive for the use of the care Kit for cases of sexual violence”*.

<sup>143</sup> La República, '*Aún hay trabas en entrega de la píldora del día siguiente*' [There are still obstacles to the provision of the morning after pill], 28 October 2019.

<sup>144</sup> Ojo Público, '*La última ruta para la distribución gratuita del anticonceptivo oral de emergencia*' [The last route for the free distribution of emergency oral contraception], 2 March 2021. Reference: Presentation by Dr. Guillermo Atencio, director of the National Directorate of Sexual and Reproductive Health of MINSA at a meeting of the Citizen Roundtable for the Surveillance of Sexual and Reproductive Rights, 28 January 2021.

<sup>145</sup> El Comercio, '*El acceso a anticonceptivos ha sido afectado en el contexto del COVID-19*' [Access to contraceptives has been affected in the context of COVID-19], 25 May 2020.

<sup>146</sup> Ojo Público, '*La última ruta para la distribución gratuita del anticonceptivo oral de emergencia*' [The last route for the free distribution of emergency oral contraception], 2 March 2021. Reference: Presentation by Dr. Guillermo Atencio, director of the National Directorate of Sexual and Reproductive Health of MINSA at a meeting of the Citizen Roundtable for the Surveillance of Sexual and Reproductive Rights, 28 January 2021



- only women with financial and geographical capabilities were able to acquire them, which means the discontinuity of these services for women in vulnerable conditions.
60. Meanwhile, UNFPA noted that six out of ten women who will discontinue the use of contraceptives in the country will do so because of a reduction to the family income<sup>147</sup>, which means that 62,667 women who had been acquiring their modern short-term contraceptives in pharmacies and 56,445 women who had received their modern short-term contraceptives through public health services will discontinue their use in 2020. This results in a total of 119,111 women who will discontinue their use of modern contraceptive methods as a consequence of COVID-19<sup>148</sup>. In the aftermath, UNFPA predicts that after COVID-19, the percentage of women with unmet family planning needs in Peru regressed more than 5 years, going from 15.5% to 19.9%<sup>149</sup>.
61. It also mentioned that unplanned births will have an increase of between 50 thousand and 100 thousand, between 2020 and 2021, if Peru does not maintain sexual planning programs during the coronavirus pandemic. Official statistics show that there are approximately 600,000 births annually in Peru. Out of them, 40%, approximately 250,000 births, are not planned<sup>150</sup>. This percentage is directly related to the low use of modern contraceptive methods in the country.

#### **61. Recommendations suggested to the Peruvian State:**

- a) **Ensure** permanent access to information on, and distribution of, the emergency oral contraception (EOC) in public health services, including victims of rape.
  - b) **Guarantee and monitor** that family planning services are prioritized, free of charge and effective.
  - c) **Train** health personnel on the procedures to follow and the components that make up the emergency KIT.
  - d) Make sure that the Constitutional Court **guarantees** the free distribution of the EOC, permanently and without discrimination.
- In times of COVID-19:**
- e) **Develop** specific care steps for victims of violence in health services.
  - f) **Guarantee** the free provision of contraceptive methods, as well as the supply of health care kits for victims of sexual violence, including the EOC and medicine for the prevention of HIV and STIs.

#### **Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 3, 6, 7, 9, 14, 19)**

- ***Persistent barriers in the access to therapeutic abortion***

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<sup>147</sup> Ibid., p. 5.

<sup>148</sup> Ibid., p. 6.

<sup>149</sup> Ibid., p. 8.

<sup>150</sup> Official newspaper 'Diario Oficial El Peruano'. *UNFPA: Pandemia incrementaría en 40% nacimientos no planificados en el país durante 2020-2021* [UNFPA: The pandemic would increase unplanned births by 40% in the country during 2020-2021].





CCPR/C/PER/CO/5	<p>"14. (...) The Committee recommends that the State party:</p> <p>(a) Review its legislation on abortion and provide for additional exceptions in cases of pregnancy resulting from rape or incest.</p> <p>(b) Swiftly adopt a national protocol regulating the practice of therapeutic abortion"</p>
CCPR/C/PER/QPR/6	<p>"13. (...) please describe the measures that have been taken to decriminalize the voluntary termination of pregnancy, including in cases of rape, incest or fatal fetal abnormality, and to broaden the interpretation of what constitutes a therapeutic abortion. <u>Please describe the measures taken to ensure that women do not have to resort to unsafe abortions that may put their lives or health at risk.</u> Please provide information on the use of the national technical handbook on the standardization of comprehensive care procedures for women who, with their informed consent and in the framework of article 119 of the Criminal Code, are undergoing a voluntary therapeutic termination of pregnancy before the twenty-second week of pregnancy" <b><u>(underlined and use of cursive by us)</u></b></p>

62. Article 119 of the Peruvian Criminal Code allows the therapeutic abortion *to save the life of the pregnant woman or to avoid severe and permanent health complications*<sup>151</sup>, the only ground for abortion not punishable. However, even within this ground, access to abortion is very limited for women.

63. After the decisions of the case *K.L. vs. Peru*<sup>152</sup> and *L.C. vs. Peru (2011)*<sup>153</sup>, in 2014, Peru finally promulgated the "*National Technical Guide for the standardization of the procedure of comprehensive care of pregnant women in the Voluntary Termination of pregnancies of less than 22 weeks by Therapeutic Indication with informed consent in the framework of that provided for in Article 119 of the Criminal Code*" (hereinafter the "*Technical Guide*" or "*Guide*")<sup>154</sup>. However, this Guide has deficits, and therefore there are still barriers to access therapeutic abortion. Among them:

- The limit of 22 weeks of gestation included in the Technical Guide, *even when article 119 of the Criminal Code does not establish this time limit*. This is especially serious because therapeutic abortion in Peru should be provided in the case of *any pregnancy that puts at risk women's lives or health*, and a gestational limit can force women to continue a pregnancy that poses a high risk for their life and health, including mental health.
- The implementation of the Technical Guide is made under a restrictive interpretation of therapeutic abortion, since *it in fact does not pay attention to the potential serious impacts on women's health, including mental health*. In this regard, health care services are behaving as agents of secondary victimization, by not providing proper health care treatment to adolescents who become pregnant as a result of rape, and not performing a comprehensive assessment on the impact of this situation to the victims at the psychological, social and economic levels.

<sup>151</sup> Criminal Code, 1991, *supra* note 22, article 119 which states that "*And abortion performed by a doctor, with the consent of the pregnant woman or her legal representative, if there is one, is not punishable if it is the only way to save her life or avoid serious and permanent damage to her health*".

<sup>152</sup> Human Rights Committee, *K.L. vs. Peru*, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005), p. 8.

<sup>153</sup> CEDAW Committee, *L.C. vs. Peru*, Communication No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011), para. 9.2. [CEDAW Committee, *L.C. vs. Peru*].

<sup>154</sup> Ministry of Health, *Guía Técnica Nacional para la Estandarización del Procedimiento de la Atención Integral de la Gestante en la Interrupción Voluntaria por Indicación Terapéutica del embarazo menor de 22 semanas con consentimiento informado en el marco de lo dispuesto en el artículo 119° del Código Penal* [National Technical Guide for the standardization of the procedure of comprehensive care of pregnant women in the voluntary termination of pregnancies of less than 22 weeks by therapeutic indication with informed consent in the framework of that provided for in Article 119 of the Criminal Code], approved by Resolution No. 486-2014/MINSA, dated 27 June 2014.



- It is a Guide that lacks a childhood approach, so girls and adolescents are treated as adult women and potential mothers.
  - In practice, they impose requirements *not covered by the Technical Guide*, such as having filed a police report for rape. In this regard, the availability of therapeutic abortion is not guaranteed for girls victims of rape.
  - Lack of public information available on the legality of therapeutic abortion.
64. All of this promotes a cycle of widespread gender-based discrimination, which disproportionately affects young women from poor, vulnerable and rural settings. This consolidates a cycle of poverty and discrimination that perpetuates a continuous state of inequality.
65. Added to this is the judicialization of the *Guide* promoted by conservative organizations, such as the NGO Acción de Lucha Anticorrupción Sin Componenda (2014)<sup>155</sup> and Asociación Centro de Estudios Jurídicos Santo Tomás Moro, who in 2018 filed a constitutional process of class action against MINSA in order to declare the unconstitutionality of Ministerial Resolution No. 486-2014/MINSA, a standard that approves the Protocol on Therapeutic Abortion. In 2020, the First Civil Chamber of Lima issued the Judgment contained in Resolution No. 25 on 10 December 2019, which issued a ruling declaring unfounded the class action lawsuit filed by this conservative organization. This ruling confirms that the contested Technical Guide is a legal device in accordance with our legal framework, and emphasizes its correlation with decisions and recommendations issued by Committees such as CEDAW; however, this ruling has been appealed and is awaiting the decision of the Supreme Court<sup>156</sup>.
66. According to official data from MINSA, during 2018 and 2020, the number of women who agreed to a therapeutic termination of pregnancy was: 84 in 2018, 98 in 2019 and 44 in 2020<sup>157</sup>. In addition, the survey “Abortion Statistics: Survey of Women in Peru” (2019) reveals that approximately one million of Peruvian women (19%) have had an abortion nationwide, 58% of the women went to a health professional to terminate the pregnancy, and it reported that the practice of abortion is cross-sectional at all socioeconomic levels, with a higher incidence in sectors C, D, and E (81% of the total)<sup>158</sup>.
67. On the other hand, on 17 April 2019, a Supreme Decree<sup>159</sup> adopted the *Protocol of joint action between CEMs and health facilities for the care of victims of violence against women*, which establishes a set of criteria for a coordinated, comprehensive and

<sup>155</sup> The NGO Acción de Lucha Anticorrupción Sin Componenda (ALA Sin Componenda), filed in 2014 a lawsuit for the protection of fundamental rights (amparo) against MINSA to desist on the implementation of the National Technical Guide of Therapeutic Abortion. After 6 years, on 28 September 2020, the Judiciary conclusively dismissed the lawsuit for the protection of fundamental rights, which represented a serious threat to the rights of women and girls. PROMSEX Press release, *Poder Judicial archiva definitivamente la demanda de amparo interpuesta contra el Protocolo de Aborto Terapéutico* [The Judiciary conclusively dismissed the lawsuit for the protection of fundamental rights against the Protocol of Therapeutic Abortion], 28 September 2020.

<sup>156</sup> PROMSEX. *Hoja de resumen: Proceso de Acción Popular contra el Protocolo de Aborto Terapéutico* [Summary sheet: Class action process against the Protocol of Therapeutic Abortion].

<sup>157</sup> Response of the Ministry of Health to the request for access to public information, Memorandum No. 464-2021-DEOG/INMP, dated 29 April 2021.

<sup>158</sup> *El aborto en cifras: Encuesta a mujeres en el Perú* [Abortion statistics: Survey of women in Peru]. Research carried out by Instituto de Opinión Pública on behalf of Promsex, interviewing women between the ages of 18 and 49 who reside in urban areas of the country, field work conducted on 15 to 29 October 2018.

<sup>159</sup> Ministry of Health. (2019). Supreme Decree No. 008-2019-SA “Protocol of joint action between the Emergency Centers for Women (CEM) and health facilities for the care of victims of violence against women and members of the family group, within the framework of Law No. 30”. Footnote 58.



- effective care, including the assessment of the impact caused by a pregnancy that results from rape in order to proceed to offer and ensure a therapeutic abortion. However, the indication to ensure access to a therapeutic abortion appears in a quote at the bottom of the page and *is not an integral part of the regulation, thus leaving access to this right to the discretion of the officials*. Furthermore, it does not have clear operating mechanisms, action guides or guidelines that are specific to the different realities of the country. In this regard, it fails to articulate the abovementioned services in order to provide immediate and efficient care to victims. On the contrary, the lack of coordination between the CEMs and health facilities produces episodes of revictimization and makes difficult for the victims to be able to access their right to health.
68. Among the few establishments that provided therapeutic abortion, which did not exceed 10 at the national level, in the **context of the health emergency due to COVID-19** they have been reduced to only 1 establishment, generating a lack of access to an essential service for those girls and adolescents who have been forced to continue a pregnancy resulting from rape, as shown in the case of Rosa, a 12-year-old girl who was the victim of rape in a peasant community in Ayacucho, and has been and continues to be subjected to a stigmatizing and revictimizing process. Rosa did not receive the emergency kit for cases of sexual violence and was denied a therapeutic abortion<sup>160</sup>.
  69. There is no protocol or directive detailing the procedure to provide the service of therapeutic abortion via telemedicine, as is being done in other countries; and according to informants from the health sector, abortion care is not being provided by telehealth nor in an outpatient basis, as it is not part of their protocols<sup>161</sup>. Added to this is the fact that there is no information available regarding the provision of supplies for therapeutic abortion<sup>162</sup> and the *Line for Safe Information on Abortion*, an initiative that disseminates reliable and free information on abortion, registered a 400% increase in queries during the health emergency<sup>163</sup>.
  70. In 2019, the National Maternal Perinatal Institute (INMP), a national reference for maternal and perinatal care, performed 98 therapeutic abortions in this establishment, and as of 30 June 2020, 26 therapeutic abortions had been performed. In an estimate of the number of therapeutic abortions as of June 2019 (in order to compare both figures) it is shown that there was a 47% decrease in the number of this type of health care provided for women. Moreover, in the main reference hospitals at the national level, 141 therapeutic abortions were reported in 2019, and in a time equivalent to 8 months in that same year, approximately 94 therapeutic abortions would have been treated.<sup>164</sup>
  71. According to MINSA, childbirth care at INMP increased significantly during the national state of emergency. Just in April there were 506 *more* childbirths than what was registered for the same month in 2019. Prior to the quarantine, the average number of childbirths at INMP was 52 per day, and now it is approximately 70. This situation is due to the fact that INMP is the national reference center for maternal and perinatal

<sup>160</sup> Wayka. ' *Violan a una niña, le niegan el aborto terapéutico y sus agresores están libres*' [Girl is raped, they deny her a therapeutic abortion and her attackers are free], 17 August 2020.

<sup>161</sup> *Informe de la Situación del Acceso a los Servicios de Salud Sexual y Reproductiva durante la pandemia del Covid-19 en el Perú* [Report on the situation of the access to sexual and reproductive health services during the Covid-19 pandemic in Peru], Promsex, November 2020, p. 8

<sup>162</sup> *Ibid.*, 10.

<sup>163</sup> *Ibid.*, 11.

<sup>164</sup> *Ibid.*, 24.



care, and the first-level health establishment that offer maternity services have had to expand the provision of care for patients with COVID-19<sup>165</sup>.

72. According to the registry of MINSA on the cases of incomplete abortions by life stage at the national level, there were 33,232 cases in 2018, 33,892 in 2019, and 20,963 in 2020<sup>166</sup>, and classified by age (see table 1 below), and this is sorted by age (see Table 1 below).

Table 1

Cases of incomplete abortions		
Year	Age	
	0-11 years old	12-17 years old
2018	4	2039
2019	10	2009
2020	2	1188

Source: Registry of MINSA on the cases of incomplete abortions by life stage.

73. As of July 2020, a decrease in therapeutic abortions of up to 63% was observed in some hospitals in comparison with 2019. If therapeutic abortion had been provided, 44% of maternal deaths could have been avoided, including the 53 women who died from COVID-19<sup>167</sup>.
74. As a result of this situation and the lack of maternal health care, between January and December 2020, 429 maternal deaths<sup>168</sup> were registered, and up to week 13 of 2021, the number of maternal deaths was 153<sup>169</sup>. In addition, it was reported that two hospitals in Piura obstructed the care of pregnant women in labor; despite the fact that the recent *Health Directive* orders hospitals and health centers to guarantee childbirth care 24 hours a day<sup>170</sup>, and to place visible announcements in all areas of the health facility communicating to the population about the availability of resources.

- ***Criminalization of women for abortion***

<sup>165</sup> MINSA, *Health directive to guarantee the health of pregnant women and the continuity of family planning care in light of the COVID-19 infection*, [Health Directive No. 094 -MINSa/2020/DGIESP](#), 23 April 2020, para. 6.3.14.

<sup>166</sup> Response of the Ministry of Health to the request for public information on the cases of incomplete abortions by life stage at the national level, for the years 2018, 2019 and 2020, broken down by department, age and subcategory.

<sup>167</sup> 179th Session of the IACHR. Speech of the thematic hearing on *"Derechos sexuales y reproductivos en el contexto de la pandemia del Covid-19 en la región"* [Sexual and reproductive rights in the context of the Covid-19 pandemic in the region], conducted on 26 March 2021.

<sup>168</sup> Salud Con Lupa, *'Emergencia desatendida: las muertes maternas aumentan en el Perú'* [Unattended emergency: Maternal deaths increase in Peru], 2 February 2021.

<sup>169</sup> Ministry of Health. National Center for Epidemiology, Prevention and Control of Diseases of MINSA. *'Peru Epidemiological Bulletin 2021'*. Volume 30-SE 13, p. 413.

<sup>170</sup> Wayka. Piura: *'Niegan Atención a gestante en hospital colapsado tras crisis de COVID 19'* [Piura: They deny treatment to pregnant woman in hospital that has collapsed after crisis of COVID 19].



75. Abortion in Peru is permitted when the life or health of women is at risk; in the cases of congenital malformations and rape, it is criminalized<sup>171</sup>. While the criminal punishment is considered “symbolic,” it still stigmatizes and confines women to illegality, and to resort to clandestine abortions that imply serious risks to their life and health, creating barriers to the access to legal abortion.
76. During the period of 2016-2017, this has led to 1,158 complaints against adolescents for the alleged commission of the crime of abortion to be filed before Provincial, Criminal and Mixed Public Prosecutors’ Offices nationwide<sup>172</sup>. Likewise, the Judiciary (PJ) informed that during 2017 and 2018, *231 women* over 18 years of age were processed for the alleged crime of abortion<sup>173</sup>.
77. According to the System of Registry and Control of Complaints of the National Police of Peru (SIDPOL-PNP), during 2018 and 2020, the number of complaints for the crime of abortion nationwide was: 688 in 2018, 819 in 2019, and 716 in 2020<sup>174</sup>, which are currently involved in criminal investigations.
78. Article 30 of the General Health Law (LGS) provides that health professionals must report evidence of crime, violence or indication of abortion<sup>175</sup>. That is to say, medical personnel are obliged to report to the authorities if a woman shows evidence of having had a “clandestine abortion”. This obligation to report is not used for protecting public or private health, nor does it agree with the professional secret (contained in Art. 2.18 of the Political Constitution of Peru) in an environment of confidence and intimacy; nor does it guarantee justice for patients in public action crimes; nor does it protect their health, but rather, its purpose is to persecute the woman criminally.
79. The provisions in article 30 of the General Health Law are also a measure that obstruct the prevention of maternal mortality; since for women who go to public health services, the risk of being reported by the personnel that treats them becomes a barrier to the access - without discrimination - to the services needed to save their lives. In addition to being a legal tool that discourages women, girls and adolescents to access medical services for the practice of abortion or for obstetric complications; and it prevents doctors from treating women, girls and adolescents for fear of being apprehended<sup>176</sup>.

<sup>171</sup> The Peruvian Criminal Code defines in article 114.- Self-abortion. The woman who causes her abortion, or allows someone else to practice it, shall be repressed with imprisonment for not more than two years or with community service for 52 to 104 work periods. Likewise, article 120.- Sentimental and eugenic abortion. The abortion shall be repressed with imprisonment for not more than three months: 1. When pregnancy is the result of rape outside marriage or non-consented artificial insemination and occurred outside of marriage, whenever the facts have been reported or investigated, at least by the police; or 2. When it is probable that the developing baby will be born with a severe physical or mental impairment, provided that there is a medical diagnosis.

<sup>172</sup> Response to the request for access to information from the Office of the Attorney General, Official Communication No. 810-2017-MP-FN-GG-OCPLAP/03 dated May 16, 2017.

<sup>173</sup> General Management of the Judiciary, Official Communication No. 323-2019-SG-GG-PJ. Request to access public information regarding complaints for the crime of abortion and their status, report on the number of processes submitted in the year 2017 and 2018 (21 March 2019). There are only 73 convictions registered for the crime of abortion and its different modes, at the national level; thus, it is assumed that the rest of the women are still facing criminal proceedings at different stages.

<sup>174</sup> Response of the National Police of Peru to the request for public information on the complaints for the crime of abortion at the national level, for the years 2018, 2019 and 2020, broken down by department and mode.

<sup>175</sup> General Health Law, Law No. 26842. Article 30, “The doctor who provides health care to a person injured by a knife, gunshot, traffic accident, or because of other type of violence that constitutes a crime prosecutable ex officio, or when there are signs of criminal abortion, is obliged to report the matter to the appropriate authority”.

<sup>176</sup> O’Neill Institute for National and Global Health Law & IPAS (2016), *Delatando a las mujeres: el deber de cada prestador/a de servicios de denunciar: implicaciones jurídicas y derechos humanos para los servicios de salud reproductiva en Latinoamérica* [Denouncing women: The duty to report of each service provider: Legal and human rights implications for reproductive health services in Latin America]. Latin American Consortium against Unsafe Abortion (CLACAI), October 2018, p. 15.



80. In addition to this is the criminal prosecution of health professionals involved in the crime of abortion, according to the registry of SIDPOL-PNP, there were 8 complaints in 2018, 5 in 2019, and 12 in 2020<sup>177</sup> (doubling the amount of the previous year 2019). It is uncertain whether this criminalization does not take into account the responsibility of the health professional who is entitled and obliged to respect the right to health and to protect the physical, mental and social well-being of the patient, as provided for in Article 7 of the Political Constitution of Peru.
81. **The criminalization of abortion was not unconnected to the context of the health emergency due to COVID-19**, as shown in the case of Diana Aleman<sup>178</sup>, a Venezuelan migrant. On 3 July 2020, she was admitted to the gynecology area of the María Auxiliadora hospital presenting a hemorrhage as a result of an incomplete abortion; two days later she was found dead on the hospital floor, apparently she committed suicide because of the intimidation of health personnel threatening to take her to the police because of the abortion she had. In this case, the medical personnel would have exposed her to danger by affecting Diana's mental health, and it is evident that they did not prioritize her life.
82. On 9 March 2020, a member of the Congress introduced Bill No. 7298/2020<sup>179</sup>, which recognizes the right to decide freely about motherhood<sup>180</sup>. This includes the proposal for women to access the termination of pregnancy until week 14 of gestation, and prepartum and postpartum health care in health system services, an initiative that has not been discussed or approved thus far.

### 83. Recommendations suggested to the Peruvian State:

- a) **Review** the 'Technical Guide for the therapeutic termination of pregnancy up to 22 weeks', in order to remove the barriers imposed on women in their access to therapeutic abortion that are not covered by the criminal code, and train health professionals about this right.
- b) **Develop** specific guidelines for the implementation of the 'Guide', in a manner that is relevant to the different realities of health networks and services available in urban and rural areas, and addressing the peculiarities of women.
- c) **Comply** with the decision of the CEDAW Committee in the case of *L.C. vs. Peru* (2011) recommending non-repetition measures such as the decriminalization of abortion in cases of rape, and 'when there is a diagnosis of fetal malformation incompatible with extrauterine life', which is yet to be implemented.

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<sup>177</sup> Response of the National Police of Peru to the request for public information on the number of complaints for to crime of abortion against health professionals, for the years 2018, 2019 and 2020, broken down by department and profession.

<sup>178</sup> El Comercio. *¿Qué pasó con Diana Aleman?* [What happened to Diana Aleman?], 10 August 2020.

<sup>179</sup> Bill that recognizes the right to maternity. [Bill No. 7298/2020-CR](#)

<sup>180</sup> It should be noted that, in October 2016, Bill No. 387-2016/CR was presented, proposing the decriminalization of abortion in cases of rape; non-consensual artificial insemination or transfer of eggs, and fetal malformations incompatible with life, which has not been put to debate by the Congress of the Republic. This proposal was based on initiative No. 389/2014-CR84, which was dismissed in the last legislature (2015); despite having the favorable legal opinion of several sectors, including: The Judiciary, the Office of the Attorney General, the Office of the Ombudsperson, the United Nations System, and the Civil Society Forum on Health.



- d) **Repeal** Article 30 of the General Health Law as it is unconstitutional and in contradiction with the right to professional secrecy and the right to privacy, health and life of women.
- e) **Modify** the legislation so that constitutional obligations that protect professional secrecy prevail, and prevent health care professionals from reporting women for the alleged crime of abortion.

**In times of COVID-19:**

- f) **Ensure** access to therapeutic abortion for girls and adolescents victims of sexual violence, with specific protocols, as it puts their health and life at risk.
- g) **Adopt** measures to eliminate barriers to the access to therapeutic abortion, in relation with the restrictive interpretation of the right to health, and the ground of health during the state of health emergency.
- h) **Create** guidelines for the care of pregnant girls, in order to protect their health and life, whether they need/decide on the termination of the pregnancy or to continue with the pregnancy, introducing a differentiated approach on behalf of children and guaranteeing the best interest of the girls.

**Principle of equality and non-discrimination, and violence against LGBTI persons (arts. 2 (paragraph 1), 3, 6, 7, 24, 25 and 26)**

CCPR/C/PER/CO/5	<i>"8. The Committee is concerned at reports of discrimination and acts of violence suffered by lesbian, gay, bisexual and transgender (LGBT) persons on the basis of their sexual orientation or gender identity (arts. 2, 3, 6, 7 and 26)." The State party should state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transexuality, or discrimination or violence against persons because of their sexual orientation or gender identity (...)"</i>
CCPR/C/PER/QPR/6	<i>The Committee indicates "6. (...) please provide information on the measures adopted for the eradication of discrimination, as well as information about prevention, monitoring and protection mechanisms (...)"</i>

84. In Peru, the discrimination and the situation of structural inequality in which LGBTI persons live is still a constant issue. The systematic violence they experience daily in different settings is related with the invisibility, exclusion and abandonment by the State. Moreover, legal initiatives to remedy this situation have not yet been adopted. Consequently, there is the absence of a regulatory and institutional protection system at all levels: local, regional and national, showing non-compliance with international instruments to which the Peruvian State is committed in the matter of the respect and protection of LGBTI persons.
85. The Annual Report from the Observatory of LGBTI Rights of Cayetano Heredia University (2019) recorded from January to December 2019, 170 cases of LGBTI rights violations, most of them involving individualized populations, trans women (73 cases) and gay men (54 cases)<sup>181</sup>. According to the Office of the Attorney General, in 2020 there were a total of 385 complaints of discrimination and incitement to discrimination at the national level. The regions with the highest number of complaints were: Lima (106 complaints), Eastern Lima (25 complaints), Arequipa (23 complaints), Northern

<sup>181</sup> *Informe Anual del Observatorio de Derechos LGBT 2019* [Annual Report from the Observatory of LGBT 2019]. Cayetano Heredia University, Unicxs, Observatory of LGBTI Rights and HIV/AIDS, published on June 2020.



- Lima (20 complaints), Southern Lima (15 complaints), Piura and Lambayeque (14 complaints each)<sup>182</sup>.
86. According to a survey conducted by Promsex<sup>183</sup> regarding the acts of violence experienced by LGBTI persons, in relation to acts of discrimination on the basis of sexual orientation, 33% indicated that they have experienced it. Among this group, 50% said they received it through social networks, and 25% in the family environment<sup>184</sup>. Meanwhile, in the first year of the implementation of the National Human Rights Plan, MINJUSDH registered 16 complaints in the section of complaints of discrimination on the basis of sexual orientation and gender identity in SIDPOL<sup>185</sup>.
87. The LGBTI Thematic Report 2018<sup>186</sup>, 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%) that refer to the eradication of homosexuals or transvestites, and 12 plans (27.3%) that directly mention the exercise of prostitution<sup>187</sup>.
88. The reference to the eradication of transsexual and gay persons in the security plans gives us an alarming message: (a) 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’; (b) 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’<sup>188</sup>; (c) There is a high probability of violations to the right to freedom of transit and physical integrity; (d) There are cases of persecution of trans women who perform sexual work.
89. On the other hand, MINJUSDH indicated in its Report on the Situation of the Gender Identity of Trans Persons in Peru that ‘there is no administrative procedure for the recognition of name and gender, so trans people are compelled to resort to the Judiciary’<sup>189</sup>. Despite the criteria established in the judgment of the case of Romero Saldarriaga<sup>190</sup>, trans people still have to undergo a pathological, cumbersome and stereotypical judicial process, when they could be doing it in an administrative office

<sup>182</sup> Ibid., p. 49

<sup>183</sup> The survey and semi-structured interviews were conducted by Promsex in 2020, with a total participation of 38 people nationwide, all the interviews were carried out remotely in order to avoid contact. (See results in PROMSEX. ‘Informe Anual sobre la situación de los derechos humanos de las personas LGBTI 2020’, May 2021)

<sup>184</sup> PROMSEX. ‘Informe Anual sobre la situación de los derechos humanos de las personas LGBTI 2020’ [Annual report on the Human Rights Situation of LGBTI persons 2020], May 2021 p. 59. P. 47.

<sup>185</sup> Questionnaire on gender, sexual orientation and gender identity sent to the independent expert on protection against violence and discrimination based on sexual orientation and gender identity, 13 March 2021, p. 8.

<sup>186</sup> PROMSEX, *Informe Temático LGBTI 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.

<sup>187</sup> Ibid., p. 160-163.

<sup>188</sup> Ibid., p. 164.

<sup>189</sup> MINJUSDH, National Commission against Discrimination. Report on the situation of the gender identity of trans persons in Peru, *CONACOD/Sec.Téc./II.2019*, dated 29 January 2019. In addition to this, there are cases such as the one of Darling Delfin and Jenny Trujillo, who got married in Peru and had a son in 2014. RENIEC issued the child’s ID in which it recognizes the child’s nationality and the maternity of only one of them. They are still demanding the recognition of their co-maternity since 2016. La República, ‘*Dos mujeres luchan desde hace cuatro años para ser reconocidas como madres de su hijo*’ [Two women have been fighting for the last four years to be recognized as mothers of their son], 7 September 2020.

<sup>190</sup> On 15 June 2012, Rodolfo Enrique Romero Saldarriaga filed a lawsuit for the protection of fundamental rights (amparo) against RENIEC requesting the change of his name and gender in his identity card. In light of the decision of the Civil Chamber that sided with RENIEC, dismissing Romero’s claim, the complainant filed a constitutional appeal. The Constitutional Court declared the complaint founded as it violates the complainant’s right to access justice, and considers that a summary proceeding is the right way file this request.





- (RENIEC). According to the survey conducted by Promsex (2020), 31% of people have their social name in their identity card, and 38% have started legal proceedings to change it<sup>191</sup>. In this context, in July 2020, the Third Provisional Constitutional Court declared the lawsuit for the protection of fundamental rights (amparo) filed by Promsex on behalf of an intersex person for the violation of their right to identity partly founded. This Court ruled in its judgment that, within one year, RENIEC shall implement an administrative procedure; this judgment was appealed by RENIEC and a decision on the case by the Constitutional Chamber is still pending<sup>192</sup>.
90. Regarding **violence and discrimination against LGBTI children and adolescents in schools**, a School Climate Survey conducted by Promsex (2016)<sup>193</sup> reports that 72% of students suffered verbal harassment because of their sexual orientation, and 58% because of their gender expression<sup>194</sup>. Likewise, a study conducted by Cayetano Heredia University (UPCH) in Peruvian educational institutions indicated that 44% of respondents claimed to have suffered some kind of bullying or harassment at school, and 68% confessed having been victims of bullying for being gay<sup>195</sup>.
91. The Ministry of Education (MINEDU) implemented a System to Report Cases of School Violence - "SíSeVe"<sup>196</sup>, according to its records, which have not been updated, between 2016 and 2018, there were 252 cases of violence reported among students because the victim was identified as 'fag', 'gay', 'lesbian' or 'dyke'<sup>197</sup>. Even though the Peruvian State approved in 2018 the "Guidelines to Manage School Coexistence, and the Prevention and Care of Violence against Children and Adolescents", none of the six protocols to address violence considers the detection, care and punishment in cases of violence on the basis of non-normative sexual orientation and gender identity, real or perceived<sup>198</sup>.
92. **The COVID-19 pandemic** only exacerbated the situation of poverty<sup>199</sup>, exclusion, and structural discrimination faced by LGBTI people. On 2 April 2020, in the context of the health emergency, the Peruvian State published Supreme Decree No. 57-2020-PCM<sup>200</sup>, dubbed "Pico y Placa de género", which established a "gender-specific permission to leave home" in order to purchase food, pharmaceuticals and perform financial transactions. Despite the statement by the President of the Republic who said that 'this measure guarantees the right to gender identity of trans people', this resulted in a series of acts of discrimination, violence and transphobia, particularly against trans women who were interrogated by PNP and Armed Forces officials because of their gender

<sup>191</sup> PROMSEX. 'Informe Anual sobre la situación de los derechos humanos de las personas LGBTI 2020' [Annual report on the Human Rights Situation of LGBTI persons 2020], May 2021 p. 59.

<sup>192</sup> Ibid., p. 61.

<sup>193</sup> Conducted through a virtual survey with the participation of 321 LGBTI students between the ages of 14 and 17

<sup>194</sup> 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: Experiences of LGBT adolescents and youth in the school setting].

<sup>195</sup> Cáceres, 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..."] Homophobic bullying in public educational institutions in Chile, Guatemala and Peru] December 2013.

<sup>196</sup> The Ministry of Education (MINEDU). "SiSeVe" System. Accessible at <http://www.siseve.pe/>

<sup>197</sup> 171st Session of the IACHR. Speech of the thematic hearing on "violencia escolar por orientación sexual, identidad de género y expresión de género, real o percibida, en Perú" [School violence on the basis of sexual orientation, gender identity and gender expression, real or perceived, in Peru], on 14 February 2019 in Sucre-Bolivia.

<sup>198</sup> Ibid.

<sup>199</sup> El Comercio, *La lucha de las mujeres trans en tiempos de pandemia* [The fight of trans women in times of pandemic]. nr.

<sup>200</sup> Supreme Decree No. 57-2020-PCM, 2 April 2020



- identity and gender expression. In district of Bellavista, three women reported receiving a humiliating treatment by the National Police of Peru<sup>201</sup>.
93. In the context of the health emergency due to the COVID-19 pandemic, in April 2020, through Legislative Decree No. 1470, measures were established to ensure the care and protection of victims of violence against women and members of the family group during the health emergency. The main changes introduced with this legislative decree were promptness in the deadlines to grant protective measures, and prioritizing cases of violence against children and adolescents. However, there is no special protection system and care steps for cases of violence against LGBTI persons<sup>202</sup>.
94. Added to this is the increase in complaints of discrimination in the last semester of 2020. According to the Office of the Attorney General, 152 complaints were filed between January and June 2020, and 223 between July and November<sup>203</sup>
95. On the other hand, in light of the general elections held in our country on 11 April 2021, there have been cases of discrimination against trans candidates because of their gender identity, such as in the case of Gahela Cari, a trans candidate running for Congress<sup>204</sup>. A situation occurred promoted by the conservative candidate Frank Krklec, who called out the candidate in the media by her legal name not recognizing her identity<sup>205</sup>; this was the subject of a complaint to the National Electoral Board (JNE) requesting the Court of Honor of the Electoral Ethical Pact to ensure the respect for the political participation of LGBTI persons. The court sanctioned the candidate only with a verbal warning. Added to this is the fact that there is no electoral protocol regarding trans people nor a political harassment law.

- **The need to punish hate speech**

96. The Office of the Ombudsperson, through an official communication (2019), called upon the Peruvian State to ‘punish hate speech that promotes discrimination and violence against LGBTI persons’<sup>206</sup>, as our Criminal Code does not punish these behaviors, leaving these acts to go unpunished. It should be noted that in recent years there has been a growing wave of conservative and fundamentalist movements that use faith to convey their hate speech, based on erroneous and harmful arguments toward LGBTI people, promoting rejection and violence against them<sup>207</sup>. The unison discourse of these

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<sup>201</sup> La mala fe. *Cuarentena por género expone la transfobia de las Fuerzas del orden en Panamá y Perú* [Gender-based lockdown exposes the transphobia of the Police Forces in Panama and Peru], 10 March 2010.

<sup>202</sup> PROMSEX. *Informe Anual sobre la situación de los derechos humanos de las personas LGBTI 2020* [Annual report on the Human Rights Situation of LGBTI persons 2020], May 2021, p. 57.

<sup>203</sup> Ibid. p. 50.

<sup>204</sup> EFE, *‘Gahela Cari, candidate trans discriminada en Perú “Cuestionan mis genitales”* [Gahela Cari, trans candidate trans discriminated in Peru “They question my genitals”], 2 February 2021.

<sup>205</sup> La República, *‘Transfobia, Frank Krklec no respeta la identidad de género de Gahela Cari’* [Transphobia, Frank Krklec does not respect the gender identity of Gahela Cari], 28 January 2021.

<sup>206</sup> Office of the Ombudsperson, *Urge sancionar los discursos de odio que promueven la discriminación y violencia contra personas LGBTI* [It is imperative to punish hate speech promoting discrimination and violence against LGBTI people], 17 May 2019.

<sup>207</sup> Lastly, there have also been hate crimes in the name of religion, as is the case of Moisés, a 17-year-old LGBT teenager from the District of Saposoa (San Martín) shot to dead in 2019 by his father, who did not approve his sexual orientation. After committing the crime, his father prayed asking God for forgiveness for the sins committed by him and his son. PROMSEX, *Crímenes de odio en nombre de la religión* [Hate crimes in the name of religion], 4 January 2019. See the views of the Churches regarding sexual diversity (PROMSEX. Questionnaire on gender, sexual orientation and gender identity sent to the independent expert on protection against violence and discrimination based on sexual orientation and gender identity, 13 March 2021, p. 19.



fundamentalist groups, who hide in their right to freedom of expression, has become a struggle for LGBTI collectives, activists and/or individuals.

97. Additionally, the Congress of the Republic, with a conservative majority, has been the obstacle to the adoption of legislative initiatives in favor of LGBTI persons. Moreover, it is evident the alliance of religious groups and/or leaders with political parties such as Fuerza Popular, which has a conservative agenda and supports the homolebotransphobic campaign #ConMisHijosNoTeMetas (Don't Mess with My Kids). The following is a sample of this<sup>208</sup>:

- Former congressman Héctor Becerril, from the political party Fuerza Popular, used his Twitter account to respond to a message from the openly gay congressman Alberto de Belaunde de Cárdenas, saying that *"if for you it is the same for a man and woman to kiss, and for two men to kiss in a public place, for me it will never be the same, and if that is to discriminate, then I discriminate"*,<sup>209</sup> civil society organizations filed a complaint with the Prosecutor's Office and the Ethics Commission of the Congress<sup>210</sup>.
- In 2017, the Office of the Attorney General, through 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 murder. "If you find two women having sex, kill them both (...) in the name of Jesus", he stated<sup>211</sup> as part of a speech to encourage parents to participate in a march against the inexistent 'gender ideology'<sup>212</sup>. However, this is not the first time that political, religious (Evangelical or Catholic pastors or priests) and opinion leaders, who oppose any progress in the acknowledgment and protection of the rights of LGBTI people, have uttered discriminatory arguments that, in some cases, also induce to violence and discrimination, without receiving any sanction whatsoever.
- Former congressman Julio Rosas, an evangelical pastor, who took advantage of his position to organize an event on "science and gender", inviting a specialist who, without any scientific support, claimed that "homosexuality can be cured"; in light of this, Promsex filed a complaint before the Ethics Commission of the Congress on the ground that conversion therapies are torture<sup>213</sup>.

<sup>208</sup> Among others, we have: a) Former congressman Juan Carlos Gonzales Ardiles, from the political party Fuerza Popular, and pastor of the Agua Viva church, in 2019 presented a bill which proposed merging the MIMP to create the Ministry of the Family. In 2017, during the Pride Parade, he shared a post through his social networks showing two pictures, a rainbow with the phrase 'The symbol of God's covenant' and the LGBTI flag with the phrase 'This is why the flood came' (PROMSEX. Questionnaire on gender, sexual orientation and gender identity sent to the independent expert on protection against violence and discrimination based on sexual orientation and gender identity, 13 March 2021, p. 26); and b) The spouses Guillermo and Milagros Aguayo, founders and directors of the Center for Family Development of the religious institution Misión Cristiana; they organize conferences for the #ConMisHijoNoTeMetas campaign. In an interview, Mr. Guillermo indicated that 'the Creator created the perfect body for the well-being of the progeny, who are men and women (...)' (Ibid., p. 28 - See <https://www.facebook.com/ConMisHijosNoTeMetasOficial/videos/entrevista-con-guillermo-y-milagros-aguayo-en-radio-capital/346287092411882/>); e) Mr. Rolando Boulanger from Asambleas de Dios in 2017 made a call to all assemblymembers nationwide to join 4 March the rally against the education on gender ideology in schools and Legislative Decree 1323 (Ibid. p. 29).

<sup>209</sup> Twitter account of Héctor Becerril R. Accessed at <https://twitter.com/hectorbecerrilr/status/1143702688280059908?lang=en>

<sup>210</sup> La Ley (2019). *'Héctor Becerril es denunciado por discriminación contra la comunidad LGTBIQ'* [Hector Becerril is reported for discrimination against the LGTBIQ community], 4 July 2019.

<sup>211</sup> La República, *'con mentiras y mensajes de odio se preparó marcha de hoy'* [Today's march was put together with lies and hate speech], 4 March 2017.

<sup>212</sup> Misinformation marches that are taking place in the country as a form of protest against the inclusion of the gender approach in the National Basic Education Curriculum, which was recently approved.

<sup>213</sup> PROMSEX. Questionnaire on gender, sexual orientation and gender identity sent to the independent expert on protection against violence and discrimination based on sexual orientation and gender identity, 13 March 2021, p. 27.



98. On the other hand, it is worrying that social media statements are done without an approach of respect for diversity, normalizing violence, and ignoring gender identity and social names causing psychological violence<sup>214</sup>. Evidence of this is the hate speech of some journalists toward LGBTI people.

- In his radio program, commentator Philip Butters<sup>215</sup>, spokesman for the homolesbotransphobic campaign “Con Mis Hijos No Te Metas”, pointed out that “if in the morning when I go to my daughter’s kindergarten, I see two lesbians or homosexuals kissing, I ask them to please leave once, twice, the third time I’m kicking them”<sup>216</sup>; for this reason, civil society organizations filed a criminal complaint for the crime of discrimination - which is yet to be solved - and the Ethics Board of the National Radio and Television Society sanctioned Radio Capital and the journalist for broadcasting a message of violence toward LGBTI people<sup>217</sup>.

Regional and local radios are spaces where homolesbotransphobic demonstrations occur<sup>218</sup>

- Thus, there have been several cases such as what happened in the interview of journalist Iván Cruces with the former candidate of Juntos por el Perú, Natalia Arbildo, in Trujillo in the context of the electoral campaign 2021-2026, Mr. Cruces alleges that homosexuals are sexual deviants, fags, that the situation has deteriorated<sup>219</sup>

Recognition of the gender identity when reporting about people

- The Ethics Board of the Peruvian Press Council, through Resolution No. 002-TE/2020 dated 27 October 2020, declared founded the complaint filed by the Unicxs Consultancy of the Law School of Pontifical Catholic University of Peru against news articles published by the newspapers ‘El Comercio’, ‘La República’ and ‘El Popular’, in which they reported the death of one of the trans women murdered in 2020 without respect for her gender identity and publishing her legal name, and it insisted on promoting the obligation of due diligence when reviewing the information given to their journalistic teams through all their information platforms<sup>220</sup>.

99. Finally, on the eve of the general election (April 2020), it has been noted that the LGBTI agenda is not part of the government plans of the majority of the candidates. On the contrary, it has been observed that within the speeches of congressional candidates, there is a campaign of hatred against LGBTI people, in particular from political parties linked to religious movements, as is the case with former presidential candidate Rafael López Aliaga from the Renovación Popular political party, a conservative political organization, who pointed out in an interview that ‘supporting the rights of that community would homosexualize children’<sup>221</sup>(2021). Another case is that of former candidate Frank Krklec Torres, who called out former trans candidate Gahela Cari by her legal name<sup>222</sup>(2021). Lastly, there is the case of former candidate Giuliana

<sup>214</sup> Ibid. p. 39.

<sup>215</sup> Ibid. p. 41.

<sup>216</sup> CiudadaníasX, ‘Perú: Tribunal de Ética sanciona a Radio Capital y Phillip Butter por comentarios que alientan la homofobia’ [Ethics Board sanctions Radio Capital and Phillip Butter for comments that encourage homophobia], 15 February 2011

<sup>217</sup> Ibid.

<sup>218</sup> PROMSEX. Questionnaire on gender, sexual orientation and gender identity sent to the independent expert on protection against violence and discrimination based on sexual orientation and gender identity, 13 March 2021, p. 42.

<sup>219</sup> Agencia Presentes, ‘Campañas electorales de Perú usan homofobia y transfobia para captar votos’ [Peruvian electoral campaigns use homophobia and transphobia to attract votes]. Issue dated 10 February 2021.

<sup>220</sup> PROMSEX. ‘Informe Anual sobre la situación de los derechos humanos de las personas LGBTI 2020’ [Annual report on the Human Rights Situation of LGBTI persons 2020], May 2021, p. 70.

<sup>221</sup> IDL Reporteros, ‘Afirmación de Aliaga sobre cartillas para homosexualizar a niños es falsa’ [Aliaga’s claim about cards to homosexualize children is false], 17 February 2021.

<sup>222</sup> La República, ‘Transfobia, Frank Krklec no respeta la identidad de género de Gahela Cari’ [Transphobia, Frank Krklec does not respect the gender identity of Gahela Cari], 28 January 2021.



Calambrogio, who in an interview on Youtube with Rafa SJL pointed out that ‘Only exists the marriage between male and female (...) They cannot be treated equally because the situation is not the same’<sup>223</sup>.

100. **Recommendations suggested to the Peruvian State:**

- a) **Guarantee** respect for and promotion of the rights of LGBTI persons.
- b) **Use** the Yogyakarta Principles in the application of international human rights law on the matter of sexual orientation, gender identity and gender expression as a guide for the development of State policies and guidelines.
- c) **Ensure** the right to health of LGBTI persons through a comprehensive health program, including care protocols and training modules for health operators to provide appropriate services for LGBTI persons.
- d) **Eliminate** Citizen Security Plans from regions and districts of Peru that indicate the “eradication of homosexuals and transvestites”, in accordance with paragraph 255 of the case of *Azul vs. Peru*.
- e) **Create and implement** a policy to prevent, address or punish cases of school violence against children and adolescents because of their non-normative sexual orientation and gender identity, real or perceived.
- f) **Prevent and criminally punish** hate speeches that promote violence and discrimination against LGBTI people, establishing aggravated punishments in the case of political leaders or State public servants, and set up mechanisms to promote and supervise the auto-regulation of content in the media to avoid the broadcasting of discourses that promote violence and discrimination against LGBTI people.
- g) **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 punish hate speeches that incite violence.

**In times of COVID-19:**

- h) **Develop** a preventive and informative communication strategy to report violations to LGBTI rights, such as through the helplines Línea 100 y Línea 1884 option 1.
- i) **Guarantee** the right to health of LGBTI persons through a comprehensive health program and counseling protocols that consider practices different than for heterosexual people and targeted at lesbian, bisexual and trans-male women.

• **Systematization of information on the situation of violence against LGBTI persons**

101. According to INEI First Virtual Survey for LGBTI People<sup>224</sup> (2017), 62.7% of LGBTI people between the ages of 18 and 29 claimed to have suffered discrimination and/or violence, the places where this occurred more frequently were public spaces (65.6%), educational settings (57.6%), means of transportation (42.3%), commercial

<sup>223</sup> Más Igualdad, ‘*Derechos LGBTI no son parte del debate ni de los planes de gobiernos de la mayoría de candidatas*’ [LGBTI rights are not part of the debate or the government plans of the majority of candidates], 1 March 2021.

<sup>224</sup> Its main feature was that it could be filled voluntarily through the Internet, providing the first official figures; however, these were not representative and could provide a false diagnosis on the experiences and access to resources of LGBTI people.



- and leisure spaces (41.5%). Similarly, the main offenders are usually schoolmates and parents (55.8%), religious leaders (42.7%), public officials (32.7%), and health personnel (15.4%), among others.
102. The Second National Survey on Human Rights, conducted by Ipsos on behalf of the Ministry of Justice (2020), registered more than 1.7 million Peruvian adults who identify themselves as not heterosexuals. 71% of people in Peru claim that LGBTI people are discriminated or very discriminated; 46% of people in Peru consider that a trans person is confused; 36% of Peruvians consider that is dangerous to leave a child with a homosexual, and 19% claim that homosexuality is a disease<sup>225</sup>.
103. Likewise, the MIMP National Program Against Family and Sexual Violence has published the figures on the victims of violence against LGBTI persons that are assisted in CEMs, reporting 98 cases from January to December 2019<sup>226</sup>, 58 cases in the same period in 2020<sup>227</sup>, and 17 cases from January to February 2021<sup>228</sup>. While the AURORA Program reported that, from January to December 2020, 52 LGBTI people were treated in CEMs, and only 12 were able to obtain protective measures<sup>229</sup>.
104. According to the platform on virtual harassment of the MIMP that includes LGBTI people<sup>230</sup>, there were 62 cases of harassment reported between January and December 2019<sup>231</sup>, and 46 cases in the same period of 2020<sup>232</sup>. The small percentage of complaints regarding acts of discrimination is due to the low credibility of justice operators and distrust toward state institutions.
105. Despite the fact that the National Plan for Human Rights 2018-2021<sup>233</sup> establishes in its objectives the creation of registration systems that would allow the generation of disaggregated information on the cases of violence or discrimination against LGBTI persons<sup>234</sup>, the information that has been systematized corresponded to an effort by civil society organizations through requests for information<sup>235</sup>, rather than to state initiatives concerned with understanding and addressing the problem of lack of collection and management of official records, as it

<sup>225</sup> Ipsos, *II Encuesta Nacional de Derechos Humanos* [2nd National Survey on Human Rights], 26 June 2020. The survey was conducted from 7 to 25 November 2019, with the participation of 3,312 men and women over the age of 18 in urban and rural areas of Peru.

<sup>226</sup> Ministry of Women and Vulnerable Populations (MIMP), *Statistical Newsletter* 2019. Report of cases of people treated in CEMs who have suffered violence against women and men at the national level, from January to December 2019.

<sup>227</sup> Ministry of Women Affairs and Vulnerable Populations (MIMP), *Statistical Newsletter 2020*. Report of cases of people treated at CEMs who have suffered violence against LGBTI women and men at the national level, from January to December 2020. Cases of discrimination in digital media (see PROMSEX. 'Informe Anual sobre la situación de los derechos humanos de las personas LGBTI 2020', May 2021, p. 41-42).

<sup>228</sup> Ministry of Women Affairs and Vulnerable Populations (MIMP), *Statistical Newsletter 2021*. Report of cases of people treated at CEMs who have suffered violence against LGBTI women and men at the national level, from January to February 2021.

<sup>229</sup> PROMSEX. 'Informe Anual sobre la situación de los derechos humanos de las personas LGBTI 2020' [Annual report on the Human Rights Situation of LGBTI persons 2020], May 2021, p. 761 (This information is based on Report No. D000077-2020-MIMP-AURORA-SISEGC-DVV dated 23 December 2020.)

<sup>230</sup> Access with this link: <http://www.noalacosovirtual.pe/estadisticas/estadisticas-16feb-31dic-2018-acoso-virtual.pdf>

<sup>231</sup> Ministry of Women Affairs and Vulnerable Populations (MIMP), *Estadística de alertas contra el acoso virtual de enero a diciembre de 2019* [Statistics on alerts against virtual harassment from January to December 2019].

<sup>232</sup> Ministry of Women Affairs and Vulnerable Populations (MIMP), *Estadística de alertas contra el acoso virtual de enero a diciembre de 2020* [Statistics on alerts against virtual harassment from January to December 2020].

<sup>233</sup> Ministry of Justice and Human Rights, *Supreme Decree No. 002-2018-JUS, National Plan for Human Rights 2018-2021*, 31 January 2018

<sup>234</sup> Guideline III, subchapter 9, strategic objective 1.

<sup>235</sup> We, the civil society organizations, collected information through a request called "Request for Access to Public Information", as provided by the Consolidated Amended Text of Law No. 27806, however, they do not forward the information to us within the required time.



- was ordered by the Inter-American Court to the Peruvian State in the case of Azul Rojas Marín vs. Peru, with regard to designing and implementing a system to collect data and figures related to cases of violence against LGBTI people<sup>236</sup>.
106. **Recommendations suggested to the Peruvian State:**
- a) **Design and implement** a system to collect data and figures related to cases of violence against LGBTI people, in accordance with Paragraph 252 of the case of *Azul vs. Peru*.
  - b) **Incorporate** in the Crime Observatory of the Office of the Attorney General and the Statistical Yearbook of the National Police of Peru a detailed record of violence and discrimination acts against LGBTI people.

• **National legal framework for the protection of the rights of LGBTI persons**

CCPR/C/PER/CO/5	The Committee indicates that “8. (...) It should also amend its laws with a view to prohibiting discrimination on the basis of sexual orientation and gender identity. The State party should provide effective protection to LGBT individuals (...)”
CCPR/C/PER/QPR/6	The Committee indicates “6. Please provide information on the legislative, public policy and awareness-raising measures adopted, as well as information about prevention, monitoring and protection mechanisms, with a view to the eradication of discrimination on the basis of sexual orientation and gender identity (...)”

107. In this regard, Political Constitution of Peru does not establish the prohibition of discrimination on the basis of sexual orientation and gender identity. On the other hand, the Code of Constitutional Procedure in Article No. 37 subparagraph 1) explicitly states “*The protection of fundamental rights (amparo) is lawful in the defense of the following rights: equality and non-discrimination on the basis of origin, sex, race, sexual orientation, (...)*”<sup>237</sup>. In this respect, the Code of Constitutional Procedure protects sexual orientations, but not gender identities.
108. Conversely, to this day no legislative initiative has been adopted to guarantee the rights of LGBTI persons, on the contrary, the Congress of the Republic has held an opposing agenda. Between the year 2011 and March 2021, members of the 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<sup>238</sup>, and other initiatives are pending discussion at the Congress of the Republic<sup>239</sup>.

<sup>236</sup> PROMSEX. ‘Informe Anual sobre la situación de los derechos humanos de las personas LGBTI 2020’ [Annual report on the Human Rights Situation of LGBTI persons 2020], May 2021 p. 50. Inter-American Court of Human Rights. (2020). *Case of Azul Rojas Marín and other vs. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgement of 12 March 2020. Series C No. 402, paras. 259 and 289.*

<sup>237</sup> Peruvian Code of Constitutional Procedure.

<sup>238</sup> Among them: Bill No. 3584/2009-CR: **Law against hate crimes**; Bill No. 609/2011-CR: **Law against criminal actions originating in discrimination and**; 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 Political Constitution of Peru.

<sup>239</sup> Among them: Bill No. 790/2016-CR: **Law on gender identity**; Bill No. 1378/2016-CR (in March 2021, the Commission on Women and Family approved by a majority vote the decision that shall be adopted by the Plenary Session of Congress): **Law on hate crimes**; Bill No. 1704/2016-CR: **Law that promotes equality before the law and non-discrimination on the grounds of sexual orientation and gender identity**; Bill No. 961/2016-CR: **Law on equal civil marriage**, among other legislative initiatives. Through Law No. 30506, the Legislative Branch empowers the Executive Branch to legislate; in this context, it promotes **Legislative Decree No. 1323 “Strengthen 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



109. On 16 December 2020, the Congress of the Republic adopted the Inter-American Convention on Protecting the Human Rights of Older Persons<sup>240</sup>, a document that protects the rights of elderly persons, including the elderly LGBTI population; however, the “Inter-American Convention Against All Forms of Discrimination and Intolerance, which includes sexual orientation and gender identity” still has to be discussed and reaffirmed, and this is needed to enter into force in the country.
110. In addition to this, in our country “conversion therapies”, which are practices used to alter the gender expression, gender identity and sexual orientation of an LGBTI person, are not criminally punished. According to an exploratory study published in 2019, 40% of the 323 people who participated in the survey claimed to have been a victim of these conversion practices over the course of their lives<sup>241</sup> and, among that group, about 62% were subjected to these practices as minors<sup>242</sup>. This must also be interpreted in light of what was reiterated in the judgment in the case of *Azul v. Peru*, the Court stated that acts of torture motivated by sexual orientation are intended to send a message of threat and punishment to all LGBTI people<sup>243</sup>, and therefore these therapies should be considered as torture<sup>244</sup>.
111. In November 2020, the Constitutional Court, the highest entity for the interpretation of constitutional matters, declared inadmissible by a majority vote the lawsuit for the protection of fundamental rights (amparo) filed by Oscar Ugarteche<sup>245</sup>, who requested the recognition of his civil marriage to Fidel Aroche, held in Mexico in 2010. ‘This ruling not only does not take into account the existing international framework for the recognition of same-sex unions, but it also invisibilizes the many common law marriages that already exist in our country’<sup>246</sup>.
112. Among the meager actions that during 2020 have promoted non-discrimination, we have:

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gender identity; however, with a vast majority, Fuerza Popular voted to partially repeal Legislative Decree No. 1323. This was contested by the Executive Branch and returned to the Congress of the Republic, where, so far, it has not 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.

<sup>240</sup> Legislative Resolution No. 31090 ‘Resolución Legislativa que aprueba la Convención Interamericana sobre la Protección de los Derechos Humanos de las Personas Mayores’ [Legislative resolution adopting the Inter-American Convention on Protecting the Human Rights of Older Persons], 16 December 2020.

<sup>241</sup> Asociación Más Igualdad Perú. “Problemas de salud mental, acceso a servicios de salud mental públicos y privados y prácticas de conversión en personas LGBTIQ+” [Mental health problems, access to public and private mental health services, and conversion practices in LGBTIQ+ persons], November 2019. ‘The type of sampling of the 323 LGBTI persons was non-random and circumstantial, (...) this means that the results cannot be generalized to the LGBTI population in the Peruvian territory.

<sup>242</sup> Op. cit. 1.

<sup>243</sup> Inter-American Court (2020). Case of Azul Rojas Marín and other vs. Peru. Judgement of 12 March 2020, para. 165.

<sup>244</sup> Despite the fact that on 13 August 2019, the Office of the Ombudsperson requested professional colleges, the Office of the Attorney General and municipalities to investigate and punish the aforementioned practices, there was no response from these institutions. (Office of the Ombudsperson (2019). Press release No. 247/OCII/DP/2019, 13 August 2019). On their part, on March 2020, MINSA published the ‘Regulation of the Mental Health Law’, which recognizes the need to respect sexual diversity; however, this does not mention the need to prohibit and punish conversion therapies. This gave rise to complaints from organizations, and we demanded the investigation and closure of mental health centers that provide these treatments (Promsex, Twitter #JuntosVenceremos esta pandemia [Together we will defeat this pandemic], 14 August 2019).

<sup>245</sup> Oscar Ugarteche initiated lawsuit for the protection of fundamental rights (amparo) against RENIEC in 2016, and the Seventh Constitutional Court of Lima recognized the marriage and ordered its registration. However, in 2018, this decision was overturned by the Fourth Civil Chamber of the Superior Court of Justice of Lima. In light of this judgment, the complainant filed a constitutional appeal that resulted in the majority ruling of the Constitutional Court declaring it inadmissible. Press release of the Constitutional Court, TC rechazó demanda de amparo de Oscar Ugarteche contra el Reniec [TC declares inadmissible the lawsuit for the protection of fundamental rights filed by Oscar Ugarteche against Reniec], 3 November 2020.

<sup>246</sup> PROMSEX. *Informe Anual sobre la situación de los derechos humanos de las personas LGBTI 2020* [Annual report on the Human Rights Situation of LGBTI persons 2020], May 2021. p. 38.





- a) In February 2020, MIMP and MININTER approved, by Supreme Decree No. 002-2020, the Inter-Agency Protocol to Handle the Cases of Disappearance of Persons in Situation of Vulnerability and Other Cases of Disappearance, the protocol specifies that, to issue an Emergency Alert Note, the gender identity of the person shall be taken into account, regardless of what is established in the system of RENIEC<sup>247</sup>.
- b) In May 2020, two months since the declaration of the health emergency due to COVID-19, MIMP launched a pamphlet 'Equality guidelines to promote the rights of LGBTI people in the context of COVID-19'. This publication provides a series of guidelines for the general public regarding the respect of their rights; however, 'these guidelines must be supplemented with training plans for all entities and bodies responsible for receiving and processing complaints of discrimination against LGBTI persons, and they should be promoted to reach a greater audience and raise awareness within the population'<sup>248</sup>.
- c) On 8 August 2020, Supreme Decree No. 220-2020-EF was published, stipulating the solidarity support of officials and public servants of the Executive Branch to provide an economic support for the bereaved of health personnel deceased as a result of COVID-19. This Decree includes in the group of beneficiaries same-sex partners that lived together with the deceased<sup>249</sup>.
- d) In 2020, the districts of Metropolitan Lima, Lurín and Breña issued municipal ordinances prohibiting discrimination<sup>250</sup> and, on 8 September 2020, the Regional Council of Arequipa unanimously approved the Regional Ordinance on Equality and Non-Discrimination No. 428-Arequipa<sup>251</sup>, after 12 years of waiting. This regulation guarantees the prohibition of discrimination and racism, and it also stipulated the inclusion of non-discrimination in the Regional Education Curriculum at all levels of education.
- e) In December 2020, a draft Ordinance on Trans Labor Quota Ordinance was presented in the Municipality of Lima<sup>252</sup>, which the purpose of promoting the labor integration of trans people; the decision, and if it be, its subsequent implementation is still pending.
- f) On 8 March 2021, the first protocol to guarantee the right to vote of trans persons on election day was approved, including a procedure in case of possible acts of discrimination during election day.<sup>253</sup>

### 113. Recommendations suggested to the Peruvian State:

<sup>247</sup> Ibid. p. 69.

<sup>248</sup> Ibid. p. 53.

<sup>249</sup> Ibid. p. 52.

<sup>250</sup> Municipal Ordinance No. 407-2020/ML and Municipal Ordinance No. 0545-2020-MDB.

<sup>251</sup> Official newspaper 'Diario Oficial El Peruano', Ordenanza Regional de Igualdad y no Discriminación en la Región Arequipa [Regional ordinance on equality and non-discrimination], on 8 September 2020.

<sup>252</sup> Wayka, Presentan proyecto para cupo laboral de personas trans en la Municipalidad de Lima [Project on labor quota of trans people submitted to the Municipality of Lima], 10 December 2020.

<sup>253</sup> PROMSEX. Questionnaire on gender, sexual orientation and gender identity sent to the independent expert on protection against violence and discrimination based on sexual orientation and gender identity, 13 March 2021, p. 4.



- a) **Include** within the crime of discrimination (currently Article 323) of the Criminal Code, sexual orientation and gender identity as prohibited categories of discrimination, as well as criminally punish hate speeches that incite violence, with aggravated punishments in the case of public officials.
- b) **Train** personnel of the National Police of Peru, members of the Armed Forces and municipal security agents on the rights of LGBTI persons.
- c) **Modify** the curriculum of the Judicial Academy to incorporate courses on gender and justice.
- d) **Include** in the legislation the punishment of conversion therapies, the offering and the realization of any psychotherapeutic and medical practice that has the purpose of changing the sexual orientation and gender identity of individuals. This shall include the administrative and criminal sanction of health professionals who conduct and promote them.

- **Prevention and punishment of violence against LGBTI persons**

CCPR/C/PER/CO/5	The Committee indicates “8. (...) ensure the investigation, prosecution and punishment of any act of violence motivated by the victim’s sexual orientation or gender identity.”
CCPR/C/PER/QPR/6	The Committee indicates. “6. (...) Please provide information on the measures taken to ensure that acts of discrimination are investigated, the perpetrators are prosecuted and punished, and the victims obtain redress. Please provide information on the measures adopted to prevent violence against lesbian, gay, bisexual, transgender and intersex persons. Please also describe any existing specialized protocols for the assistance of lesbian, gay, bisexual, transgender and intersex victims”.

114. 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.

115. 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 as ineffective in investigating these facts, or that it is also imbued with negative stereotypes and prejudices”<sup>254</sup>. 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 protective measures and impunity. Added to this is the unnecessary delay and deferment of judicial proceedings. In the survey conducted by Promsex (2020), out of the three people interviewed who suffered violence, only one person chose to file a complaint<sup>255</sup>. However, this person had no intention to continue the process as they felt it would not prosper. While it is true that in this survey people did know the channels to file a complaint, this is not necessarily a

<sup>254</sup> 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.

<sup>255</sup> PROMSEX. ‘Informe Anual sobre la situación de los derechos humanos de las personas LGBTI 2020’ [Annual report on the Human Rights Situation of LGBTI persons 2020], May 2021 p. 46.



- rule. Furthermore, people who want to file a complaint face obstacles such as those mentioned, plus the context of the health emergency due to COVID-19<sup>256</sup>.
116. According to the Information System in Support of Prosecutorial Work (SIATF) and the Prosecutor Management System (SGF) of the Office of the Attorney General (2020), out of the 254 complaints filed for discrimination under the New Criminal Procedure Code, 34% of them were dismissed, 28% are in preliminary investigation, 7% are pending qualification for admission or not, and none is close to getting to an oral trial<sup>257</sup>; while of the 131 complaints of discrimination under the Code of Criminal Procedures, 38% of them were dismissed, 25% are close to being resolved in the courthouse, and none has a sentence<sup>258</sup>.
117. Hereunder are two representative processes that show the persistence of impunity of cases related with the LGBTI persons and the decisions issued by judicial bodies that do not guarantee victims the access to justice, as in the cases of Azul and Jefri:

***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 25 February 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. In view of the inoperability of the justice system and the unnecessary delays, the case was brought before the Inter-American Commission on Human Rights (IACHR)<sup>259</sup>. On 1 March 2020, **the Inter-American Court issued its judgment declaring the Peruvian State responsible for the violation of the rights to personal integrity, privacy and not to be subjected to torture**, contained in Articles 7.1, 7.2, 7.3, 7.4, 5, 1, 5.2, 11, 8.1, 25.1, 1.1 and 2 of the Inter-American Convention on Human Rights, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Azul. Likewise, **the Court also “verified that, at the time of the facts and even today, strong prejudices against the LGBTI population exist among Peruvian society and, in certain cases, this is revealed by acts of violence”<sup>260</sup>**. While this is an emblematic and transcendental case in the defense of the rights of LGBTI people, Azul had to wait 12 years to get justice.*

***Yefri Peña Tuánama**, a 32-year-old transsexual woman. 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 escaping from her aggressors, 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 March 2015, PROMSEX, along with other organizations, presented a complaint for the crime of torture. On 7 September 2018 (three years after the initiation of the procedure) the prosecutor in charge decided to not denounce the act of torture and to close the complaint<sup>261</sup>. Because of this, in December 2020, the case was submitted by Promsex to the Human Rights Committee.*

<sup>256</sup> Ibid. p. 48.

<sup>257</sup> Ibid., p. 51.

<sup>258</sup> Ibid., p. 52.

<sup>259</sup> 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].

<sup>260</sup> Inter-American Court of Human Rights. Case of Azul Rojas Marín vs. Peru, *Judgement on 1 March 2020, para. 51* MIMP. '*Pautas igualitarias para promover los derechos de las personas LGBTI en el contexto de COVID-19*' [Equality guidelines to promote the rights of LGBTI people in the context of COVID-19], 17 May 2020.

<sup>261</sup> 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], 24 September 2019.



118. On 17 June 2020, Resolution No. 002-2020-CE-PJ and Resolution No. 011-2020 were published by the Executive Council of the Judiciary which decided to approve its accession to the updated version of the Brasilia Regulations Regarding Access to Justice for Vulnerable People, providing for its application by all judges in Peru<sup>262</sup>, however, the Executive Council of the Judiciary acceded establishing the exception of regulation No. 4, explicitly excluding the *LGBTI* population<sup>263</sup>. The president of the Permanent Commission for the Access to Justice of Persons in Vulnerable Conditions, judge Janet Tello, requested a reconsideration by ensuring that the exception ‘would (...) vulnerate the guiding principles of equality and non-discrimination, and the fundamental rights of access to justice for the *LGBTIQ* population’<sup>264</sup>, her request was declared founded and so the application of the Brasilia Regulations by all justice operators came into force.
119. Since the beginning of the **health emergency due to COVID-19**, the activities and proceedings arranged by the bodies that administer justice have been paralyzed, the procedural deadlines are not met, there is a delay in the processing of dossiers, and thus a delay in the channels to file complaints, and also a lack of free legal assistance, all of which creates a situation of defenselessness for *LGBTI* people whose rights have been violated.
120. **Recommendations suggested to the Peruvian State:**
- a) **Implement** specialized protocols for the attention, investigation and judgment of cases of violence and discrimination against *LGBTI* persons, especially in cases regarding children and adolescents.
  - b) **Adopt** a protocol to investigate and administer justice in criminal proceedings for cases of *LGBTI* persons victims of violence, in accordance with paragraphs 241 and 244 of the judgement of the Inter-American Court in the case of *Azul vs. Peru*.
  - c) **Create and implement** a training and awareness-raising plan, in accordance with paragraphs 248 and 249 of the judgement of the Inter-American Court in the case of *Azul vs. Peru*.
  - d) **Application by justice operators** of the Brasilia Regulations Regarding Access to Justice for Vulnerable People.
- In times of COVID-19:**
- e) **Guarantee** legal assistance and public defense of victims of violence and discrimination nationwide, and make sure they count with ongoing training on the rights of *LGBTI* persons.
  - f) **Publicize** platforms or channels that *LGBTI* victims of violence and discrimination can use to file complaints.

### **The situation of trafficking in persons for sexual exploitation and its impact, particularly on girls and adolescents (arts. 7, 8, 14 and 24)**

<sup>262</sup> Official newspaper ‘Diario Oficial El Peruano’. Through [Administrative Resolution No. 000198-2020-CE-PJ](#) the accession to the Brasilia Regulations Regarding Access to Justice for Vulnerable People, providing for its application by all judges in the Republic of Peru was approved, dated 30 July 2020.

<sup>263</sup> Administrative Resolution No. 002-2020-CE-PJ dated 8 January 2020, including as an exception the application to *LGBTI* persons.

<sup>264</sup> Official newspaper ‘Diario Oficial El Peruano’. Through [Administrative Resolution No. 000198-2020-CE-PJ](#) the accession to the Brasilia Regulations Regarding Access to Justice for Vulnerable People, providing for its application by all judges in Peru was approved, dated 30 July 2020.



CCPR/C/PER/CO/5	"20. While taking note of the measures taken by the State party to combat trafficking in persons (...), the Committee is concerned about the persistence of such practices in the State party (art. 8)".
CCPR/C/PER/QPR/6	The Committee indicates "18. Please provide information on the measures adopted to prevent and put an end to trafficking in persons (...), including the prohibition of such acts in the legislation of the State party and the penalties imposed for contraventions of that prohibition, in accordance with article 8 of the Covenant, as well as the investigation, prosecution and punishment of those responsible for such acts. Please include statistics on reported cases of trafficking in persons, the investigations and trials conducted, the criminal convictions handed down, the reparations awarded and any prevention and public awareness campaigns that have been launched".

121. Trafficking in persons in Peru is a complex phenomenon that is associated to violence and structural inequalities, including gender inequalities. Current metrics do not necessarily represent the reality of the phenomenon, this is because of extensive underregistration and lack of official statistical records of cases of trafficking in persons<sup>265</sup>; some non-governmental organizations join efforts to enter areas where the problem is not being addressed in depth.
122. According to the report from INEI (2020), between 2014 and March 2020, 3,283 complaints of trafficking were recorded<sup>266</sup>. Between January and March 2020, the PNP reported 88 complaints of trafficking in persons nationwide, while in 2019, the number of complaints reached 509<sup>267</sup>.
123. INEI identified that, in the first quarter of 2020, trafficking for the purpose of sexual exploitation reached 49 complaints and 26 for labor exploitation<sup>268</sup>, both numbers represent 56% and 30% of the total cases registered in that period<sup>269</sup>. With regard to the profile of the victim of trafficking, there is a prevalence of women over men; between January and December 2019, 442 (87%) are women and, in the first quarter of 2020, 81 (92%) are women<sup>270</sup>.
124. Moreover, the System of Registry and Statistics on Human Trafficking and Related Crimes (RETA) provides figures for the period of January 2010 to August 2018, identifying 2,756 complaints of trafficking in persons through the RETA system, of which 34.2% were registered to be for the purpose of sexual exploitation, and 16.6% for labor exploitation<sup>271</sup>.

<sup>265</sup> This has been confirmed by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, which recommended to the "Peruvian" State the systematic collection of disaggregated data with the aim to improve the fight against trafficking in persons (...). Meanwhile, civil society has been conducting a systematization of information, collected from the request to access information, due to the meager production of statistics by state institutions. An example of this is the System of Registry and Statistics on Human Trafficking and Related Crimes (RETA), which contains indicators on complaints of persons linked to trafficking; however, the last report is from 2018.

<sup>266</sup> INEI (2020). PNP Database on Trafficking in Persons (2014-2020). INEI.

<sup>267</sup> Medina, C. et al. Study '*Balance sobre la situación actual de la trata, explotación sexual y violencia sexual en zonas de minería informal de Madre de Dios y Piura*' [Assessment on the current situation of trafficking in persons, sexual exploitation and sexual violence in informal mining areas of Madre de Dios and Piura], p. 19.

<sup>268</sup> INEI (2020). PNP Database on Trafficking in Persons (2014-2020). INEI.

<sup>269</sup> Medina, C. et al. Study '*Balance sobre la situación actual de la trata, explotación sexual y violencia sexual en zonas de minería informal de Madre de Dios y Piura*' [Assessment on the current situation of trafficking in persons, sexual exploitation and sexual violence in informal mining areas of Madre de Dios and Piura], p. 20.

<sup>270</sup> INEI (2020). PNP Database on Trafficking in Persons (2014-2020). INEI.

<sup>271</sup> Ministry of Internal Affairs – *System of Registry and Statistics on Human Trafficking and Related Crimes of the PNP-RETA*, National Institute of Statistics and Computer Science, p. 15.



125. The Office of the Attorney General reported 1,355 complaints in 2018, and 795 complaints from January and July 2019<sup>272</sup>. As to the impunity rate, 65 convictions against the offenders were pronounced by the Judiciary in 2019, representing 4.8% of the convictions in 2018<sup>273</sup>.
126. According to MINJUSDH, between January and October 2019, 1,114 victims of trafficking received legal assistance, an increase of 28% in comparison with 871 victims defended in 2018<sup>274</sup>. Despite the efforts, this number is still insufficient.
127. The lack of reporting of trafficking in persons for purposes of sexual exploitation and the underregistration of this data in the justice system is a constant<sup>275</sup>. In addition to this, there are challenges in the access to justice, according to the Office of the Ombudsperson (2020)<sup>276</sup> these barriers include: The lack of characterization of labor exploitation and sexual exploitation as the purpose of trafficking in persons and distinction from other criminal types; the inadequate application of the *prohibición de regreso*<sup>277</sup> even when the neutral conduct matches the criminal plan of the perpetrator; the argument of a type error to exempt the author from liability when the victims are children and adolescents; the challenges of the withdrawal of incriminatory statements; lack of a rights and gender approach in judicial rulings; and lack of motivation in judicial rulings.
128. On the other hand, there is a clear re-victimization and lack of protection in Residential Care Centers (CAR) for victims of trafficking, according to civil society organizations. Victims are admitted into CAR centers without consulting them, and the infrastructure and security are precarious<sup>278</sup>. Another recurring theme is the lack of information from the State on the percentage of rescued victims who have been incorporated into the substitute family program or who have been reintegrated into their family unit, on whether the shelters have mechanisms or agreements for the maintenance and operation of their services, and on the care of all victims from the moment they are rescued to their entry into shelters, except in the case of minors<sup>279</sup>. This is why the supervision and control of the conditions of persons held in the CARs is necessary.
129. **With the declaration of the health emergency due to COVID-19** and movement and transit restrictions nationwide, victims of trafficking are exposed to a greater exploitation and are forced to participate in more risky activities, reducing the

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<sup>272</sup> Of the total number of complaints, 89.2% are women, of which 56.3% were between the ages of 18 and 29, and 32.5% were minors. In relation to male victims (79), the highest percentage is under the age of 18 (41.8 %) (INEI, 2019b).

<sup>273</sup> Ibid.

<sup>274</sup> CHS Alternativo. '*VII Informe Alternativo: Balance de la sociedad civil sobre la situación de la trata de personas en el Perú 2018-2019*' [7th Alternative report: Assessment of the civil society on the situation of trafficking in persons in Peru 2018-2019], August 2020, p. 102.

<sup>275</sup> In 2017, 38 people received condemnatory sentences for this crime. INEI 2011-2018 p. 29.

<sup>276</sup> Office of the Ombudsperson. '*Abordaje Judicial de la Trata de Personas*' [Legal approach of trafficking in persons], Report No. 001-2020-DP/ADHPD, March 2020

<sup>277</sup> Translator's Note: Theory that implies that a person cannot be held responsible for the commission of an offense that they caused or favored through a conduct conceived as part of their social role, despite the other subject using that conduct for their benefit giving it a criminal sense.

<sup>278</sup> Universal Periodic Review (UPR), '*Desafíos en materia de igualdad y no discriminación para mujeres y personas LGBTI en Perú*' [Challenges in the matter of equality and non-discrimination of women and LGBTI people in Peru], PROMSEX, 2016.

<sup>279</sup> CHS Alternativo. '*VI Informe Alternativo: Balance de la sociedad civil sobre la situación de la trata de personas en el Perú 2017-2018*' [6th Alternative report: Assessment of the civil society on the situation of trafficking in persons in Peru 2017-2018], November 2018, p. 135.



- chances of securing access to reporting mechanisms to prevent vulnerable persons from being subjected to sexual and labor exploitation.
130. Likewise, the context of economic crisis and unemployment as a result of the COVID-19 pandemic facilitates the recruitment of victims through false job offers. According to a journalistic report, sexual exploiters use social networks with alleged job offers in order to lure their victims; among 38,237 publications analyzed, there were advertisements with risk of computer fraud, pyramid sales, trafficking in persons, prostitution or 'delivery' or recruitment to be an escort, which implies a latent risk of sexual, labor and other forms of exploitation. Between January and September 2020, 214 complaints of trafficking were recorded, 142 of them are women, almost all of them were looking for work when they became victims<sup>280</sup>.
131. Furthermore, the actions of the PNP were directed to the control of citizenship at the national level and only since the second half of July 2020, when entering phase two, the Specialized Police against Trafficking in Persons began its activities. According to the Office of the Attorney General, between 16 March and July 2020, the ten Prosecutors' Offices Specialized in Trafficking in Persons prosecuted only five cases for this crime, and 110 persons were arrested for trafficking; this figure represents only 15% of the cases that the Office of the Attorney General processes every year<sup>281</sup>.
132. According to the Ministry of Internal Affairs, between January and June 2020, 30 operations were carried out and 437 victims of trafficking were rescued<sup>282</sup>, out of that total, 68 are Peruvian minors and 8 foreign minors<sup>283</sup>; while in 2019, 161 operations were conducted and 1,054 victims were rescued, 25% of the total of victims were children and adolescents.<sup>284</sup>
133. Despite the efforts of the State, as with the adoption of the '*Operational Guide for the Investigation of the Crime of Trafficking in Persons*' approved on 19 June 2020<sup>285</sup>, which stipulates a set of actions for the prevention, prosecution and punishment of the crime of trafficking, as well as with the enactment in April 2021 of Law No. 31146 '*Law against trafficking in persons and illicit smuggling of migrants*', with the purpose to systematize the articles related to the crimes of exploitation and trafficking in persons, and to consider them as crimes against human dignity<sup>286</sup>. The care and protection of the victim is still a challenge.
134. Lastly, the budget allocation to fight trafficking is small, according to a civil society report, the budget allocated for 2018 was S/.10,213,557.50 and for 2019 it was S/.7,758.410.81, making it 0.0046% of the annual budget, that is S/3 million less than

<sup>280</sup> Ojo Público. '*Explotadores sexuales acechan en redes sociales a jóvenes que buscan empleo en pandemia*' [Sexual exploiters lurk in social networks looking for young people who seek employment during the pandemic], 9 December 2020.

<sup>281</sup> El Comercio, '*Trata de personas: tras la pandemia por coronavirus se estima que los casos irán en aumento*' [Trafficking in persons: It is estimated that the cases will increase after the coronavirus pandemic], 3 August 2020.

<sup>282</sup> Ibid.

<sup>283</sup> Revista Diálogo, '*Policía Nacional del Perú rescata a más de 500 víctimas de trata de personas*' [National Police of Peru rescues more than 500 victims of trafficking in persons], 17 September 2020.

<sup>284</sup> Ibid.

<sup>285</sup> Ministerial Resolution No. 524-2020-IN adopted the '*Guía Operativa para la Investigación del Delito de Trata de Personas*' [Operational Guide for the Investigation of the Crime of Trafficking in Persons], on 19 June 2020.

<sup>286</sup> Official newspaper 'Diario Oficial El Peruano', Law No. 31146 '*Ley contra la trata de personas y el tráfico ilícito de migrantes, con la finalidad de sistematizar los artículos referidos a los delitos de trata de personas y de explotación, y considerar estos como delitos contra la dignidad humana*' [Law against trafficking in persons and illicit smuggling of migrants, with the purpose to systematize the articles related to the crimes of exploitation and trafficking in persons, and to consider them as crimes against human dignity], on 2 April 2021.



the budget for 2018<sup>287</sup>. Moreover, so far there is no Health Care Protocol that would ensure the assistance to victims, families and witnesses, mainly in the area of sexual and reproductive health.

135. **Recommendations suggested to the Peruvian State:**

- a) **Increase** the number of police stations, courts and prosecutors' offices specialized in trafficking in persons.
- b) **Develop** protocols for the prevention and administrative punishment of violence inside CARs, and guarantee that entry into these centers is not against their will and with an indefinite duration.
- c) **Design** a unique disaggregated registry on the number of victims of trafficking.
- d) **Elaborate** early warning measures for the search and identification of cases of women, particularly girls and adolescents, who have disappeared.
- e) **Increase** the number of public defenders in a decentralized manner and ensure that they have ongoing training.
- f) **Increase** the budget allocation to fight trafficking in persons.

**In times of COVID-19:**

- g) **Publicize** platforms or channels that victims of trafficking in persons can use to file complaints.
- h) **Supervise** residential care centers and make sure that the personnel and services provided are adequate to accommodate victims of trafficking in persons.

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<sup>287</sup> CHS Alternativo. '*VII Informe Alternativo: Balance de la sociedad civil sobre la situación de la trata de personas en el Perú 2018-2019*' [7th Alternative report: Assessment of the civil society on the situation of trafficking in persons in Peru 2018-2019], August 2020.