**Lima, April 10, 2017**

Human Rights Committee

Dear Sir/Madam,

In the framework of the drafting of the “List of Issues” as a part of the periodic assessment process of the Peruvian State, the Center for the Promotion and Defense of Sexual and Reproductive Rights - PROMSEX submits relevant information on human rights in Peru in subjects of interest related to the situation of the sexual and reproductive rights of LGBTI persons, girls, adolescents and women; all of this within the framework of equality and non-discrimination.

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

In this document we will present important information regarding the situation of sexual and reproductive rights, and the guarantee of the principle/right to equality and non-discrimination in the Peruvian State. In this regard, we will address the aforementioned through the assessment of the State's obligations set out in the respective articles of the International Covenant on Civil and Political Rights.

**1. Principle of Equality and Non-Discrimination, and Violence against LGBTI Persons in the Country (Articles 2 (Paragraphs 1, 2 and 3), 6, 7, 24, 25 and 26)**

**1.1 Institutional Violence against LGBTI Persons and Lack of Special Prevention, Investigation and Sanction Mechanisms**

LGBTI persons suffer aggressions that may entail torture and other cruel, inhuman or degrading treatments or punishments[[1]](#footnote-1) driven by the desire to punish those who are considered as defying gender regulations[[2]](#footnote-2). In this regard, the Special Rapporteur on the subject indicated that “indifference and inaction by the State provides a form of encouragement and/or *de facto* permission”[[3]](#footnote-3).

In the period of 2015 - 2016[[4]](#footnote-4), there were eight (8) cases of discrimination perpetrated by police officers and municipal security agents in public spaces (parks, squares, etc.) in order to expel non-heterosexual couples and repress their manifestations of affection by stating that “they are inappropriate for children”[[5]](#footnote-5), that “it is not normal to kiss another man”[[6]](#footnote-6) or that they are considered “obscene acts”[[7]](#footnote-7).

Regarding the impact to their personal security that did not result in death, it was reported that trans women linked to sexual work were the main victims of state agents (24 cases). These acts have become systematic practices performed by municipal security agents[[8]](#footnote-8), who detain them arbitrarily, hit them and take them to isolated places to strip them of their belongings and sexually assault them (forced nudity, rape, etc.).

However, there is no specific national policy to prevent, register, investigate and sanction discrimination and violence against LGBTI persons perpetrated by municipal security agents and police officers, which may constitute acts of torture. The Criminal Code does not establish specific sanctions in this regard and its amendments do not consider the aforementioned patterns. Although the Executive branch amended the Criminal Code to sanction hate crimes through aggravating factors (Art. 46.d) and to include sexual orientation and gender identity as prohibited grounds of discrimination (Art. 323), at the legislative level, such amendments pretend to be overruled.

Through Law No. 30506 (Authoritative Law), the Congress of the Republic granted powers to the Executive branch to legislate on Public Safety matters. This Authoritative Law, in Article 2, Paragraph 2, Item a, determined that the Executive branch may legislate on public safety matters in order to “*(...)* ***modify the criminal law, criminal procedural law and sentence enforcement law*** *(…)* ***to fight*** *family violence* ***and gender-based violence (…)****".*

Thus, in compliance with such powers, a series of legislative decrees were adopted. Among them, Legislative Decree No. 1323[[9]](#footnote-9), which strengthens the fight against feminicide, family violence and gender-based violence, published in Diario Oficial El Peruano on January 6, 2017, whereby the Executive branch incorporated amendments to Articles 46 (Mitigating and Aggravating Circumstances) and 323 (Crime of Discrimination) in order to sanction with increased sentences gender-based violence motivated by discrimination due to sexual orientation and/or gender identity and it made explicit, for the first time, that it would also sanction discrimination based on these categories.

However, in the framework of the constitutional control, which is a function of the legislative branch, the Legislative Decree was examined by the Commission on Constitution and Regulations of the Congress of the Republic, where the working group in charge of the constitutional control made two reports: Minority Report[[10]](#footnote-10) that rejected, solely, the inclusion of the categories of sexual orientation and gender identity in the typification of the crime of discrimination and the aggravating circumstances of sentences; and the Majority Report[[11]](#footnote-11), which confirmed the constitutionality of the decree.

However, on April 04, 2017, the Commission on Constitution and Regulations voted to recommend to the Plenary Assembly of Congress to overrule the aforementioned amendments in favor of LGBTI persons in the country[[12]](#footnote-12), considering that violence against them could not be regarded as gender-based violence, and that the prohibition of discrimination against LGBTI persons is a “controversial” matter that must be proposed and discussed in the Congress and not by the Executive branch; introducing the idea that, because of their religion or personal beliefs, some members of the Congress shall have the possibility to express their opposition on this matter, ignoring that it is the obligation of the State to comply with its international obligations that demand that it sanctions violence and discrimination against LGBTI persons.

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

a. How will it punish those who, in the exercise of their public functions, discriminate or use violence against LGBTI persons?

b. How will it ensure the criminal punishment of prejudice-based violence (hate crimes) and discrimination based on sexual orientation, gender identity and gender expression?

c. How will it ensure that LGBTI persons are not arbitrarily detained, without providing information on their location and condition, as well as not criminalizing them by the implementation of general and abstract regulations that protect “morals” or “good practices”, whose implementation are subject to the discretion of justice operators?

d. How will it ensure that the National Police Force, the Office of the Attorney General, the Judiciary and the Office of the Ombudsperson keep a detailed record of violence and discrimination acts against LGBTI persons?

e. What measures have been taken to train and educate law enforcement officers on the prohibition of torture and ill-treatment against LGBTI persons?

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

There are no specialized protocols in the Justice System for the assistance 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.

In this respect, the performance of justice operators may be discriminatory and affect the due diligence during investigations and the judicial proceeding. Thereby, violence against LGBTI persons could be classified *per se* as a “crime of passion” under stereotypes relating to the motive, the victims and perpetrators of prejudice-based violence, and, as a result, it does not allow to carry out the corresponding investigations to determine if it could have been a hate crime, affecting the due diligence and access to justice.

In May 2016, Promsex assumed the defense of an adolescent who suffered physical psychological violence since childhood. When her mother, who is a member of an Evangelical church, and her stepfather found out she was lesbian, the aggressions increased, they stopped paying for her studies and harassed her so she would go to the Evangelical church to “save her soul” and stop being a lesbian. However, the first time she went to file a report, the police officers told her she first had to have a psychological exam and suggested her not to file the report because they were her parents, in spite of the fact that they have an obligation to receive any accusation, and not to discourage the victims, nor revictimize them. When she finally filed the report, they only provided her with protective measures that prohibit her parents to approach her. Until now, in spite of being a case of family violence with expedite proceedings, her aggressors have not been sanctioned and she has not had access to repair measures, which makes evident the non-compliance of the reasonable proceeding deadline.

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

a. How will it ensure the assistance, specialized investigation, and unprejudiced and non-discriminatory judgment in cases of violence and discrimination against LGBTI persons, especially children and adolescents, in the Judiciary and the Office of the Attorney General?

b. How will it ensure that LGBTI persons are not discriminated in the justice system and that trans persons, especially, are treated according to their own self-identification, even if they have not been able to modify their name or gender in their identity documentation?

e. What measures have been implemented to train and educate justice system workers on the prohibition of discrimination based on sexual orientation and gender identity?

**1.3 The Need to Sanction Hate Speeches and to Establish Limitations on Freedom of Expression (Articles 2, 19 and 20)**

In the country, there is a context of stereotyped prejudices against LGBTI persons, which is a premise for discrimination and violence against them. Recently, the 51st Prosecutors’ Office of Lima With Jurisdiction Over Criminal Offenses ordered the investigation of pastor Rodolfo Gonzales Cruz, leader of the [World Missionary Movement](http://larepublica.pe/impresa/domingo/778338-duenosdel-odio), for instigating a homicide. *"If you find two women having sex, kill them both (…) in the name of Jesus",* he stated[[13]](#footnote-13) as part of a speech to encourage parents to participate in a march against the inexistent 'gender ideology'[[14]](#footnote-14). However, it is not the first time that this happens. Political, religious (Evangelic or Catholic pastors or pries) and opinion leaders, who oppose any progress in the acknowledgment and protection of the rights of LGBTI persons, have issued discriminatory arguments that, in some cases, also induce to violence and discrimination, without receiving any sanction whatsoever.

In 2016, at an event with the former presidential candidate Keiko Fujimori, the Evangelic pastor Santana Leiva stated: “*The Holy Scriptures acknowledge homosexuality as a sexual vice (…) if a homosexual person is going to have rights, it is going to legalize (…) sodomy”*[[15]](#footnote-15). However, in spite of being reported, the 6th Appellate Prosecutors’ Office of Lima With Jurisdiction Over Criminal Offenses dismissed the accusation arguing that *“(…) his expressions cannot be considered as an alleged “promotion of discrimination”, but his exercise of freedom of religion and expression”.*

In this context, it is a matter of concern that even if the Criminal Code previously classified the encouragement of discrimination (Art. 323) as a crime, after its recent amendment, the foregoing has been eliminated; therefore, such speeches would remain unpunished even if the limitations to freedom of expression have been notoriously exceeded.

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

a. How will it ensure the criminal punishment of hate speeches that promote violence and discrimination against LGBTI persons, establishing aggravated punishments in the case of political leaders or State public servants?

b. How will it ensure the self-regulation of content in the media to prevent the dissemination of speeches that promote violence and discrimination against LGBTI persons?

c. What measures have been implemented to raise the awareness of political and opinion leaders, as well as public servants, in order to prevent them from using hate speeches against LGBTI persons?

**1.4** **Violence and Discrimination against LGBT Children and Adolescents in Public and Private Schools**

According to a 2016 School Climate Survey[[16]](#footnote-16) conducted in the country, 7 out of 10 LGBT students between the ages of 14 and 17 felt insecure in their schools due to their sexual orientation, and 29.3% because of their gender identity. Furthermore, 58.8% reported having heard, by students and teachers, degrading comments such as ‘marica’ (fag), ‘rosquete’ (queer), ‘leca’ (dyke) or ‘machona’ (butch), and 40.6% heard comments like ‘traca’ (queen) or ‘travesti’ (transvestite). Additionally, 8 out of 10 (82.8%) said they had been victims of verbal harassment; 4 out of 10 (42%) victims of physical harassment, and half of them (53.2%) victims of sexual harassment.

Therefore, although the new National Basic Education Curriculum[[17]](#footnote-17) indicates that the aim is for the students to “*relate with other people under a framework of rights, with no discrimination on the grounds of gender or sexual orientation and without violence”,* it is a matter of concern that members of the Congress of the Republic introduced bills to eliminate this objective and, mainly, to overrule the curriculum because it includes a gender equality approach[[18]](#footnote-18) and general guidelines on equality and non-discrimination.

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

a. How will it ensure the prevention, assistance, investigation and possible reporting of cases of violence and discrimination against LGBTI children and adolescents in schools at the national level?

b. What measures have been implemented to train and educate school administrative personnel and faculty so that they can properly address situations of school violence against LGBTI children and adolescents in their care?

**1.5 Institutionalized Discrimination: Discriminatory Disciplinary Sanctions in the Peruvian National Police Force**

On December 2016, Legislative Decree No. 1150 was repealed. This decree regulated the Disciplinary Code of the Peruvian National Police Force (PNP), which established offense MG-55 that stipulated that “having sex with people of the same gender, making a scandal or undermining the institutional image” was sanctioned with forced retirement[[19]](#footnote-19). The validity of this Decree during four (04) years implemented this disciplinary sanction, despite being discriminatory. According to the Peruvian National Police Force itself, **from 2013 to 2015 six (06) people were removed from their jobs on the basis of that offense[[20]](#footnote-20).**

However, in the Congress of the Republic, Legislative Decree 1268, which repealed the Legislative Decree No. 1150, is going to be repealed. Thereby, the Disciplinary Code of the PNP, would continue to be governed by the latter even if, in a discriminatory manner, contains the aforementioned offense MG-55.

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

a. What measures are going to be implemented to not repeal the amendments to Legislative Decree No. 1150 in order to not preserve offense MG-55 that is sanctioned with the retirement from police duties?

**2. Questioning of the Legislative Branch Concerning the Inclusion of the Gender Equality Approach to the National Basic Education Curriculum as a Guarantee of the Right to Education without Discrimination (Articles 2 and 3)**

The Ministry of Education (MINEDU), through Ministerial Resolution 281-2016-MINEDU published on June 02, 2016[[21]](#footnote-21), approved the new National Basic Education Curriculum, which consists of 7 cross-cutting approaches including the rights approach, the inclusive approach or approach of attention to diversity, the inter-cultural approach, the gender equality approach, among others.

However, the inclusion of the gender equality approach has been questioned by collectives mobilized by the main Christian churches in the country, and supported by members of the Congress of the Republic who are active in these churches or who legitimize what has been pointed out by them. These individuals and public authorities believe that the Curriculum includes what they call “gender ideology”, since it refers to terms such as “gender identity” or “sexual orientation”, which in their view promotes sexual relations at an early age and homosexuality in schools[[22]](#footnote-22). Unfortunately, this led the MINEDU to make changes to the curriculum and, although the gender equality approach was not eliminated, the term *gender identity* was removed[[23]](#footnote-23).

However, the situation is still troubling because this has been joined by the attacks by members of the Congress, who make use of their political power and their legislative function, advancing their prejudices and personal interests, to impose, through the adoption of laws, the elimination of the current Curriculum and prohibiting the inclusion of the gender equality approach, in addition to any reference to non-discrimination on the grounds of sexual orientation or gender identity in the elaboration of the next school curricula.

Thus far, 03 (three) legislative initiatives have been introduced in this regard: Bill No. 1043-2016/CR that proposes the elimination of the terms gender identity and sexual orientation from the National Curriculum[[24]](#footnote-24), Bill No. 1008/2016/CR that proposes to overrule the National Curriculum on the grounds that *“(…) in a State governed by the rule of law (…) minorities cannot expect their minority sexual option to be taken as a model to be extensively disseminated and taught in schools (…)”*, and Bill No. 1073-/2016-CR that proposes to “*exclude from every Basic Education Curriculum any mention or reference to the cross-cutting approach of equality or gender identity*”[[25]](#footnote-25).

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

a. How will it ensure the implementation of the National Curriculum approved by Ministerial Resolution No. 281-2016-MINEDU?

b. How will it ensure the inclusion of guidelines on equality and non-discrimination, in particular regarding sexual orientation and gender identity, in the elaboration of every National Basic Education Curriculum?

c. How will it ensure that the Congress would not make any legislative amendments that could constitute a step backwards in the protection of human rights, especially, of certain people, such as women and LGBTI persons?

**3. The Guarantee of Sexual and Reproductive Rights of Girls and Adolescents, Mainly, those Victims of Sexual Violence (Articles 2, 3, 6, 7, 24, 25 and 26)**

**3.1 Sexual Violence, Forced Pregnancy and Maternal Death/Mortality in Girls and Adolescents**

In South America, Peru has the highest rate of complaints of sexual violence[[26]](#footnote-26). During 2014[[27]](#footnote-27) and 2015[[28]](#footnote-28), 66% (7443) of the complaints concerned victims between the ages of 10 and 17. Added to this is the high number of forced pregnancies as a result of rape in girls between the ages of 11 and 14. According to the Comprehensive Health Insurance (SIS), it was reported that between 2011 and 2015 there was an **average of 2 thousand childbirths per year performed in girls** in that age range[[29]](#footnote-29), who were not able to access abortion services because it was criminalized in cases of rape.

Maternal mortality in girls and adolescents is one of the health indicators that evidence, to a greater extent, the inequality and the exclusion. In 2012, their deaths represented 17.6% of total maternal deaths at the national level; in 2013, it dropped to 9.3%; in 2014, it was 13.3%; and in 2015, it was 12.1%[[30]](#footnote-30). **In the period of 2014-2015, 68 girls and adolescents died, mainly from bleeding (19), hypertensive disease of pregnancy (9), and infections (14)[[31]](#footnote-31), notwithstanding that this could have been avoided with access to** therapeutic abortion.

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

1. How will it ensure the prevention of pregnancy in girls and adolescents as a result of rape?
2. How will it ensure the access to prophylactic care for girls and adolescents victims of rape?
3. How will it ensure the access to emergency oral contraception for girls and adolescents, and victims of rape?
4. How will it ensure the prevention of maternal death and mortality in girls and adolescents?
5. How has it ensured (through public policies, regulations, and budgetary measures) the decrease of adolescent pregnancy?

**3.2 Access to Specialized Sexual and Reproductive Health Services for Girls and Adolescents**

Since 2009, the Emergency Oral Contraception (EOC) is not available to the public sector and, therefore, they have not provided information about it, especially addressed to girls and adolescents. Currently, the provision of EOC is temporary because of a precautionary measure ordered by the First Constitutional Court of Lima, in the framework of a process for the protection of fundamental rights (amparo) submitted by a Peruvian citizen. It should be noted that the State still does not comply with requesting technical information from the World Health Organization or the Pan American Health Organization on the effects of the EOC with the purpose of adapting its public policy, within the framework of the implementation of its National Plan on Human Rights 2014-2016[[32]](#footnote-32).

In addition to this, Bill 387-2016/CR, which proposes the decriminalization of abortion in cases of rape, is still pending discussion in the Congress, **despite the fact that in 2011 the CEDAW Committee established the international responsibility of the State in the case of *L.C. vs. Peru*, stipulating as a preventive measure the decriminalization of abortion in cases of rape.**

Likewise, even if the *Therapeutic Abortion Protocol* was adopted in 2014, one of the challenges of its effective implementation is for the interpretation of what is understood by the practice of abortion *“when it is the only means to save the life of the pregnant woman or to avoid severe and permanent health complications”* to stop being restrictive so that girls and adolescents victims of rape may access a legal abortion to prevent affecting their mental and even physical health[[33]](#footnote-33).

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

a. What measures have been implemented to effectively ensure that girls and adolescents receive information on sexual and reproductive health without the need to being accompanied by their parents, guardians or caretakers?

b. How will it ensure access to sexual and reproductive health information and services for adolescents, including access to modern contraceptive methods, especially the emergency oral contraception, for victims of rape?

c. How will it ensure access to therapeutic abortion for girls and adolescents victims of rape, taking into account the effect that pregnancy may cause in their physical, mental, and social health?

d. How will it ensure access to therapeutic abortion in private health services?

e. What control measures is the National Health Authority (SUSALUD) enforcing to ensure the implementation of the Therapeutic Abortion Protocol in private health centers?

f. How will it ensure, from the executive branch, the decriminalization of abortion when pregnancy is the result of rape?

g. How will it ensure that the legislative branch approves the decriminalization of abortion when pregnancy is the result of rape?

h. What measures will be implemented to comply with what is set forth in the National Plan on Human Rights 2014-2016, regarding the commitment of the State to request to the World Health Organization (WHO), the Pan American Health Organization (PAHO) or a specialized organization of international prestige to inform in regard to the alleged abortive effect of the Emergency Oral Contraception and, on this basis, adapt its public policy?

**3.3 Criminalization of Abortion in Girls and Adolescents**

The treatment should not depend on the cooperation of the woman in the criminal prosecution, and in no case could it be used as evidence against her or against those who have performed the abortion[[34]](#footnote-34). However, Article 326 of the Criminal Code of Procedures[[35]](#footnote-35) forces health practitioners to report women for the crime of abortion, in addition to stipulating the failure to report it[[36]](#footnote-36) as a separate crime.

This has caused, **during the period of 2014 - 2016, 269 complaints to be filed** in provincial, Family and Mixed Public Prosecutors’ Offices, **against adolescents for the alleged commission of the crime of abortion,** the same that, currently, are involved in criminal investigations, and many of them would have been intercepted by police officers or prosecutors in the same health centers where, taking advantage of their misinformation, they take their statements disregarding the minimal procedural safeguards, such as accessing a defense attorney.

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

a. What measures have been implemented to ensure that women who suffer miscarriages or clandestine abortions are treated in health centers without fear of being criminally investigated?

b. Why, thus far, the State has not amended its criminal legislation so that the constitutional obligations that protect professional secrecy prevail, and to prevent that health care professionals report women for the alleged crime of abortion?

c. How many women, girls and adolescents have been subjected to court proceedings for the crime of abortion and what have been the punishments imposed?

d. What measures have been implemented to ensure due diligence for girls and adolescents prosecuted for the crime of abortion, which ensure the impartiality of justice operators?

**4. Human Trafficking, Especially of Adult Women, Adolescents and Girls, for the Purpose of Sexual Exploitation (Articles 2, 8 and 24)**

**4.1 The Need to Assist Victims of Trafficking in the Area of Health**

Trafficking in persons is a crime provided for in the Peruvian Criminal Code. The main advances of the State have been on prevention and prosecution; however, there has been very little progress regarding care and protection of victims, since there is no budget nor a Health Protocol that would ensure the assistance to victims, families and witnesses[[37]](#footnote-37), mainly in the field of mental, sexual and reproductive health.

Most of the victims affected by the crime of human trafficking for the purpose of sexual exploitation are girls and adolescents, who bear consequences that are different than that of other victims. In 2014[[38]](#footnote-38), 41% were girls and adolescents under the age of 18 years, of which 34.9% was subjected to sexual exploitation, including providing services in brothels and serving as female escorts in pubs. In 2015, 526 cases were reported, this amount exceeds the number of cases reported in previous years.[[39]](#footnote-39)

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

a. How will it ensure that health care practices take into account the characteristics of human trafficking and sexual exploitation in the country (illegal mining), and the needs of girls and adolescents?

b. What (public policy and budgetary) measures have been implemented to ensure the mental, sexual and reproductive health care of victims of trafficking?

c. What are the specific measures that have been implemented to ensure the recovery of victims of human trafficking for the purpose of sexual exploitation?

**4.2 The Need of Prosecution with Gender Perspective to Avoid Impunity in the Case of Girls and Adolescents Victims of Human Trafficking for the Purpose of Sexual Exploitation**

In 2016, it was known that the Permanent Criminal Chamber of the Supreme Court of Justice issued the Appeal for Annulment No. 2349-2014[[40]](#footnote-40), which confirmed the acquittal of a woman accused in a case of human trafficking and whose victim was a 14-year-old girl that was captured to work as an “escort” in a bar in the mining area of Mazuko in Madre de Dios.

The Chamber considered that there was no labor exploitation since *“being an escort (…), is not a labor that would exhaust the strength of the worker*”; nor sexual exploitation because she was only told once to have sex with customers. Such ruling assured impunity and affected the right to equality by issuing a sentence based on stereotyped prejudices about what constitutes sexual violence, disregarding the standards in the matter.

In light of this, the judges were reported to the National Council of Magistrates (CNM) for engaging in manifestly discriminatory treatment in the exercise of their position and not prompting the court decision. Unfortunately, so far, the CNM does not define the responsibility of the judges.

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

A. How will it ensure that the CNM acts with due diligence in the disciplinary processes against judges and guarantee that they indeed comply with the proper motivation of their resolutions?

b. What measures have been taken for the implementation of training on the use of the gender equality approach and the eradication of gender stereotypes in the judicial function by the CNM?

**5. Discrimination in Civil Regulations on Non-Heterosexual Relationships and the Protection of their Families (Article 2 and 23)**

In the year 2016, a Constitutional Court, ruled positively, in the first instance, in the case of Óscar Ugarteche and his partner, who could not register their marriage held abroad in the Vital Statistics Office of Peru because the *National Registry of Identification and Vital Statistics (RENIEC) pointed out that the Peruvian Civil Code only allows the marriage between a man and a woman*; however, this ruling that guarantees the rights of this non-heterosexual couple has been appealed by RENIEC. Similarly, it is also known the case of Darling Delfín and Jenny Trujillo, a lesbian couple that asked, also to RENIEC, for the identity card (DNI) of their son to recognize the filial relationship of both as mothers without obtaining a favorable response. These are some of the cases that display the context of lack of legal protection, personal and patrimonial, of couple and family relationships of LGBT persons in the country.

In this regard, the Office of the Ombudsperson already stressed that families formed by non-heterosexual couples “*(…) do not have a regulatory framework for the exercise and safeguarding of their rights. If they decide to (…) acquire property and then one of them dies, the other person will be unprotected (…), the Civil Code establishes an order of priority in matters of inheritance that does not take them into account. (…) they also cannot have health insurance nor access to a pension and (…) face difficulties to visit their partners in hospitals or clinics, mainly due to the opposition of their parents or relatives*”[[41]](#footnote-41). Added to this is the lack of protection and denial of the filial relationships that they may build, affecting as well the rights of their children.

To reverse this situation, Bill 961-2016-CR, Equal Marriage Act, was introduced. It proposes the amendment of Article 234 of the Civil Code with regard to the regulation of marriage, defining it as the voluntarily established union of two persons legally able to do so and the recognition of same-sex marriages held abroad. However, even though the corresponding legislative discussion has not yet taken place, some members of the Congress have pointed out, mistakenly, that the adoption of the equal marriage act is not possible because there is not a social consensus on non-heterosexual marriage, ignoring that human rights cannot be subjected to the decision of the majority.

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

a. How will it ensure the protection of couple and family relationships of non-heterosexual couples?

b. What measures have been taken so that judges appropriately implement the treaties to which the Peruvian State is a party, in order to not compromise its international responsibility, in cases involving the rights of LGBTI persons?

6. **The Situation of Sexual and Reproductive Rights Defenders[[42]](#footnote-42)**

The devaluation and stereotyping of sexual and reproductive rights defenders legitimize the inappropriate use of the judicial system or the supervisory competence of the legislative branch to investigate and criminally punish those defenders and/or their organizations. In the year 2015, the director of Promsex was reported for advocating for abortion, in response to a book that she did not write and did not present, and which gave information on safe abortion. However, these attacks continued with a stigmatization campaign that arose in the context of the discussion on the decriminalization of abortion in cases of rape. The work of the Organization was questioned and Catholic media accused it of “promoting the dismemberment of innocent children”[[43]](#footnote-43), in reference to abortion, and of being “salaried employees that corrupt local authorities in order to enjoy these sizable funds”[[44]](#footnote-44), on the misunderstanding that the incidence work would be a way to corrupt authorities.

In addition to this, the organizations also face a series of unjustified restrictions and attacks because of their work. In August 2014, public servants from the Peruvian Agency for International Cooperation (APCI) initiated an ex officio oversight of the organization’s project “Access to sexual and reproductive health care from a rights-based approach in Peru: Reducing the stigma and strengthening the debate”, known as the campaign “Déjala Decidir” (Let her decide) promoted by Promsex. This oversight was encouraged by the Commission of Foreign Affairs of the Congress, which had requested the monitoring of organizations that receive funds from international cooperation, with special emphasis on those who work on reproductive rights[[45]](#footnote-45).

Finally, in a context of national debate regarding the implementation of the National Basic Education Curriculum, through Ministerial Resolution 281-2016-MINEDU, the opposition of certain groups linked to the most conservative sectors of the Catholic and Evangelical churches, grouped in the collective called “Con Mis Hijos no te Metas” (Don’t mess with my children), led 3 (three) women human rights defenders, who defended this public policy, to be threatened by members of this collective[[46]](#footnote-46).

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

a. What policies will be implemented to ensure the protection and defense of Human Rights defenders in the country?

b. How will it ensure the investigation and, if applicable, the punishment by means of the corresponding procedures, of State agents who support, promote or facilitate acts of stigmatization, as well as of those who make statements that stigmatize defenders?

7. **The Guarantee of Sexual and Reproductive Rights in the Context of Natural Disasters**

The country is experiencing an emergency situation in several departments that have been affected by the “Niño Costero” phenomenon, which has flooded several cities of Peru causing the unavailability of public (roads, schools, health centers, etc.) and private (homes, shopping centers, etc.) infrastructures, in addition to death, and physical and psychological harm to people, who have also lost their homes.

In this context, there is special concern regarding women and children who are in a situation of greater vulnerability, because during and after this type of disasters, there’s an increase in sexual violence, unplanned pregnancy, violence against women, human trafficking and diseases related to the Zika virus whose impact have been observed in pregnancies and newborns causing serious damage such as microcephaly and Guillain-Barré syndrome. However, given the emergency situation, people may not have access to quality services and prevention practices in the affected area.

In this respect, the State’s strategy for intervention shall ensure access with no discrimination to health services, especially in the matter of prevention and attendance to sexual violence, access to contraceptive methods, including the Emergency Oral Contraception, and access to medicines. Furthermore, it shall be considered that the context of crisis has as a consequence an additional burden for women and girls since they are made responsible for the provision of care, food and water to households (community meals, for example), and they may suffer from differentiated effects caused by the appearance of unsafe spaces (camps, temporary shelters, etc.) where they can be victims of sexual violence.

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

1. What preventive and protecting measures will be implemented, especially for children and adolescents, regarding sexual violence in temporary shelters for victims and other spaces?
2. How will it ensure the free provision of contraceptive methods, as well as guarantee the supply of health care kits for victims of sexual violence, including the emergency oral contraception and medicine for the prevention of HIV and STIs.
3. What measures are going to be implemented to provide specialized and understandable information on the prevention and the effects of the Zika virus in the sexual and reproductive health, as well as to ensure access to health services to detect and treat, as a priority, the cases reported in pregnant women?

Yours faithfully,



Susana Chávez Alvarado

Director of PROMSEX

1. Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A/56/156. UN. July 3, 2001, page 17. [↑](#footnote-ref-1)
2. Violencia contra Personas Lesbianas, Gays, Bisexuales, Trans e Intersex en América (Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas). OAS/Ser.L/V/II.rev.1. Inter-American Commission on Human Rights (IACHR). November 12, 2015, page 25. [↑](#footnote-ref-2)
3. Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A/ HRC/31/57. January 5, 2016, page 11. [↑](#footnote-ref-3)
4. Promsex and Red Peruana TLGB (2016) Informe Anual sobre Derechos Humanos de las personas TLGB en el Perú 2015 – 2016 (Annual Report on the Human Rights of LGBT Persons in Peru 2015 – 2016). Available at: <http://promsex.org/images/docs/Publicaciones/InformeTLGB2015al2016.pdf> [↑](#footnote-ref-4)
5. LaMula.pe. Municipio de Miraflores despidió a dos serenos que discriminaron a parejas del mismo sexo (The Municipality of Miraflores Fired Two Municipal Security Agents who Discriminated Couples of the Same Sex). Available at: https://redaccion.lamula.pe/2016/01/13/municipio-de-miraflores-despidio-a-dos-serenos-que-discriminaron-a-parejasdel-mismo-sexo/redaccionmulera/ [↑](#footnote-ref-5)
6. Record of the facts at: https://www.youtube.com/watch?v=ON92QlHTLc0 [↑](#footnote-ref-6)
7. Ibidem. [↑](#footnote-ref-7)
8. Security personnel hired by the Municipalities. [↑](#footnote-ref-8)
9. Available at: <http://busquedas.elperuano.com.pe/normaslegales/decreto-legislativo-que-fortalece-la-lucha-contra-el-feminic-decreto-legislativo-n-1323-1471010-2/> [↑](#footnote-ref-9)
10. Available at: <http://www.congreso.gob.pe/Docs/comisiones2016/ConstitucionReglamento/files/informe_en_minor%C3%ADa_dl_1323.pdf> [↑](#footnote-ref-10)
11. Available at: <http://www.congreso.gob.pe/Docs/comisiones2016/ConstitucionReglamento/files/1323.pdf> [↑](#footnote-ref-11)
12. The substitute text that recommends to overrule Article 1 of Legislative Decree 1323, in order to amend Item d of Paragraph 2 of Article 46 and Article 323 of the Criminal Code, was adopted with the votes of the political party Fuerza Popular. [↑](#footnote-ref-12)
13. Available at: <http://larepublica.pe/impresa/sociedad/853535-con-mentiras-y-mensajes-de-odio-se-preparo-marcha-de-hoy> [↑](#footnote-ref-13)
14. 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. [↑](#footnote-ref-14)
15. See speech at: <http://www.americatv.com.pe/noticias/actualidad/keiko-fujimori-polemicas-declaraciones-pastor-que-redacto-compromiso-n229877> y <http://larepublica.pe/politica/767752-pastor-evangelico-que-apoya-keiko-fujimori-dice-que-homosexualidad-se-puede-curar-video> [↑](#footnote-ref-15)
16. PROMSEX (2016) Estudio Nacional sobre Clima Escolar en el Perú: Experiencias De Adolescentes y Jóvenes Lesbianas, Gays, Bisexuales y Trans en el Ámbito Escolar (National School Climate Survey in Peru: Experiences of Lesbian, Gay, Bisexual and Transgender Adolescents and Youth in the School Climate). Available at: <http://promsex.org/images/docs/Publicaciones/IAEPeruWebGlesen.pdf> [↑](#footnote-ref-16)
17. Approved by Ministerial Resolution No. 281-2016. Document available at: <http://www.minedu.gob.pe/curriculo/> [↑](#footnote-ref-17)
18. Bill No. 1043-2016/CR was introduced by members of the Congress from the political party Fuerza Popular and it proposes the elimination of the terms gender identity and sexual orientation from the National Curriculum. It can be reviewed at: <http://www.leyes.congreso.gob.pe/Documentos/2016_2021/Proyectos_de_Ley_y_de_Resoluciones_Legislativas/PL0104320170309.PDF> . Likewise, Bill No. 1008/2016/CR, introduced by members of the Congress from the political party Acción Popular, proposes to overrule the National Curriculum on the grounds that “(…) in a State governed by the rule of law (…) minorities cannot expect their minority sexual option to be taken as a model to be extensively disseminated and taught in schools (…)”. It can be reviewed at: <http://www.leyes.congreso.gob.pe/Documentos/2016_2021/Proyectos_de_Ley_y_de_Resoluciones_Legislativas/PL0100820170302..pdf> [↑](#footnote-ref-18)
19. By Legislative Decree No. 1268, issued by the executive branch and published on December 19, 2016. [↑](#footnote-ref-19)
20. Report No. 424-2016-DIREJPER-PNP/OFITCE-BD from the Database of the UNINFO-OFITCE-DIREJPER-PNP dated February 20, 2016, in response to the request to access public information requested by Susana Chávez Alvarado. [↑](#footnote-ref-20)
21. MINISTRY OF EDUCATION. Aprueban el Currículo Nacional de la Educación Básica (The National Basic Education Curriculum was Approved). Ministerial Resolution No. 281-2016-MINEDU. Available at: <http://busquedas.elperuano.com.pe/normaslegales/aprueban-el-curriculo-nacional-de-la-educacion-basica-resolucion-ministerial-no-281-2016-minedu-1388044-1/> [↑](#footnote-ref-21)
22. LEÓN, Jesica and LEYTON, Fernando. “Un intenso debate: ¿ideología de género o educación integral?” (A heated debate: Gender ideology or comprehensive education?). In *La República,* published on January 25, 2017. Available at:<http://larepublica.pe/impresa/sociedad/842614-un-intenso-debate-ideologia-de-genero-o-educacion-integral> [↑](#footnote-ref-22)
23. Through Ministerial Resolution No. 159-2017-MINEDU, dated March 08, 2017. [↑](#footnote-ref-23)
24. Available at: <http://www.leyes.congreso.gob.pe/Documentos/2016_2021/Proyectos_de_Ley_y_de_Resoluciones_Legislativas/PL0104320170309.PDF> . [↑](#footnote-ref-24)
25. Available at: <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2016.nsf/641842f7e5d631bd052578e20058a231/cd8d505fdb27e550052580e400615a80?OpenDocument> [↑](#footnote-ref-25)
26. According to data from the OAS Security Observatory until 2009 used in: Jaris Mujica (2011) Violaciones Sexuales en el Perú 2000 -2009: Un informe sobre el estado de la situación (Rape in Peru 2000-2009: A report on the situation) [↑](#footnote-ref-26)
27. Statistical Yearbook 2014 of the Peruvian National Police Force (Directorate of Statistics). Available at:

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28. Statistical Yearbook 2015 of the Peruvian National Police Force (Directorate of Statistics). Available at: <https://www.pnp.gob.pe/anuario_estadistico/documentos/ANUARIO%20PNP%202015%20DIREST%20PUBLICACION.pdf> [↑](#footnote-ref-28)
29. Data used in: Team of Concerted Monitoring of Health Policies. Subgroup of Prevention of Pregnancy in Adolescents*. Prevención del embarazo en adolescentes: situación y perspectivas al 2021* (Prevention of pregnancy in adolescents: situation and forecast to 2021). Report No. 4-2016-SC/MCLCP PREVENCIÓN, page 7 [↑](#footnote-ref-29)
30. MINSA. Regional Directorate of Epidemiology. 2015. Available at: <http://www.dge.gob.pe/portal/index.php?option=com_content&view=article&id=532> [↑](#footnote-ref-30)
31. Ministry of Health (MINSA) National Center for Epidemiology, Prevention and Control of Diseases. OFFICIAL COMMUNICATION No. 172-2016-CDC/MINSA, dated June 24, 2016, in response to a request to access public information requested by PROMSEX. [↑](#footnote-ref-31)
32. As set forth in the Plan, it was decided to instruct the Ministry of Health (MINSA) the following: “Request the World Health Organization (WHO), the Pan American Health Organization (PAHO) or a specialized organization of international prestige to inform regarding the alleged abortive effect of the Emergency Oral Contraception and, on this basis, carry out the corresponding legal actions to adapt the public health policy on the subject matter”, with the aim of achieving Objective No. 15 thereof. [↑](#footnote-ref-32)
33. Even though grounds 11 of the protocol leaves open the possibility that women may have access to a therapeutic abortion through the substantiation of any other pathology; it is relevant to have in mind that inadequate training on this matter lets some physicians to have their own interpretations. [↑](#footnote-ref-33)
34. Ibidem. [↑](#footnote-ref-34)
35. Law 26842. General Health Law. Art.30**.-** The physician providing medical care is obliged, when there is evidence of criminal abortion, to report the case to the competent authority. Legislative Decree 957. New Criminal Code of Procedures. Art. 326**.-** Faculty and obligation to denounce: 1. Any person may report the criminal facts before the respective authority, whenever the exercise of the criminal act to prosecute them is public. 2. Notwithstanding the foregoing, people that must report are: a) Those who are obliged by express order of the Law. Especially the health care professionals for the crimes they are aware of in the performance of their duties, as well as educators for the crimes that would have taken place in the education center. [↑](#footnote-ref-35)
36. Criminal Code. Article 407 Those who fail to inform to the authority about the information they have regarding the commission of a crime, when required to do so by their profession or employment, shall be punished with imprisonment for not more than two years. If the punishable act that was not denounced has defined by law more than five years of imprisonment, the punishment shall be not less than two nor more than four years. (…) [↑](#footnote-ref-36)
37. CHS Alternativo 2015 Tercer Informe Alternativo: Balance de la sociedad civil sobre la situación de la trata de personas en el Perú 2014 – 2015 (Third Report: Assessment from the Civil Society on the Situation of Human Trafficking in Peru 2014 – 2015), page 74. [↑](#footnote-ref-37)
38. Office of The Attorney General. Official Communication No. 685-2015-MP-FN-OBSERVATORIO Request to Access Public Information regarding human trafficking charges in the years 2013, 2014 and 2015 (2015) [↑](#footnote-ref-38)
39. Office of The Attorney General. Official Communication No. 685-2015-MP-FN-OBSERVATORIO Request to Access Public Information regarding human trafficking charges in the years 2013, 2014 and 2015 (2015). Note: Information for 2015 is from January to December. [↑](#footnote-ref-39)
40. Available at: <http://kausajusta.blogspot.pe/2016/09/inaudita-confirmacion-de-absolucion-en.html> [↑](#footnote-ref-40)
41. Office of the Ombudsperson. *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. Page 22. [↑](#footnote-ref-41)
42. Information taken from the Amnesty International report: Defenders Under Attack! Promoting Sexual and Reproductive Rights in the Americas from 2015. [↑](#footnote-ref-42)
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44. AciPrensa, “Planned Parenthood invirtió 3 millones de dólares para promover aborto en Perú” (Planned Parenthood invested 3 million dollars to promote abortion in Peru), July

    23, 2015, available at: https://www.aciprensa.com/noticias/planned-parenthood-invirtio-3-millones-de-dolares-para-promover-aborto-en-peru-97481 [↑](#footnote-ref-44)
45. La República, “Nueva ofensiva contra las ONG que defienden los derechos de la mujer” (New offensive against NGOS that defend the rights of women) October 10, 2015, available at: http://larepublica.pe/impresa/en-portada/709446-nueva-ofensiva-contralas-ong-que-defienden-los-derechos-de-la-mujer [↑](#footnote-ref-45)
46. La República. “Defensoras del currículo escolar son amenazadas de muerte” (Women defenders of the school curriculum are threatened with death). Tuesday, March 7, 2017. Available at: http://larepublica.pe/impresa/sociedad/854284-defensoras-del-curriculo-escolar-son-amenazadas-de-muerte [↑](#footnote-ref-46)