

Lima, October 17<sup>th</sup>, 2016

**The Office of the High Commissioner for Human Rights  
United Nations  
Palais Wilson  
52, rue des Pâquis  
CH-1201 Geneva, Switzerland**

**Re: Report for the Preparation of the Report on the Protection of the Rights of the Child and the 2030 Agenda for Sustainable Development**

Dear Sir/Madam,

In the framework of Resolution 31/7 of the Human Rights Council for the preparation of the Report on the Protection of the Rights of the Child and the implementation of the 2030 Agenda for Sustainable Development, the **Center for the Promotion and Defense of Sexual and Reproductive Rights - PROMSEX** submits relevant information about the sexual and reproductive rights of children in Peru, regarding the right to equality and non-discrimination; focusing on four points: 1) Lack of access to Emergency Oral Contraception (EOC); 2) Lack of access to therapeutic abortion and criminalization of abortion in case of rape; 3) Lack of acknowledgment of ownership of sexual and reproductive rights of children and adolescents; 4) The situation of child trafficking for purposes of sexual exploitation; and 5) Sexual and domestic violence based on sexual orientation and gender identity.

## **I. CONTENT: Objective 3, To Ensure and Promote a Healthy Life for People of All Ages**

### **1.1. The Prohibition to Distribute Emergency Oral Contraception (EOC) in the Public Health System Violates the Right to Reproductive Health of Girls and Adolescents.**

1. In 2009, the Constitutional Court, in light of a lawsuit by a religious organization, ordered the Ministry of Health to refrain from developing a public policy for the free distribution of the Emergency Oral Contraception at the national level, referred to as “the morning-after pill”. This decision was based on “reasonable doubt regarding the form in which the EOC acts on the endometrium and its possible anti-implantation effect”<sup>1</sup>. However, it did not prohibit its sale in the private sector. Thus, girls and adolescents in state of poverty and victims of sexual violence have been more affected by this discriminatory decision.
2. The EOC is especially needed in Peru where there are high rates of sexual violence against women, especially adolescents. Preventing a pregnancy caused by rape can decrease the occurrence of unsafe and clandestine abortions in a legal context in which abortion in cases of rape is criminalized and the right to health is interpreted in a restrictive manner, not considering the possibility of a therapeutic abortion for victims of sexual violence whose mental health has been affected.
3. Currently, the First Constitutional Court of Lima, through a precautionary measure, ordered the Ministry of Health to distribute free of charge, within a maximum period of 30 days, the EOC in health establishments, while solving the lawsuit submitted in 2014, which seeks to reverse the judgment of 2009. This is a temporary measure, but it must be properly implemented guaranteeing the access of adolescents to this contraceptive method.

### **1.2. Limitations in Access to Therapeutic Abortion and the Prohibition of Abortion on the Grounds of Sexual Violence**

#### **A) Deficient Implementation of the Therapeutic Abortion Protocol**

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<sup>1</sup> Constitutional Court. Docket 2005-2009-PA/TC. Judgment issued on October 16, 2009; Lima.

4. On June 28, 2014 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*” was published.
5. According to information from the Round Table for the Fight against Poverty, which systematizes MINSa information, abortion is the third cause of maternal death in Peru (17.5%)<sup>2</sup>. The General Directorate of Epidemiology of MINSa stated that, up to week 15 of 2016, there have been 101 maternal deaths at the national level. Of these, 33.6% were due to indirect causes, that is, diseases that complicate pregnancy or become more severe because of pregnancy and could have been prevented if they could have had access to a therapeutic abortion. The regions with the highest number of cases are Piura, Arequipa and Amazonas, and 16.8% of the maternal deaths take place among women between 15 and 19 years of age.<sup>3</sup>
6. One of the challenges for the effective implementation of the Protocol is the interpretation of what is understood by the practice of therapeutic abortion “*when it is the only means to save the life of the pregnant woman or to avoid severe and permanent health complications*” being performed by health practitioners widely, this with the purpose that clinical entities included in the Protocol do not restrict the right to health, and so that adolescents who have suffered from rape may access a legal abortion to prevent affecting their mental and even physical health<sup>4</sup>. Likewise, the State should also ensure the dissemination of relevant information on therapeutic abortion and its scope to women; the availability of resources to improve the offering of sexual and reproductive health services in health facilities; and the development of specific claim and penalization mechanisms for non-compliance with the duty to guarantee access to therapeutic abortion.

## **B) The Prohibition of Legal Abortion in Cases of Rape**

11. In Peru, abortion in the cases of rape, according to Articles 114 and 120 of the Criminal Code, is criminalized, this has resulted in women, girls and adolescents being forced to continue their unwanted pregnancies or to seek clandestine practices to terminate the pregnancy. These practices are sometimes performed without the adequate professional support and without appropriate conditions to ensure their life and integrity.
12. The criminalization of abortion in cases of rape is of great concern, especially when it is known that approximately 12% of Peruvian women have been forced, at least once, to have sexual intercourse they did not want or did not approve<sup>5 6</sup>. Regarding women between the ages of 15 and 19, 4% of them stated to have been forced to have sexual intercourse they did not want or did not approve. Only during the year 2015, the Peruvian Police Force (PNP) registered 2889 cases of sexual abuse in detriment of girls, boys and adolescents at the national level<sup>7</sup>. According to the Ministry of Women

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<sup>2</sup> Round Table for the Fight against Poverty. *Neonatal Maternal Health, Assessment Report 2012*

<sup>3</sup> Ministry of Health. General Directorate of Epidemiology. *Sala Situación* (Situation Room) Week 1 of 2016. Available at: [http://www.dge.gob.pe/portal/index.php?option=com\\_content&view=article&id=591](http://www.dge.gob.pe/portal/index.php?option=com_content&view=article&id=591) Last revised on October 14, 2016.

<sup>4</sup> Even though grounds 11 of the protocol leaves open the possibility that women may have access to a therapeutic abortion through the appropriate basis of any other maternal pathology; it is relevant to have in mind that inadequate training on this matter lets some physicians to have their own interpretations. Consequently, States Parties have been repeatedly asked to permit abortion in cases of rape or incest. URL: <http://www.unfpa.org.pe/Legislacion/PDF/20140627-MINSA-Aprueban-Guia-Tecnica-Interrupcion-Voluntaria-Embarazo.pdf>

<sup>5</sup> NATIONAL INSTITUTE OF STATISTICS AND COMPUTER SCIENCE. *Demographic and Family Health Survey 2014*. Lima: INEI, April 2015, p. 369, available at: [http://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitales/Est/Lib1211/pdf/Libro.pdf](http://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1211/pdf/Libro.pdf)

<sup>6</sup> Situation, which generally took place among uneducated women, residents of the rural area, in the Sierra region and those women who live in homes belonging to the three first quintiles of wealth, according to the *Demographic and Family Health Survey (Endes) 2014*. p.369

<sup>7</sup> NATIONAL POLICE FORCE OF PERU. *Yearbook of the National Police of Peru*. 2015.

[https://www.pnp.gob.pe/anuario\\_estadistico/documentos/ANUARIO%20PNP%202015%20DIREST%20PUBLICACION.pdf](https://www.pnp.gob.pe/anuario_estadistico/documentos/ANUARIO%20PNP%202015%20DIREST%20PUBLICACION.pdf)

Affairs, in the year 2010, 34% of adolescents were pregnant as a result of rape<sup>8</sup> and, according to the Ministry of Women Affairs and Vulnerable Populations (MIMP), during the year 2012, the Women's Emergency Center treated 333 adolescents between the ages of 12 and 18 who had become pregnant as a result of rape<sup>9</sup>. Such numbers are a cause for concern, especially if we take into account that there is a high degree of under registration.

13. On October 12, 2016, Bill 378 – 2016 CR was submitted to the Congress of the Republic, which decriminalizes abortion in cases of rape, non-consented artificial insemination and transfer of ovules, and fetal anomalies incompatible with life. To this effect, the Peruvian State has the opportunity to guarantee the sexual and reproductive rights of girls and adolescents.

### **1.3. Lack of Recognition of the Ownership of Sexual and Reproductive Rights of Adolescents and its Consequences**

14. There are barriers that obstruct access for teenagers to sexual and reproductive health services and information, which results in low incidence on the usage of modern contraceptive methods, and an increase in pregnancies, sexually transmitted infections, maternal mortality, clandestine abortions and suicide.
15. The lack of services and information on sexual and reproductive health for adolescents causes serious impacts on their lives and health. Of all the students who have had sexual intercourse, 46.7% had their first sexual intercourse before the age of 14. Among the students who have had sexual intercourse, only 64% used some contraceptive method at their last sexual intercourse, which influences the possibility of pregnancy or the development of sexually transmitted infections<sup>10</sup>. Similarly, it is known that women between the ages of 15 and 19 who do not use any contraceptive method represent 33.9% of married women and 12.3% of sexually active women<sup>11</sup>.
16. Adolescent pregnancy increases as the age of girls increases and is inversely related to the educational and socioeconomic level. In that sense, among adolescents who only received primary education, 34.9% are pregnant; and among adolescent who have higher education, 4.5% are pregnant<sup>12</sup>.
17. On the other hand, 1 of every 5 adolescents in rural areas is pregnant or has had a child. Between 30.9% and 33.8% of women had their first child under the age of 20. The rainforest is the region with the highest rate of adolescent pregnancy with 24.7%, followed by the coast with 14.6%. The characteristics of adolescent pregnancy are: 34.1% only have primary education, they are located in the lowest quintile of poverty and more than 60% did not want to have more children or wanted to postpone their motherhood<sup>13</sup>.
18. According to the Ministry of Health (MINSa), 41 births by adolescent mothers aged 12 were registered in 2013, especially in the departments of Puno and Junin, which are part of the Sierra region of the country. Likewise, it is known that there were 192 births by mothers aged 13, and 881 births by

<sup>8</sup> UNFPA AND THE MINISTRY OF HEALTH (2012) To prevent adolescent pregnancies is to overcome barriers for development. Data Sheet No. 3 Available at: <http://www.unfpa.org.pe/publicaciones/publicacionesperu/UNFPA-AECID-Hoja-de-Datos-3.pdf>

<sup>9</sup> MINISTRY OF WOMEN AND VULNERABLE POPULATIONS Ministerial Resolution No. 236 - 2014 -MIMP, dated July 21, 2014. Available at: [http://www.mimp.gob.pe/files/transparencia/resoluciones\\_ministeriales/rm\\_236\\_2014\\_mimp.pdf](http://www.mimp.gob.pe/files/transparencia/resoluciones_ministeriales/rm_236_2014_mimp.pdf)

<sup>10</sup> MINISTRY OF HEALTH OF PERU (MINSa), General Directorate for Health Promotion. Results of the Global School Health Survey – Peru 2010, p. 47 (2011)

<sup>11</sup> NATIONAL INSTITUTE OF STATISTICS AND COMPUTER SCIENCE. *Demographic and Family Health Survey 2015*. Lima: INEI, April 2016, p. 147, available at: [http://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitales/Est/Lib1211/pdf/Libro.pdf](http://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1211/pdf/Libro.pdf)

<sup>12</sup> UNICEF (2014) *Situation of girls and adolescent girls in rural schools in Peru*. page 3. Available at: [http://www.unicef.org/peru/spanish/LA\\_ESCUELA\\_DEL\\_SILENCIO.pdf](http://www.unicef.org/peru/spanish/LA_ESCUELA_DEL_SILENCIO.pdf)

<sup>13</sup> PERU21. Every year in Peru One Thousand Girls between the Ages of 12 and 13 Become Mothers. September 26, 2015. <http://peru21.pe/actualidad/cada-ano-mil-ninas-12-y-13-anos-se-convierten-madres-2228392>

adolescent mothers aged 14. The higher incidence of these cases takes place in Ucayali, Junin, San Martín and Loreto<sup>14</sup>. Furthermore, it is known that between the years 2005 and 2013, at least 11 272 adolescents under the age of 15 became mothers and in many cases the pregnancy was caused by rape<sup>15</sup>.

19. On the national level, maternal death in adolescents is increasing. In 2012, it represented 17.6% of maternal deaths; in 2013, it dropped to 9.3%; in 2014, it was 13.3%; and in 2015, until the first two weeks of the month of February, it was 28.9%<sup>16</sup>. The main direct causes of maternal deaths in adolescents are: hypertension induced by pregnancy (41%: 7 cases), abortion (29%: 5 cases), bleeding (18%: 3 cases), and infections (6%: 1 case). The main indirect cause of maternal deaths in adolescents is still suicide (56%: 5 cases)<sup>17</sup>.
20. On the other hand, governmental sources indicate that in 2013, 8 of every 10 adolescents that were pregnant at some point did not attend an educational center (85.2%). As for the reasons of non-attendance to school, pregnancy or marriage (45.9%) was the most frequent, followed by economic reasons (22.1%), among the most important<sup>18</sup>.

#### 1.4. Trafficking of Children and Adolescents for the Purpose of Sexual Exploitation

21. According to the Crime Observatory of the Office of The Attorney General<sup>19</sup>, during the period of 2009 to 2014, 2241 lawsuits were filed for the crime of human trafficking; the departments with the highest amount of cases were Loreto (10.8%), Lima (15.6%) and Madre de Dios (10.1%). Similarly, among the 803 alleged victims of such crime, 50.1% were minors. On the other hand, in terms of the type of alleged exploitation, 41.6% of the victims were subjected to sexual exploitation.
22. In 2014, the Office of The Attorney General reported<sup>20</sup> 501 cases of human trafficking with 782 victims, of which 41% (of the reported 623 alleged female victims) and 69% (of the reported 150 alleged male victims) were in the age range from 0 to 17. This report showed that the highest incidence of this crime was registered mainly in the regions of Lima, Loreto and Madre de Dios<sup>21</sup>, the latter having the largest number of victims annually, due to a situation that is aggravated by illegal mining in Madre de Dios.
23. The registered figures reveal that the majority of underage victims, affected by the crime of human trafficking for the purposes of sexual exploitation, are girls and adolescent girls; consequently, it is important to recognize, first of all, that gender-based violence and other forms of discrimination against women aggravates their vulnerability and exposes them to specific and differentiated exploitation situations based on their gender, and, secondly, it involves taking into consideration that girls and adolescent girls endure unique and disproportionate consequences unlike other victims of trafficking. The State efforts have been focused mainly on the prosecution of the crime, through intervention in conflict zones or the rescue of victims.
24. However, very little has been achieved in the matter of treatment and protection of victims because a Sectorial Protocol to ensure care and assistance to victims, families and witnesses<sup>22</sup> has still not been implemented. In this regard, it is concerning that health is the area that has shown the less progress,

<sup>14</sup> INEI (2015): Charts made by INEI using the "Statistical Report of Live Births" from the Ministry of Health.

<sup>15</sup> Ibid.

<sup>16</sup> MINSAL. Regional Directorate of Epidemiology. 2015

<sup>17</sup> Maternal and Neo-natal Health Task Force. Assessment Report of 2012. URL:

<http://www.midis.gob.pe/dgsye/data1/files/enic/eje1/documento-tecnico/MCLCPSequimientopPRSaludMatNeonl2012.pdf>

<sup>18</sup> State of the Peruvian population INEI 2014

<sup>19</sup> Crime Observatory of the Office of The Attorney General. Lawsuits filed in the Office of The Attorney General 2009 - 2014.

Available at: <http://portal.mpf.gob.pe/descargas/observatorio/tratadepersonas/20150405.pdf>

<sup>20</sup> 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)

<sup>21</sup> Lima has 108 cases and 161 victims; Loreto, 80 cases and 41 victims; and **Madre de Dios, 54 cases and 205 victims**. The latter presenting the larger number of victims in comparison with the rest of the districts.

<sup>22</sup> CHS Alternativo Op. cit. Page 74

especially in support regarding mental health. As reported by the Ministry of Health (MINSA), during the year 2014, comprehensive health care services for victims of human trafficking have been strengthened in the primary-care level, but there is no information in this regard<sup>23</sup>.

### **1.5. Domestic Violence, Sexual Violence and Homophobic Bullying: Forms of Discrimination Based on Sexual Orientation and Gender Identity**

25. There is no official data regarding domestic violence in children and adolescents based on sexual orientation and gender identity because this type of violence is invisible in public policies. However, from the annual reports of PROMSEX, eight (8) victims of domestic violence were registered during the period of 2015-2016, mostly gay and lesbian people, but also there was a case of a trans man. The victims often indicate that there are several relatives who assault them; but when they are identified, most of the perpetrators are usually the parents of the victims and siblings. Domestic violence is often perpetrated through beatings and insults, and only in one case the victim mentioned being confined in their own home. Furthermore, it is known the practice of “corrective rape”, which involves the rape of lesbians by men, usually from the family or friend circle, with the purpose of changing the sexual orientation of the victim, “make them women” or “so they know how it feels to be with a real man”.
26. While in March 2016 the Ministry of Women Affairs and Vulnerable Populations (MIMP) adopted the Technical Guidelines for the Care of LGBTI Persons in the services provided by the National Program against Domestic and Sexual Violence (PNCVFS) of the MIMP, there is no policy of prevention, care and punishment of domestic violence against children and adolescents on account of their sexual orientation, gender identity or gender expression. Additionally, the National Plan for Childhood and Adolescence does not contemplate actions to eradicate, address, prevent and punish violence motivated by homophobia, lesbophobia and transphobia against children and adolescents.
27. Bullying has become one of the main obstacles to the improvement of the quality of education, not only for its high degree of incidence, but for the difficulty when designing strategies to eradicate it from the daily relationships within the educational centers. Several investigations on this regard show alarming results: 44% of the surveyed students reported having been victims of bullying, a figure that rises to 57% among non-heterosexual students<sup>24</sup>; likewise, from a sample of 776 academic institutions, it was concluded that 72% of them had established an anti-bullying strategy and 67% had a psychologist; however, from the 393 cases detected, only 81 were processed effectively.
28. Finally, the situation of the trans population with regard to access to education is preoccupying: there is a high school dissent as a result of the lack of support for the family and discrimination. This occurs in a context in which it is still difficult to obtain the recognition of their identity - through the RENIEC - and this prevents them from performing their everyday procedures to access state services<sup>25</sup>.
29. In a survey conducted between December 2015 and March 2016 it was found that 7 of every 10 students felt unsafe in the school because of their sexual orientation, and 3 of every 10 because of their gender expression/identity. 59% of students heard always or often homophobic comments in their schools and 30% stated that sometimes the comments came from the teachers. 72% of students suffered an act of aggression due to their sexual orientation and 58% due to their gender identity; 33% suffered physical harassment because of their sexual orientation and 26% because of their gender expression<sup>26</sup>.

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<sup>23</sup> CHS Alternativo Op. cit. Page 64

<sup>24</sup> ABARCA, Humberto et al. *Era como ir al matadero... El bullying homofóbico en instituciones educativas públicas de Chile, Guatemala y Perú* (It was like going to the slaughterhouse... The homophobic bullying in public educational institutions in Chile, Guatemala and Peru). Lima: IESSDEHH/PNUD/Universidad Cayetano Heredia/UNESCO, 2013, pp. 16.

<sup>25</sup> Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos - PROMSEX and Red Peruana TLGB. Annual Report on Human Rights of Trans, Lesbian, Gay and Bisexual People in Peru. Lima: author, 2012, pp. 62.

<sup>26</sup> Center for the Promotion and Defense of Sexual and Reproductive Rights (PROMSEX). National Study on School Environment in Peru 2016. Lima. <http://promsex.org/documentacion/publicaciones/2991-estudio-nacional-sobre-clima-escolar-en-el-peru-2016>

30. Unfortunately, the National Educational Project towards 2021 does not employ a human rights or comprehensive sexual education approach. Nor does it further address school harassment (bullying) and violence. Its main claim is to be the result of social dialog and consensus, as well as of the participation of many actors that represent the educational community, civil society and different sectors of the State.

Yours faithfully,

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

Susana Chavez  
Director