Más Igualdad

January 14th, 2022

Committee on the Elimination of Discrimination Against Women
Human Rights Treaties Division (HRTD)
Office of the High Commissioner for Human Rights (OHCHR)
Palais Wilson
52, rue des Pâquis
CH-1201 Geneva, Switzerland

Re: Alternative Report on the Ninth Periodic Report presented by the Peruvian State, scheduled for examination at the CEDAW Committee during its 81st Session

Of our highest consideration:

Asociación Civil Más Igualdad Perú, a feminist organization that works for equal marriage, rights for sexual and gender diversity, and the well-being of all families without discrimination, present on this occasion complementary information to the Ninth periodic report presented by the Peruvian State on the application of the Convention on the Elimination of All Forms of Discrimination against Women for its evaluation at the 81st session of the CEDAW Committee to be held in Geneva.

This report seeks to provide relevant and up-to-date information on 1) Situation of trans women during the state of emergency due to the COVID-19 pandemic; 2) Institutionality of the Peruvian State for the rights of bisexual, lesbian and transgender women; 3) Gender violence related to sexual orientation and gender identity of women; 4) Marriage and family life; and 5) Criminalization of trans women.

We thank you in advance for your attention to this matter.

Sincerely,

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CEDAW COMMITTEE
SHADOW REPORT FROM MAS IGUALDAD PERU – 81st SESSION OF THE COMMITTEE

1. Situation of trans women during the state of emergency due to the COVID-19 pandemic

1. In Peru, trans women subsist from daily income jobs or engage in sex work due to early school exclusion and few job opportunities. Despite the precariousness they face and being recognized as a special protection group in the National Human Rights Plan 2018-2021, they are not given the socioeconomic classification of poverty or extreme poverty, so they do not receive economic subsidies or benefit from the programs state social.
2. Added to this is the fact that the economic support policies designed to mitigate the effects of COVID-19 They have a family approach, which represents a problem for trans people, who often live in large self-managed communities with other trans people due to leaving their homes at an early age or because they face forced displacement to flee from home due to transphobic violence.
3. Even if they could access any of the economic bonuses, trans people are also unable to collect them because their ID denies their identity and exposes them to discriminatory situations.
4. Furthermore, as a result of the actions of the State to face the pandemic, trans people faced situations of violence. Through Supreme Decree No. 057-2020-PCM, the measure called 'peak and gender' was established, for which differentiated days were established for the transit of men and women. The norm did not include provisions to prevent violence and discrimination based on gender identity or expression[1], so trans women were affected in a greater proportion. This measure, after serious questioning, only lasted 7 days.
5. At that time, various trans people reported having been seized by police personnel who asked for their DNI[2], questioned their gender identity[3] and released a video about police officers forcing a group of trans women to do squats inside a police station, while forcing them to repeat the phrase: "I want to be a man"[4]. It was also reported that supermarket security personnel carried out identity checks on trans women without being authorized to do so[5].
6. Because of this, many trans people decided not to go out for fear of being aggravated or discriminated against (despite needing essential goods such as food), and those who left had to face arbitrary arrests, disproportionate questioning of their identity and were forced to walk with copies of their name and sex change lawsuits (if they had one in progress) and other documents that could support them.

7. **Suggested recommendations for the State:**

   a) The State must grant, due to their special situation of vulnerability, the socioeconomic classification of poverty and/or extreme poverty to trans people (based solely on the criteria of self-identification) through the SISFOH, so that they can access economic subsidies and social programs specific post-pandemic generated by COVID 19.
   b) Establish guides for action that prevent violence toward LGBTIQ people for the National Police and the Armed Forces within the framework of the declaration of States of Emergency at the national level.

2. Institutionality of the Peruvian State for the rights of bisexual, lesbian and transgender women

[1] RPP News (2020). Restriction of exit for days is not a pretext for any measure of homophobia. Recovered from https://rpp.pe/politica/gobierno/martin-vizcarra-restriccion-de-salida-por-dias-no-es-pretexto-para-nuna-measure-de-homofobia-video-noticia-1256046
[2] Twitter account. Recovered fromhttps://twitter.com/alex_rm2510/status/1246440562338783237
[3] Twitter account. Recovered fromhttps://twitter.com/m_siccha/status/1246557062483578880
[4] Peru21 Journal (2020). Outrageous: They make trans women shout "I want to be a man" and force them to do squats at the Bellavista police station [VIDEO]. Recovered from https://peru21.pe/lima/coronavirus-peru-i-lgtb-i-indignante-a-Mujeres-trans-las-hacen-gritar-quiero-ser-un-hombre-y-las-obligan-a- make-frogs-in-bellavista-police-station-news/
[5] Féminas Peru Twitter account. Recovered from https://twitter.com/feminasperu/status/1246538068116602880

8. According to the results of the II National Human Rights Survey, carried out in 2019 on behalf of the Ministry of Justice and Human Rights, 71% of the people surveyed consider that, in Peru, LGBT people are highly discriminated against. However, 37% of the people surveyed indicate that they would not be willing to hire a trans person if they had a company, and 30% say the same about homosexual people.
9. Likewise, 53% consider that women are also a highly discriminated group in the country. When carrying out a joint reading of these data we can conclude that those who belong to both groups are in greater exclusion. The results of the survey also show the persistence of negative stereotypes: 45% consider that people "become homosexual" due to traumas in their childhood or bad experiences, 46% think that trans people live confused. Likewise, 19% still believe that homosexuality is a disease and 36% assume that it is dangerous to leave a child with a homosexual person, with a serious impact on the social vision that is held, for example, about the exercise of care and maternity work that lesbian, bisexual and trans women may have.
10. However, there are no solid advances in the protection of the rights of LGBTI people and, on the contrary, there is a constant threat from fundamentalist sectors with political representation in the face of any attempt to include them in public policy or regulations.
11. On the one hand, within the framework of the National Human Rights Plan 2014-2016[6], LGBTIQ people were excluded. This situation was only reversed in the 2018-2021 National Human Rights Plan.[7], in which LGBTI persons were recognized for the first time as a "special protection group". Thus, in its Strategic Guideline 3 different goals were incorporated, on the one hand, for the group of women and, on the other hand, for the group of LGBTI people Unfortunately, the approach was not intersectional, and the objectives of the Plan do not include the demands of lesbian, bisexual and trans women.
12. At present, the following commitments have not yet been fulfilled: **Mapping of records of violence and discrimination based on sexual orientation and gender identity, preparation of the "Study of violent deaths due to intentional homicides against the LGBTI community" and ensuring comprehensive health care for LGBTI people**.
13. Although there is a *Working Group to promote the rights of Lesbians* in the Ministry of Women, there are still no specific advances in relation to bisexual and intersex women, being invisible or only named in the policies without this having had a real impact on the guarantee of their rights. This is because the State has not identified the demands of bisexual and intersex women in the country.

14. **Suggested Recommendations for the State:**

    a) Reinforce the mechanisms of state articulation with civil society in such a way that they work for the guarantee of the rights of women LBTI ensuring their participation and the inclusion of the specific demands of each group.
    b) In the formulation of new national policies on gender-based violence or human rights, it must be ensured that an intersectional approach is included, so that the State assumes specific commitments in relation to the rights of LBTI women, mainly bisexual and intersex.

3. Gender violence related to sexual orientation and gender identity of women

15. According to information collected by the State itself[8], in 2017, through a first virtual survey aimed at LGBTIQ people, it was reported that 63% of participants had been victims of some act of discrimination and/or violence, mainly in public spaces (65.6%), the educational field (57.6%), means of transport (42%) and commercial or leisure spaces (41%)[9]. Regarding their aggressors, it was reported that 55.8% were schoolmates and their parents, 55% were public

[6] Document available at: https://www.minjus.gob.pe/wp-content/uploads/2014/07/DS-005-2014-JUS-Aprobacion_PNDH.pdf
[7] Document available at: https://www.minjus.gob.pe/wp-content/uploads/2018/02/PNDH-2018-2021.pdf
[8] First virtual survey for LGBTI people carried out by the National Institute of Statistics and Informatics (INEI). Available in: https://www.inei.gob.pe/media/MenuRecursivo/boletines/lgbti.pdf
[9] INEI. First Virtual Survey for LGBTI People, 2017, pp. 22.

officials and/or administrative personnel of public services, 43% were religious leaders, and 15.4% were % were health service personnel[10].

16. The main aggressors of LGBTIQ people are members of the National Police of Peru, citizen security supervisors or serenazgos of the municipalities[11]. These acts are perpetrated even in places where there are municipal ordinances that prohibit discriminatory acts motivated by sexual orientation and/or gender identity.[12].
17. Likewise, hate speech and incitement to discrimination, mainly against lesbian women, are of concern. In 2016t, he movement Con Mis Hijos No Te Metas (CMHNTM) emerged, made up of opinion leaders, politicians, religious and businessmen. Within the framework of this campaign, they took advantage of the platform to reinforce harmful stereotypes regarding LGBTIQ people.
18. An Evangelical pastor and leader of the World Missionary Movement Christian church in Peru, declared in a speech to his parishioners in 2017 that *"(...) if you find two women having sex, kill them both in the name of Jesus."* Similarly, a journalist stated in 2017 during his radio broadcast: *"In the morning I go to my daughter's preschool and if I see two lesbians or homosexuals kissing, I ask them to please go in the first and second time, I'm already kicking them out by the third time"*[13].
19. Only after the Congress of the Republic delegated powers to the Executive Power[14] to legislate on citizen security, in January 2017, Legislative Decree No. 1323 was issued, which incorporated the categories of sexual orientation and gender identity into the Penal Code in the classification of the crime of discrimination. Congress, however, disagreed arguing: "That when reference is made to gender-based violence, it can only be understood as violence against women or the female sex."
20. Currently, the modification to the Code is still in force, but the categories of gender expression or body diversity are not yet included in the definition of the crime of discrimination to also allow the sanction of discrimination against intersex people and others who do not conform to the mandates of the binary sex/gender.
21. In addition, It is worrying that, in 2017, the Supreme Court of Justice adopted the PLENARY AGREEMENT No. 001-2016/CJ-116 on femicide, stating that the passive subject can only be a woman in its natural sense "by requirement of the principle of legality", excluding trans or transfeminine women from protection, so that their deaths, when they constitute a femicide, cannot be punished as such.

22. **Suggested recommendations for the State:**

    a) The State must modify the Penal Code to establish as a crime the incitement or promotion of discrimination and guarantee that the classification of the crime of discrimination does not exclude the categories of sexual orientation, gender expression, gender identity and body diversity in its classification. The same for the case of the regulation of aggravating penalties, when a crime is committed for discriminatory motives.
    b) Create awareness and train serenazgo personnel, national police and armed forces on the rights of LGBTIQ people to prevent situations of violence and discrimination in the exercise of their functions.
    c) Include in the statistics of the Public Ministry, the National Police and the Judiciary the cases of violence and discrimination motivated by sexual orientation, gender identity or expression and corporal diversity of LGBTIQ people, as well as make said information public and accessible annually, disaggregating the information by gender.
    d) Update Plenary Agreement No. 001-2016/CJ-116 to include trans women as passive subjects of the crime of femicide.

4. Marriage and family life

[10] Ibid.
[11] Prom sex. Annual Report on the human rights of TLGB people in Peru 2015-2016, pp. 41
[12] Ibid, p. 30
[13] Peru21 Newspaper (2011). Radio is sanctioned for PB's words. Recovered from http://archivo.peru21.pe/noticia/1330615/sancionan-radio-palabras-butters
[14] Through Law No. 30506, dated September 30, 2016

4.1. Lack of legal recognition of cohabitation and marriage unions

23. The Peruvian State does not allow marriage for same-sex couples, nor does it recognize their coexistence. Even though the First Virtual Survey for LGBTI Persons of the INEI found that almost half of those surveyed between 18 and 29 years of age reported being in a relationship with another person of the same sex, of which 22.9% indicated maintaining a cohabitating relationship[15], they do not have any legal protection in matters of social security, pensions, housing, decisions on health issues and others. The Peruvian Civil Code, from1984, limits marriage to the union between a man and a woman, leaving same-sex couples legally unprotected.
24. Congress has consistently refused to pass laws to regulate this situation. Currently the bill **525/2021-CR, which seeks to grant the right to marriage for same-sex couples, has not been debated** even in commissions[16].
25. As of 2019, the Judicial Power of Peru has ordered in three cases in the first instance the registration of marriages of same-sex couples carried out abroad in the civil registry, considering in all of them that RENIEC's refusal to register marriages validly carried out in another country violates the fundamental rights of LGBTIQ people due to their sexual orientation. In the case of a lesbian couple, RENIEC argued before the Judiciary that the intention of the two women was to impose "personal ideas", which would establish a criterion that would also force the recognition of "polygamous marriages of Peruvians converted to Islam" or "marriages with minors"[17].

26. **Suggested recommendations for the State:**

    a) The State must, in the shortest time possible, modify its legislation to guarantee equal access to marriage and de facto unions for same-sex couples, and update all legal regulations aimed at families so that there is no distinction based on family composition. of couples.
    b) The State must train judges and RENIEC officials on the obligations assumed by the State in international treaties to recognize the family ties of same-sex couples, including the registration of marriages performed abroad.

4.2. Parentage rights of sons and daughters of same-sex families

27. The Peruvian State does not recognize the maternity of non-biological mothers who form a same-sex family. Article 52 of the Peruvian Constitution indicates that *"Peruvians are those born abroad of a Peruvian father or mother, registered in the corresponding registry during their minority"*, reaffirmed in Law No. 26574 Nationality Law and in Law No. 26497 Organic Law of RENIEC, but this right is not guaranteed for children of parents of the same sex. In the case of the son of a couple of lesbian mothers, he was born in Mexico in 2014 and has a Mexican birth certificate that records both women as the mothers of the minor. Despite submitting the required documentation, RENIEC has registered the minor solely as the son of the birth mother, preventing the legal exercise of maternity by his other mother and the motherhood rights that derive from that relationship. In addition to it, they are violating the right to identity and to the name of the minor, producing a situation of lack of protection due to discrimination because of his mothers' sexual orientation, in which only one is legally empowered to represent him and take responsibility for his well-being[18].

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[15]INEI. (2018). First Virtual Survey for LGBTI People. Recovered fromhttps://www.inei.gob.pe/media/MenuRecursivo/boletines/lgbti.pdf
[16]Congress of the Republic (2021). Bill 525/2021-CR Equal Marriage Law. Recovered fromhttps://wb2server.congreso.gob.pe/spley-portal/#/expediente/2021/525
[17]Superior Court of Justice of Lima (2019). Eleventh Constitutional Court. File 10776 -2017. Recovered fromhttps://static.legis.pe/wp-content/uploads/2019/04/Exp.-10776-2017-Legis.pe_.pdf.pdf?fbclid=IwAR065zt_4vonSkd5cPWhNqAJQW-nuEOgxqXp9V-P7mkq5o6kSK5EvLd54dA
[18]DEMUS (2017). We will appeal RENIEC's decision that leaves the child of lesbian mothers unprotected by n ot recognizing them on the DNI. Recovered fromhttp://www.demus.org.pe/noticias/apelaran-decision-de-reniec-que-deja-desprotegido-a-hijo-de-madres-lesbianas-al-no-reconocerlas-en-dni/

28. In addition, RENIEC does not record in its Digital System the data of the MIGRATIONS Act where the filial bond of both mothers appears, it issued the ID only including the birth mother as the mother in the document[19], and has indicated to the women that they, unlike other families, would have to permanently carry, in addition to the minor's ID, the MIGRATION Act and a video in which a RENIEC official confirms that the MIGRATIONS registration is valid[20]. Due to these violations of their fundamental rights, the organizations DEMUS, LIFS and Más Igualdad Perú litigated the case through an amparo process, which, in 2021, after more than 2 years of waiting, received a favorable ruling in first instance ordering RENIEC the registration of his other mother as the minor's mother. To date, RENIEC has appealed the ruling[21].

29. **Suggested recommendations for the State:**

a) The State must modify its legislation on civil registration, nationality and other legal norms that regulate filiation to guarantee the right of children to identity and nationality without discrimination based on the sexual orientation or gender identity of their mothers.
b) The State must train officials from RENIEC, MRE, MIGRATIONS and Consulates to allow the registration of Children of Peruvians Born Abroad from homoparental and single-parent families without distinction based on the sexual orientation of the mothers.

5. Criminalization of trans women

30. In cases of violations of personal integrity by members of the security forces, it is recorded that the victims are, for the most part, trans women linked to sex work[22] or accused of engaging in prostitution, in order to justify municipal interventions and even arbitrary police arrests[23], although prostitution is not a crime.
31. In many cases, systematic practices by serenazgo members are evident: first, they put them on patrol cars, beat them and insult them. Then, they move them to distant, desolate and risky places; they take away their belongings, their clothes and their money. In some cases, they are subjected to various forms of sexual violence: rape, forced nudity and touching[24].
32. Not only is it a practice of the security forces, but they also have institutional support. In 2017 it was reported that eleven[25] of 44 district citizen security plans of Metropolitan Lima and its districts, included statistical reports of actions to "eradicate transvestites and homosexuals"[26] that would have been practiced in previous years. In some cases, these were of great magnitude. In the district of La Victoria, for example, the "eradication" of 1,466 homosexuals" was reported in 2014, 715 in 2015, and 456 in 2016.[27].

33. **Suggested recommendations for the State:**

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[19] La Mula (2017). Dakarai has two mothers, but Reniec issues the minor's ID without recognizing one of them. Recovered from https://cutt.ly/SOWj4HV
[20] La Mula visited the mothers. At minute 5:29. Recovered fromhttps://www.youtube.com/watch?v=lma6f6NyYJQ
[21] Agencia Presentes (2021). Peruvian Judicial Power recognizes comaternity, after 5 years of struggle of J and D. Recovered from https://agenciapresentes.org/2021/10/18/poder-judicial-peruano-reconoce-la-comaternidad-de-una-couple-of-lesbians-after-5-years-of-struggle/
[22]Prom sex. Annual Report on the human rights of TLGB people in Peru 2015-2016, pp. 65; and Iessdeh. Annual Report of the LGBT Rights Observatory - 2016, pgs. 28.
[23]Iessdeh. Annual Report of the LGBT Rights Observatory – 2016, pp. 24
[24] Ibid., pp.66
[25] They correspond to the districts of Barranco, Cieneguilla, Comas, La Victoria, Lima Cercado, Metropolitan Lima, San Juan de Lurigancho, San Luis, San Martín de Porres, San Miguel and Santiago de Surco.
[26] See more at: https://www.americatv.com.pe/noticias/redes-sociales/smp-contempla-eradicacion-homosexuales-su-plan-seguridad-ciudadana-n291529 Y https://elcomercio.pe/lima/sucesos/discriminacion-municipal-distritos-contemplan-eradicacion-homosexuales-noticia-457704-noticia/
[27]Source: Promsex. Annual Report on the human rights of TLGB people in Peru 2015-2016, pp. 161.

a) The regional and local governments whose citizen security plans have reported actions to “eradicate homosexuals and lesbians” must initiate an exhaustive investigation on the persons who are responsible and must make the actions carried out public.
b) The Ministry of the Interior must establish the prohibition of including indicators of "eradication of homosexuals and transvestites" in citizen security plans at the national level.