***Letter No. 013-2022-PROMSEX***

Lima, February 4th, 2022

To:

**MR. VÍCTOR MADRIGAL-BORLOZ**
Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity
United Nations

**RE: Report to the Human Rights Council on the realization of the right of persons affected by violence and discrimination based on sexual orientation and gender identity to the enjoyment of the highest attainable standard of physical and mental health, in relation to SDG3[[1]](#footnote-1) in Peru**

With the assurance of our highest consideration:

The**Center for the Promotion and Defense of Sexual and Reproductive Rights – PROMSEX—**a feminist non-governmental organization seeking to contribute towards a person’s integrity and dignity when accessing sexual and reproductive health, justice, and human safety—would like to present information on the situation concerning violence and discrimination against LGBTI people when accessing healthcare services in relation with Sustainable Development Goal 3, with special emphasis on a) the absence of a regulatory framework that effectively recognizes and guarantees the rights of LGBTI people; b) the persistent barriers in accessing healthcare services; c) the state of LGBTI people’s mental health; and d) the lack of training of healthcare personnel in sexual orientation, gender identity, and gender expression.

We thank you in advance for your attention.

****Sincerely,

**Susana I. Chávez Alvarado**

**Executive Director**

1. **The Absence of a Regulatory Framework that Effectively Recognizes and Guarantees the Rights of LGBTI Persons**

In Peru, discrimination, and the situation of structural inequality LGBTI people live in, continues to be a constant. The systematic violence they experience daily in various spaces is related to having been rendered invisible, excluded, and abandoned by the State, which can be made evident by the absence of protective measures in favor of LGBTI persons[[2]](#footnote-2).

Between 2017 and 2018, the highest percentage of the 341 infringements against LGBTI persons was perpetrated by state agents (31.7%)[[3]](#footnote-3). Between 2018 and 2020, at least nine trans women, one trans man, 14 gay men, and two lesbians were murdered. In 2020, five violent deaths of trans women were reported.

In addition to this, there is a lack of approval of legislative initiatives that seek to remediate the situations of violence and discrimination against LGBTI persons, which would guarantee their wellbeing. The Peruvian State does not possess a regulatory or institutional protection system at any of its levels: national, regional, and local, **making evident its lack of compliance with the State’s international instruments regarding respect and protection of the rights of LGBTI persons**[[4]](#footnote-4). On the contrary, actions have been identified that would entail institutional opposition[[5]](#footnote-5).

For example, Peru doesn’t have a regulation that recognizes and guarantees gender identity for people, which specifically affects trans people, who see their access to healthcare and medical attention obstructed due to their not having a national identity document that matches their gender identity. Furthermore, it’s worth mentioning that requests for name or sex changes can only be processed via the judicial system. It has been identified that, within these proceedings, medical certificates diagnosing “gender dysphoria” are still being required. This poses a serious problem, given that “gender dysphoria” is understood as pathologizing trans persons, and is used by judges as the main argument for deciding that a name and/or sex change is justified[[6]](#footnote-6).

Likewise, the absence of a regulation such as this one contributes to reinforcing and perpetuating discriminatory behaviors against trans people. This situation can aggravate their vulnerability, particularly regarding hate crimes, and transphobic and psychological violence[[7]](#footnote-7), **which has serious impacts on their physical, mental, and emotional health.**

Even though Peru has the most discriminated-against LGBTI population (70%)[[8]](#footnote-8), there is no single registry to collect comprehensive information broken down by sexual orientation and gender identity[[9]](#footnote-9). In 2017, the first Virtual Survey of LGTBI persons was carried out[[10]](#footnote-10). **However, it was of an exploratory nature and not probabilistic, with underrepresentation of experiences of people in provinces other than the capital, who have no access to internet and are in a vulnerable situation.**

Now, concerning the National Census of 2017, neither the Demographic and Family Health Survey (ENDES) nor the National Household Survey (ENAHO) includes questions on sexual orientation, gender identity or gender expression. As a result, we do not know the dimensions and characteristics of their state of health, the rate of affiliation to health insurance plans, their access to healthcare services, or their level of satisfaction with them. **The inadequacy of this information impedes the development of evidence-based public policies that effectively guarantee the rights to health and wellbeing of LGBTI persons.** Additionally, it implies the Peruvian State does **not monitor its advances vis-à-vis the goals in Sustainable Development Goal 3 regarding Good Health and Wellbeing (SDG 3)** based on the healthcare needs of the persons affected by violence and discrimination because of sexual orientation and gender identity.

1. **Persistent Barriers in Accessing Healthcare Services**

The violence and structural discrimination that LGBTI persons experience reduces their access to quality healthcare services that comprehensively address their specific needs. Even though SDG 3 asks States to guarantee comprehensive health coverage[[11]](#footnote-11), in Peru, actions and healthcare for LGBTI persons have been solely directed towards HIV/aids-related matters. In addition, going against the SDG3 target that proposes ending the AIDS epidemic[[12]](#footnote-12), the Ministry of Health (MINSA) drastically cut the initial budget for HIV/Aids-related services and treatments in 2022. In 2021, the allotted budget was 164 million soles, and for 2022 it is barely 75.8 million soles**, representing a 45% cutback compared to the previous year[[13]](#footnote-13).**

Healthcare services do not incorporate a differential approach[[14]](#footnote-14) when providing care for LGBTI persons. In this respect, there is an **absence of specialized protocols in the healthcare system for treating LGBTI persons, even more so when they are children or teenagers.** Ithas resulted in many LGBTI persons, due to experiences with discrimination or fear of it, deciding not to go to or have limited access to healthcare centers[[15]](#footnote-15) and medical treatment, as has occurred with:

**Azul** is a trans woman who was illegally and arbitrarily detained in 2008 by local government security personnel and a police officer when she was on her way home. During her time at the police station, she was a victim of beatings and verbal abuse, she was later forced to strip naked, while a third person introduced a rubber baton into her rectum twice, causing injuries; all this while being insulted because of her sexual orientation. In this case, the Inter-American Court of Human Rights ordered the Peruvian State to provide free and prioritized medical treatment for any physical, psychological, or psychiatric ailment suffered by the victim[[16]](#footnote-16). Despite this, **Peru has not complied with the sentence**. Contrary to it, Azul has been denied access to treatment for HIV/Aids.

**Yefri Peña** is a trans woman that, in 2007, was attacked by five unknown individuals, who tortured her, beat her, and cut her throughout her face and body because of her gender identity and expression. In this case, the indifference shown by two police officers when Yefri cried for help must be highlighted; it kept them from getting help and from detaining and identifying the perpetrators[[17]](#footnote-17). Likewise, the personnel at the Healthcare Center she was taken to were indifferent to the severity of her physical condition and did not provide the urgent medical care she needed due to her gender expression and gender identity. In 2015, Promsex and other organizations, in the representation of Yefri, submitted a petition to the United Nations Human Rights Committee requiring that the Peruvian State guarantee reparations for all the harm caused to her[[18]](#footnote-18).

**Eidan** is a young intersex person[[19]](#footnote-19) that at birth was registered under a female name and gender. During his whole childhood and adolescence, Eidan was treated as such. Nonetheless, Eidan has always identified as male. The legal imposition of the female gender has represented a serious obstacle to Eidan when accessing healthcare services as an insured person. Since he appears as a person with female gender in the Social Health Insurance System of Peru (EsSalud), he has been denied access to required medical examinations and specialized care “because the registered sex of the patient does not correspond” despite presenting with sharp pain and risk of testicular cancer. In 2018, with the legal support of Promsex, Eidan filed a lawsuit against the National Identification and Marital Status Registry and the municipality of the district he was born to amend the sex and first name in his birth certificate and National Identity Document.

These cases provide evidence of the structural violence and intersectional discrimination that trans and intersex people encounter in Peru, being denied –among other things- access to healthcare services and comprehensive medical care with an affirmative approach towards sexual diversity.

Even though the SDG3 contemplates granting universal access to sexual and reproductive healthcare services as a target; LGBTI persons have been left out**.** There areno strategies to improve access and coverage of sexual and reproductive healthcare services for lesbian, bisexual, and trans women, nor guidelines for information and communications materials with a rights-based approach, without discrimination due to SOGI and a gender perspective. It is compounded for trans people. In Peru, there are no public healthcare services that cover the needs of the transmasculine population associated with body modifications. The cost of hormones or breast reduction surgery is unpayable for most; add to this, trans people experience discrimination in interactions with healthcare providers[[20]](#footnote-20).

**The COVID-19 pandemic** intensified the situations of poverty[[21]](#footnote-21), exclusion, structural discrimination, and limitations when accessing healthcare services and medications that LGBTI persons face. In 2020, many LGBTI persons chose to interrupt their therapies and medication against HIV/Aids, rather than be exposed to SARS-CoV-2, as well as the discrimination and abuse they suffer in health centers due to their sexual orientation, gender identity, and gender expression[[22]](#footnote-22). One month after the health emergency was declared, the MIMP finally published a pamphlet with ‘Egalitarian guidelines to promote the rights of LGBTI persons in the COVID-19 context’. This publication provides guidelines intended for citizens about respecting their rights. However, distribution was limited.

1. **The State of LGBTI People’s Mental Health**

Peru **has not incorporated gender diversity as a crosscutting element in its public** **policies** in health, nor is it part of the current regulatory framework. SDG3 establishes in one of its targets that States should promote mental health and wellbeing. However, the first study on the mental health of LGBT persons in Peru revealed that 75% of the persons surveyed said they had suffered some form of discrimination because of their sexual orientation or gender identity[[23]](#footnote-23). Likewise, more than half (30%) mentioned having mental health problems such as anxiety, depression, and suicidal thoughts[[24]](#footnote-24). 61.9% reported encountering prejudice or misconceptions about being LGBTI when treated by mental health professionals[[25]](#footnote-25). Finally, excessive cost and the lack of training of healthcare personnel linked to prejudice and the absence of information about specialists in treating the LGBTI population have been identified as obstacles in access and treatment of mental health[[26]](#footnote-26).

Furthermore, Peru does not sanction “conversion practices”, which are efforts made to change the LGBTI person’s sexual orientation, gender identity, and expression. These practices infringe upon the right to free self-determination of LGBTI persons. Close to 40% of those surveyed mentioned having been subjected to “conversion practices” to try to change their sexual orientation or gender identity; most of them (62%) were minors when they were subjected to these practices[[27]](#footnote-27). They mentioned that, for most of them (45%), the treatments were carried out by healthcare professionals, usually psychologists[[28]](#footnote-28).

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[[29]](#footnote-29) and the United Nations Independent Expert on Sexual Orientation and Gender Identity[[30]](#footnote-30) have both condemned this type of treatment with special emphasis; expressing that these practices, by their very nature, constitute cruel, inhuman, and degrading treatment, entailing the risk of perpetuating torture[[31]](#footnote-31).

1. **Absence of Training for Healthcare Personnel in Sexual Orientation, Gender Identity and Gender Expression.**

In Peru, professional and vocational training institutions for technical healthcare training, the entities that oversee the training of social service professionals, as well as the specialization programs available, do **not incorporate a component featuring a health with gender and sexual diversity approach into their curriculum.** In a survey about mental health, 59% of LGBTI persons who answered the survey said that the healthcare professionals who treated them had not been trained to treat LGBTI persons[[32]](#footnote-32).

The Office of the Ombudsman (“Defensoría”) recommended that the MINSA incorporate an equality and non-discrimination perspective, related to the sexual orientation and gender identity of LGBTI persons, into the healthcare protocols of the Health Sector, in order to reverse the prejudice and stigmatization that victims experience[[33]](#footnote-33). Likewise, it pointed out that the MINSA must develop strategies to improve respect and quality of care in the services provided to LGBTI persons at healthcare centers nationwide. However, **there has been no progress in the matter.**

* **Suggested Recommendations for the Peruvian State:**
1. ***Guarantee***LGBTI people’s rights to health through a comprehensive healthcare program that includes sexual and reproductive health, as well as counseling protocols that consider non-heterosexual practices and are targeted towards lesbian and bisexual women, and transmasculine persons.
2. ***Draft*** treatmentprotocols and training modules for healthcare operators in order to provide adequate services for LGBTI persons.
3. ***Design and implement*** a data collection system to record cases of violence and discrimination against LGBTI persons, as per paragraph 252 of the *Azul v. Peru* case.
1. Questionnaire available at: <https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/CFI-IE-SOGI-report-50thsession-HRC.aspx> [↑](#footnote-ref-1)
2. Without LGBTI Violence – Desiphering violence in lockdown times. Homicide cases involving lesbians, bisexuals, trans and intersex in Latin-America ant the Caribbean 2019-2020. [↑](#footnote-ref-2)
3. Ídem. [↑](#footnote-ref-3)
4. Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos - Promsex, Independent Expert Report UN, 2019. Available at: https://www.ohchr.org/Documents/Issues/SexualOrientation/SocioCultural/CivilSociety/CentroPromoci%C3%B3nDefensaDerechosSexuales\_PROMSEX.pdf [↑](#footnote-ref-4)
5. Through Promsex, we have observed that “The Republic’s Congress has sustained a negative agenda, denying any possibility for recognition of LGBTI persons’ rights. Between 2011 and February of 2022, congressmen and congresswomen have rejected the possibility of including sexual orientation and gender identity as protected categories. It should be noted that, legislative discussions about the protection of the rights of LGBTI persons have not prospered, because of this many proposals have been archived, among these, we have: Bill N.º 3584/2009-CR: Law against Hate Crimes; Bill N.º 609/2011-CR: Law against criminal actions based on discrimination; Bill N.º 1697/2016-CR: Law promoting equality in the eyes of the Law and forbidding Discrimination because of sexual orientation, gender identity, and modifying numeral two of article N.º 2 of the Political Constitution of Peru, was not processed because its author removed it on October 3rd, 2017. [↑](#footnote-ref-5)
6. PROMSEX. (2012). [Informe de Derechos Humanos de las personas TLGB](https://promsex.org/wp-content/uploads/2013/05/informetlgb2012.pdf). [↑](#footnote-ref-6)
7. Ídem, para. 134. [↑](#footnote-ref-7)
8. Ministry of Justice and Human Rights. [II Encuesta Nacional de Derechos Humanos](https://cdn.www.gob.pe/uploads/document/file/1611180/3.-Informe-completo-de-la-II-Encuesta-Nacional-de-Derechos-Humanos.pdf.pdf). (January 28th, 2021). [↑](#footnote-ref-8)
9. The Inter-American Court of Human Rights in recent jurisprudence has ordered the Peruvian State to design and implement in an immediate fashion a data collection system for cases of violence against LGBTI persons, in order to evenly and accurately assess the type, prevalence, trends, and patterns of violence and discrimination against LGBTI persons, disaggregating the data by community, race, etnnic background, religion or beliefs, health status, age, and class or migratory or economic situation. Inter-American Court of Human Rights, Azul Rojas Marín and Others v. Peru Case, Sentence on March 12th, 2020, para. 252, available at: <https://www.corteidh.or.cr/docs/casos/articulos/seriec_402_esp.pdf> [↑](#footnote-ref-9)
10. INEI. [Primera encuesta virtual para personas LGBTI.](https://www.inei.gob.pe/media/MenuRecursivo/boletines/lgbti.pdf) Main results, 2017. [↑](#footnote-ref-10)
11. Target 3.8, Sustainable Development Goals. [↑](#footnote-ref-11)
12. Ibídem, target 3.2. [↑](#footnote-ref-12)
13. Sudaca. [Un recorte presupuestal que alarma a los pacientes con VIH](https://sudaca.pe/noticia/informes/un-recorte-presupuestal-que-alarma-a-los-pacientes-con-vih/). (January 2nd, 2022) [↑](#footnote-ref-13)
14. Strategy that allows inclusion of vulnerable populations in public health programs. [↑](#footnote-ref-14)
15. Ídem. [↑](#footnote-ref-15)
16. Inter-American Court of Human Rights, Azul Rojas Marín and Others v. Peru Case, Sentence March 12th, 2020, para. 236, available at: <https://www.corteidh.or.cr/docs/casos/articulos/seriec_402_esp.pdf> [↑](#footnote-ref-16)
17. PROMSEX [Yefri Peña Tuanama, hechos del caso.](https://incidenciainternacional.promsex.org/2020/06/23/yefri-pena/) [↑](#footnote-ref-17)
18. Ídem. [↑](#footnote-ref-18)
19. PROMSEX Eidan, hechos del [caso](https://incidenciainternacional.promsex.org/2020/08/17/eidan-2/). [↑](#footnote-ref-19)
20. Silva Santiesteban, Alfonso y Salazar, Ximena*. ‘Existimos vivencias experiencias y necesidades sociales de los hombres trans de Lima: Un estudio exploratorio’*. First Edition, June, 2018, pp. 51. [↑](#footnote-ref-20)
21. El Comercio, [*La lucha de las mujeres trans en tiempos de pandemia*](https://especiales.elcomercio.pe/?q=especiales/mujeres-trans-en-tiempos-de-pandemia-ecpm/index.html)*.* [↑](#footnote-ref-21)
22. Salud con Lupa. The double stigma. Trans women living with HIV in Peru. [↑](#footnote-ref-22)
23. The virtual questionnaire was answered 323 lesbian, gay bisexual, and trans persons. Más Igualdad Perú. Mental Health of LGBTQ+ persons in Peru. (July, 2021), available at: https://drive.google.com/file/d/1XQBJQmzvQhmb5aWgdNjPa-6wZM-mwjQE/view [↑](#footnote-ref-23)
24. Ídem. [↑](#footnote-ref-24)
25. Ídem. The most frequently reported misconceptions were «One becomes gay / bisexual / lesbian / trans becuase of sexual violence during childhood» (27.2 %), «homosexuales are more promiscuous» (19.2 %) y «bisexuality is a phase or confusion» (18.6 %). [↑](#footnote-ref-25)
26. Ídem. [↑](#footnote-ref-26)
27. Ídem. [↑](#footnote-ref-27)
28. Ídem. [↑](#footnote-ref-28)
29. A/74/148, párr. 50; A/56/156, párr. 24; A/HRC/43/49; y CAT/C/CHN/CO/5, para. 56. [↑](#footnote-ref-29)
30. General Assembly of the United Nations. (2020). [Práctica de las llamadas “terapias de conversión”](https://undocs.org/es/A/HRC/44/53). Report from the Independent Expert on protection against violence and discrimination based orientation and gender identity. (A/HRC/44/53), para. 65. [↑](#footnote-ref-30)
31. Ídem. [↑](#footnote-ref-31)
32. Más Igualdad Perú. [Salud Mental de personas LGBTQ+ en Perú](https://drive.google.com/file/d/1XQBJQmzvQhmb5aWgdNjPa-6wZM-mwjQE/view). (July, 2021). [↑](#footnote-ref-32)
33. Office of the Ombudsman. [Derechos humanos de las personas LGBTI. Necesidad de una política pública para la igualdad en el Perú](https://www.defensoria.gob.pe/wp-content/uploads/2018/05/Informe-175--Derechos-humanos-de-personas-LGBTI.pdf), 2018. [↑](#footnote-ref-33)