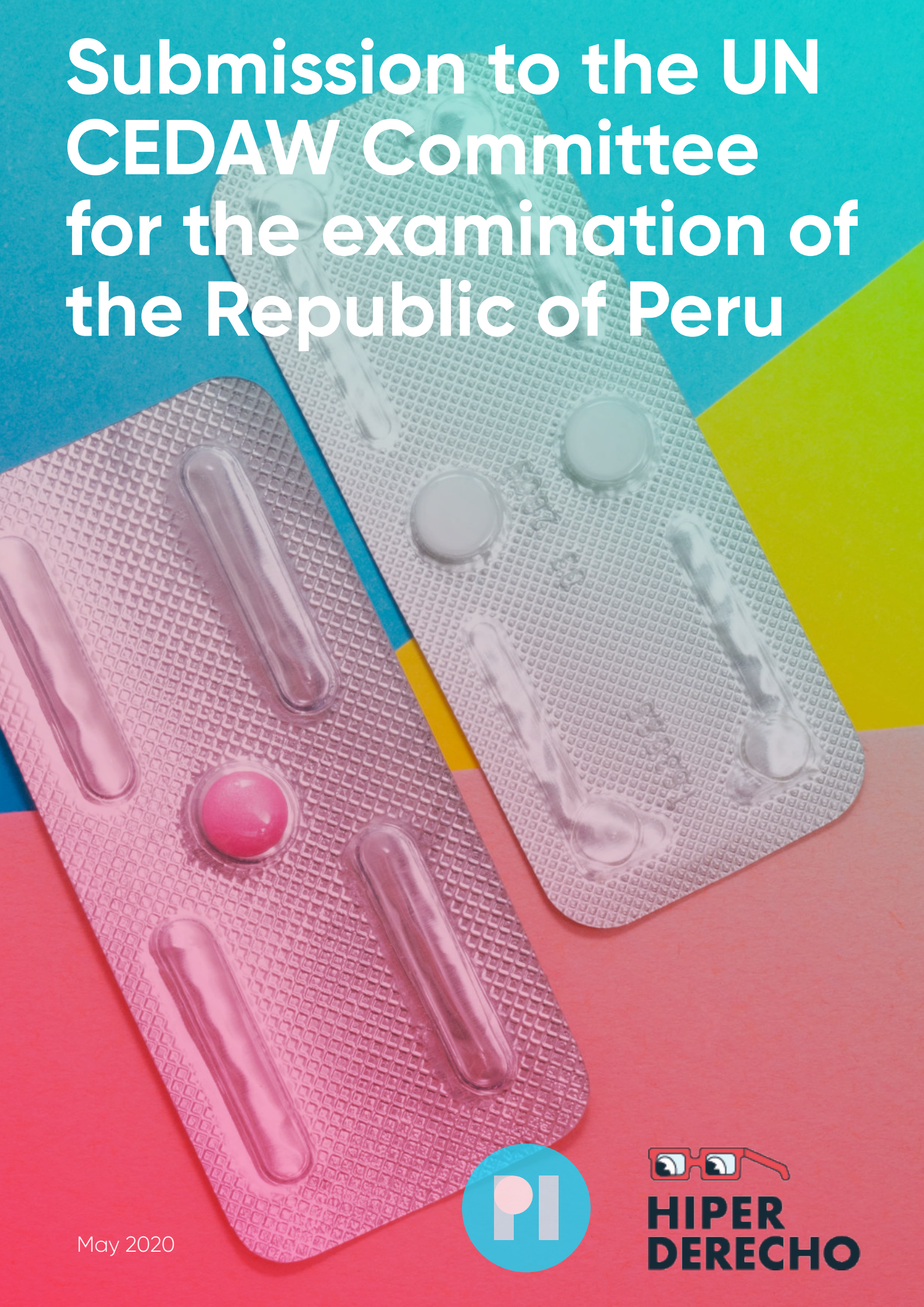
Submission to the UN CEDAW Committee for the examination of the Republic of Peru



May 2020

HIPER DERECHO

Alternative Report
Submitted to the UN CEDAW Committee
by Hiperderecho and Privacy International
for the Examination of the Republic of Peru

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Introduction

This submission is for the Pre-Sessional Working Group 78 that will be meeting between 13 July 2020 and 17 July 2020 to ensure that matters of concern raised here will be included in the list of issues for the State report. Hiperderecho is a civil society organization that works for the defense and promotion of fundamental rights online. Privacy International is a global advocacy and campaigning group that works at the intersection of technology and human rights.

The key issues raised in this report include:

- The State does not recognize gender-based online violence as a type of violence with a unique and direct impact on the rights, freedoms, emotional health and safety of women in all their diversity. We call for State-led prevention, mitigation and response strategies to protect the rights of women to freedom of expression and privacy in online spaces.
- The proliferation of disinformation campaigns and data exploitation strategies online have created new risks for women who use technology to access sexual rights and reproductive health information in Peru. We call for the immediate production of information on reproductive health and sexual rights by the State, as well as gender-observant data privacy policies that take into account the issues that women and the LGBTIQ+ community face in digital environments.
- The digital gender gap in Peru exacerbates the country's social inequalities, leaving aside the basic needs of women regarding their online rights, affecting primarily indigenous women and women in rural areas. We call for the development of gender-focused public policies related to technology, broadband, internet infrastructure, and privacy.

Article 1: Violence against women

- In Peru, the presence of gender-based violence on the Internet is constant. Although the State currently calls it 'virtual harassment'[1], the spectrum of violent behaviors affecting

[1] Ministerio de la Mujer y Poblaciones Vulnerables del Perú, *No al Acoso Virtual:* http://www.noalacosovirtual.pe/

women in all their diversity (heterosexual, lesbian, trans female and male, urban and rural; indigenous, Andean, Amazonian, Afro-Peruvian and women with disabilities) in Peru is much broader[2], including: sexual blackmail, the dissemination of intimate, sexual or erotic images without consent, identity theft, unauthorized access to devices and the unauthorized dissemination of personal data.

- A virtual attack can be the prelude to other forms of physical or sexual violence caused by ex-partners or people close to the family environment[3], and limits online free expression through technology-based censorship or intimidation strategies. In this sense, gender-based online violence is not a subtle or less worrisome form of violence. On the contrary: it is a new type[4] of gender-based violence with a unique and direct impact on the rights, emotional health, and freedom of women and sexual diversities.

- The State does not recognize the ways in which misuse of personal data and gender-based violence may intersect. For example, in 2017, the State conducted the first LGBTIQ+ online survey. However, the platform had major security and privacy flaws[5] that could potentially facilitate the leak of all the personal data of the LGBTIQ+ people who filled out the survey. This vulnerability took place in a context in which the LGBTIQ+ community already feels constantly exposed to various digital and physical attacks by conservative, hate groups and political groups[6].

- In September 2018, Legislative Decree 1410 was enacted, which gave effect to articles 151-A (Harassment), 154-B (Dissemination of images, audiovisual or audio material with sexual content), and 176-B (Sexual harassment), 176 -C (sexual blackmail) in the Peruvian Penal Code. Together with article 154 (Violation of privacy), these modifications create new opportunities to deal with cases of online violence and violations of privacy against women. However, their effectiveness is yet to be measured.

Recommendations:

1. The recent enactment of Legislative Decree 1410 is an opportunity to analyze its effectiveness. For this reason, the Committee is asked to request the Ministry of Women and Vulnerable Populations – through its Aurora Program[7] and its National Observatory on Violence against Women and the Members of the Family – to form a working group to prepare a report on the performance and implementation of the Legislative Decree No.

[2] Albornoz & Flores (2018) *Conocer para Resistir: La Violencia de Género en el Perú.* Hiperderecho: https://hiperderecho.org/tecnoresistencias/wp-content/uploads/2019/01/violencia_genero_linea_peru_2018.pdf
[3] Flanscendini, F., & Fialova, K. (2011). *Voices from digital spaces: Technology related violence against women* (M. Marie, Ed.; p. 87). Association for Progressive Communications. https://library.pcw.gov.ph/sites/default/files/voices%20from%20digital%20spaces-technology%20related%20VAW.pdf
[4] Zerdá, M. F., & Demtschenko, M. B. (2018). Violencia de género digital. 145. http://www.derecho.uba.ar/publicaciones/rev_juridica/rjba-2018-ii.pdf#page=145
[5] Morachimo M. (2017) *Lo logramos juntos: el fallo de seguridad en la web de la Encuesta LGBTI se solucionó.* Hiperderecho. https://hiperderecho.org/2017/05/encuesta-lgbti-inei-fallo-seguridad-solucionado/
[6] Albornoz & Flores (2018) *Conocer para Resistir: La Violencia de Género en el Perú.* Hiperderecho:
[7] The national program for the prevention and eradication of violence against women and members of the family group.

1410, including the number of cases overall and under each new offence introduced by the law, main problems encountered and measures taken to process complaints related to gender-based violence online.

2. The Committee is urged to promote a State-led strategy for the prevention, mitigation and response to gender-based online violence against women that protects their rights to freedom of expression and privacy in online spaces. The strategy should reinforce the importance of digital security education for women, the provision of psychological support after online attacks from the public and private sphere and reparations after violence according to the needs of the victims.

3. In addition, the Committee is asked to make an express request to the Peruvian Congress to approve the Gender Identity bill, specifying the incorporation of demands regarding the privacy and safety of the LGTBIQ+ community in the digital space.

Article 5: Health and access to reproductive rights

- Since 2012, the Peruvian Constitutional Court ordered the State to inform women about reproductive health and family planning methods (00008-2012-PI/TC)[8]. However, the Ministry of Health or the Ministry of Education's online platforms still lack comprehensive information addressing the needs of women and girls in matters of sexual rights and reproductive health[9]. Meanwhile, this topic remains among the least covered areas in Peruvian classrooms. Only 5% of teachers address sex education in their lessons, while 85% of school-age children report that they are learning about sexuality online[10].

- This dependence on the Internet, along with the lack of reliable information provided by the State, has created a fertile ground for the proliferation of online disinformation campaigns that seek to delegitimize and decrease women's trust in emergency contraceptive methods, as well as in hormonal methods of family planning. Such disinformation can at best exacerbate the cycle of poverty for women. At worst, it can prove fatal for women, as shown by the high incidence of unplanned teenage pregnancies[11] and hospitalizations due to unsafe abortion procedures[12].

- As access to contraception, abortion care and sexual health information is increasingly digitized, data exploitation technologies and strategies are being developed to hinder women's bodily autonomy[13]. In Peru, abortion continues to be a crime according to the

[8] https://www.tc.gob.pe/jurisprudencia/2013/00008-2012-AI.pdf

[9] Flores & Albornoz (2019). *Are We Connected? Digital Gender Gap in Peru*. Hiperderecho https://hiperderecho.org/wp-content/uploads/2020/01/flores_digital_gender_gap_peru_2019.pdf

[10] Peru 21 (2018), 85% de los escolares refiere que aprendió de sexualidad en Internet: Peru 21 (2018), 85% de los escolares refiere que aprendió de sexualidad en Internet: https://peru21.pe/peru/educacion-sexual-peru-85-escolares-aprende-sexualidad-medio-internet-395319-noticia/

[11] UNFPA, *Teenage pregnancy in Peru*. https://peru.unfpa.org/sites/default/files/pub-pdf/infografia%20embarazo%20adolescente-25enero.pdf

[12] Ronan and Garcia (2016) Hospital admissions and deaths due to clandestine abortion in Peru: what do the numbers reveal?. Retrieved from: https://rpmesp.ins.gob.pe/index.php/rpmesp/article/view/2573/2600

[13] Privacy International (2020). *A Documentation of Data Exploitation in Sexual and Reproductive Rights*. https://privacyinternational.org/sites/default/files/2020-04/PI-Sexual-Repruductive-Rights-report.pdf

Penal Code (Articles 114 to 120), and between 900 and 1,000 women are reported per year for criminal abortion[14]. In this context, web pages are emerging offering support to women, with the aim of capturing their personal data and forming databases of women seeking abortion in order to offer them abortion services or – in the case of anti-abortion groups – intimidate them for seeking this information. In addition, in at least two specific cases, these Peruvian websites that promote an anti-abortion agenda, do not have privacy policies to protect the personal data of women who access their services, directly violating different laws, especially the Data Protection Law[15].

Recommendations:

1. We request that the Committee promotes the immediate production of unbiased, comprehensive, intercultural, and intersectional information on reproductive health and sexual rights, hosted on state platforms that can be disseminated by the State media. Priority should be given to eliminate political and religious biases, ensuring greater visibility of scientifically-accurate information and recommendations of the World Health Organization as a strategy to combat disinformation and expand access to health for women.

2. The Committee is requested to promote coordination between the Ministry of Women and the Data Protection Authority to identify and inspect data exploitation strategies, in order to protect women and sanction groups that limit their access to health and reproductive rights. They must also encourage greater transparency by organizations that collect and use sexual and reproductive health online data; and raise awareness among the population about the risks of this type of information being processed by organizations opposing reproductive rights. In all cases, it is necessary to apply a gender lens to the work of the Data Protection Authority that takes into account the issues that women and the LGBTIQ+ community face in digital environments.

Article 10: Digital literacy and inclusion

- The digital gender gap is very pronounced in Peru and mainly affects indigenous women and women in rural areas. According to the National Institute of Statistics and Informatics (INEI), only 13.7% of women who speak a native language have access to the Internet. Furthermore, while in the urban area, 54.8% of women use the Internet, in the rural area it is only 12.5%[16]; reflecting a disparity regarding access to technology according to ethnicity and geographic location. Thus, the information and resources provided by technology in Peru exacerbate the country's social inequalities, leaving aside the basic needs of these women regarding their privacy, security and online rights[17].

[14] Ojo Público (2019) Abortar en Perú: cuando víctima y familiares son llevados a cárcel https://ojo-publico.com/1411/abortar-en-peru-victima-y-familiares-son-llevados-carcel
[15] Privacy International (2020). *A Documentation of Data Exploitation in Sexual and Reproductive Rights*
[16] INEI, "Brecha Digital de Género", https://www.inei.gob.pe/estadisticas/indice-tematico/brecha-digital-de-genero-7920/
[17] Flores & Albornoz (2019). *Are We Connected? Digital Gender Gap in Peru*.

Recommendations:

1. The Committee is requested to support the development of gender-focused public policies and create gender-specific objectives in policies related to technology, broadband, internet infrastructure, and privacy. This approach is crucial to ensure that public policies do not exclude women or the LGBTIQ+ community and that the State assumes a proactive role in providing equitable access to the Internet, which in Peru is a key gateway to the exercise of reproductive rights by women.

2. The Committee is asked to recommend to the government the elaboration of a comprehensive plan to develop digital skills in the educational system, with an intersectional and multicultural approach. Strengthening knowledge of rights and privacy in the digital space, taking into account people's native languages and cultures. In this way, democratizing the possibilities of making a safe use of the Internet.

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