Examining The Legal Landscape for Street Involved Children and Youth:

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By Pro Bono Volunteers From

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International Street Youth Project
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I. Basic Human Rights

1. Introduction

To address the basic human rights of street children, we must point out that this is a group with a double vulnerability. Indeed, for their special condition, a child is more vulnerable than an adult, and this condition entitles every child to receive special protection measures from the society and the state.

Children who live, socialize and/or work in the streets, are in a more vulnerable situation, because they absolutely lack the protection of their families, and also survive in an environment where they are exposed to grave risks that may violate their rights, such as the following:

- Distance and disconnection of the family circle
- Abandonment and neglect
- Exposure to consumption or illegal drug trafficking
- Child prostitution
- Street violence and gang activity
- Lack of access to education and health services
- Economic exploitation and forced labor

Within this group we can also identify subgroups whose characteristics make them even more vulnerable: street children with disabilities, LGBT street children, indigenous street children and street children displaced by violence in armed conflicts.

Under Peruvian law, street children have the basic human rights granted to all individuals, plus the protection provided by the specific regulations on the rights of children. There is also some specific regulation directly related to street youth. However, part of the reason for the lack of comprehensive regulation in this area is the relative invisibility of the problem of street youth.

2. Legal framework of Basic Human Rights

The legal framework on Basic Human Rights can be divided in two, depending on the level of the regulation. The level determines the preference in case of conflict of rules; hence, the constitutional rule prevails over the legal rule, as it is stated by the principle of the hierarchy of laws.

The higher level is the constitutional one, which includes the basic rights recognized in the Constitution itself, in the international treaties on human rights to which Peru is a party, and also in the decisions taken by international human rights tribunals constituted under treaties to which Peru is party. The codes and specific laws are at a lower level. In the next several paragraphs, we present an overview of the basics of each one, regarding the fundamental rights of street children.

2.1. Constitutional level

a. Peruvian Constitution

The Peruvian Constitution, adopted in 1993, establishes the basic constitutional rights recognized for all individuals in the Peruvian jurisdiction. Specifically, Article 2 contains a list of rights and liberties recognized for every person, which includes the right to life, the right to physical, mental and moral integrity, the right to personal liberty, the right to a fair trial, to equality, to identity, to information, the freedoms of conscience and religion, freedom of thought, speech and expression, the right to access to information, to honor and dignity, to the
inheritance and to the property of assets, to enterprise, to the inviolability of the home, to assembly and association, among others.

Article 3 establishes an “open clause” that allows the courts to recognize other rights established by the Constitution that are not listed, but derive from human dignity, popular sovereignty, and a democratic state based on the rule of law, and republican type of government.

It is also important to mention that Article 4 states that: “The community and the State bring special protection to the child, adolescent, mother and elderly person that is in a situation of abandonment and neglect. They also protect the family and promote marriage, recognizing them as basic and natural institutes of the society.”

Likewise, Article 7 states that everybody has the right to his personal health, his family’s and the community’s, as well as the duty to contribute to its promotion and defense. The person that is unable to take care of itself because of a physical or mental impairment has to be respected on his dignity and has the right to a legal framework for his protection, care, rehabilitation and security.”

Finally, Article 13 recognizes the right to education, while Article 23 states that everybody has the right to work, establishing that the State protects specially the working mothers, children and persons with disabilities.

b. International Treaties on Human Rights

Under Peruvian law, the international treaties on human rights are incorporated as part of the domestic law and are directly enforceable by the courts. In fact, the Fourth Final and Transitory Provision of the Constitution grants them constitutional status, and establishes that all the rights and liberties recognized in their texts must be interpreted according to the Universal Declaration of Human Rights and the human rights treaties ratified by Peru.

Along the same lines, the Constitutional Procedural Code, enacted by Law 28237, states in Article V, the following:

“Article V. - Interpretation of Constitutional Rights.

The content and scope of the constitutional rights protected by the processes regulated by this Code should be interpreted in accordance with the Universal Declaration of Human Rights, the human rights treaties as well as decisions taken by international human rights tribunals constituted under treaties to which Peru is party.”

Hence, human rights treaties are treated like sources of basic rights, and also function as parameters for interpretation of the Constitution and the laws in our legal system. The main human rights treaties ratified by Peru, that provide protection to the rights of the street youth, are the following:

(i) **American Declaration of the Rights and Duties of Man**
Adopted at the Ninth American International Conference in Bogota, Colombia, in 1948. The same Conference also adopted the Charter of the Organization of American States (“OAS”).

In Article VII, it states that all children “have the right to special protection, care and aid”.

(ii) **International Covenant on Civil and Political Rights of 1976**
Signed by Peruvian authorities in 1977; and ratified in 1978.
In Article 24, the Covenant states that “every child should have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State”. In the same article, the parties to the Covenant recognized the right of individuals (including children) to a name, and to acquire a nationality.

(iii) American Convention on Human Rights


In Article 19, the American Convention states that “every minor has the right to the measures of protection required by his condition as a minor on the part of his family, society and the state”. This rule has been interpreted by the Inter-American Court of Human Rights to establish the obligation of the States to protect the lives and safety of children on the streets (see Section C (ii) below).

In order to determine the content and scope of the general obligation defined in Article 19 of the American Convention, the Court has established that both the American Convention and the Convention on the Rights of the Child form an international “corpus juris” of protection of the rights of children.


In Article 16, the Protocol regulates the rights of children, stating that “every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother. Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.”

(v) Convention on the Rights of the Child

Signed by Peruvian authorities in 1990; and ratified in the same year, the Convention entered into force in September 1990 in accordance with its Article 49.

The Convention bans discrimination against children and foresees special measures to protect their rights as minors. It is important to highlight Article 19, that sets forth the state obligation to take legislative, administrative, social and educational measures to protect the child from all forms of violence, injury, abuse, neglect or negligent treatment, including effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment above described, and, as appropriate, for judicial involvement.

Article 39 is also relevant for the protection of street youth, as it sets forth that the States shall take all the appropriate measures to promote physical and psychological recovery and social reintegration of children who are victims of neglect, exploitation or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment.

(vi) **International Labour Organization Recommendations, Conventions and Declarations**

- Declaration on Fundamental Principles and Rights at Work, adopted in 1998
- Convention N° 138, concerning Minimum Age for Admission to Employment
- Recommendation N° 146, concerning Minimum Age for Admission to Employment
- Recommendation N° 190, concerning the prohibition and immediate action for the elimination of the worst forms of child labor

**c. International Jurisprudence on Human Rights**

As previously noted, Article V of the Constitutional Procedural Code, states that decisions taken by international human rights tribunals constituted under treaties to which Peru is party, must be considered in order to establish the content and scope of the basic human rights, under Peruvian law.

In that sense, sentences and advisory opinions issued by the Inter-American Court of Human Rights must be considered as part of the domestic law, unlike the situation with the Inter-American Commission on Human Rights, whose decisions are considered recommendations to the States.

The most important decisions of the Inter-American Court of Human Rights with regard to the rights of children, specially addressed to the situation of children in abandonment, are:


In this Opinion, the Court identified the family as a focal point for protection of the child. In paragraph 66, it declared: “In principle, the family should provide the best protection of children against abuse, abandonment and exploitation. And the State is under the obligation not only to decide and directly implement measures to protect children, but also to favor, in the broadest manner, development and strengthening of the family nucleus.”

On the other hand, in paragraph 110, the Court referred to children at risk, stating that they should not receive the same legal treatment as those who committed a crime:

“110. It is unacceptable to include in this hypothesis the situation of minors who have not incurred in conduct defined by law as a crime, but who are at risk or endangered, due to destitution, abandonment, extreme poverty or disease, and even less so those others who simply behave differently from how the majority does, those who differ from the generally accepted patterns of behavior, who are involved in conflicts regarding adaptation to the family, school, or social milieu, generally, or who alienate themselves from the customs and values of their society. The concept of crime committed by children or juvenile crime can only be applied to those who fall under the first aforementioned
situation, that is, those who incur in conduct legally defined as a crime, not to those who are in the other situations.

Finally, the Court pointed out that there were children exposed to grave risk or harm who cannot fend for themselves, solve the problems that they suffer or channel adequately their own lives, whether because they absolutely lack a favorable family environment, among other reasons. In such cases, said the Court, those children were not deprived of their rights and withdrawn from relations with their parents or guardians, who have the primary responsibilities that naturally fall to them, even in those grave circumstances.

(ii) Villagrán Morales et al. vs. Guatemala Case (“Street Children” Case), Judgment of November 19, 1999

In this judgment, the Court made an interpretation of the right to life in connection to the rights to dignity, security and integrity of the child. In paragraphs 7 and 8, the Court stated:

“7. The needs of protection of the weaker, such as the children in the streets, require definitively an interpretation of the right to life so as to comprise the minimum conditions of life with dignity. Hence the inexorable link which we find, in the circumstances of the present case, between Articles 4 (right to life) and 19 (rights of the child) of the American Convention (…)”

“8. We believe that the project of life is consubstantial of the right to existence, and requires, for its development, conditions of life with dignity, of security and integrity of the human person.”

Likewise, in paragraph 9, the Court referred to street youth in the following terms: “a person who in his childhood lives, as in so many countries of Latin America, in the humiliation of misery, without even the minimum condition of creating his project of life, experiences a state of suffering which amounts to a spiritual death; the physical death which follows to this latter, in such circumstances, is the culmination of the total destruction of the human being”.

2.2. Infra constitutional level

a. Code of Children and Adolescents

The Code of Children and Adolescents, enacted by Law 27337 in 2000, contains the specific regulation on the basic rights of children and adolescents, in different sections, as set forth below:

Definition of Child and Adolescent

According to Article I of the Heading, the Code considers that “a child” is a person from conception to the age of twelve. An adolescent is a person between twelve and eighteen years old. These definitions are consistent with Article 1 of the Civil Code, which states that a human being is the subject of rights since birth but recognizes that human life begins with conception and that the nasciturus is the subject of rights in everything that favors him.

Article 1 also states that if there were any doubt about the age of a person, he/she will be considered a child or adolescent, unless proof of the contrary is provided.
Legal Capacity

Article IV of the Heading states that, notwithstanding the basic human rights, children and adolescent have the specific legal rights related to their development process, and also have the legal capacity to perform the civil acts regulated in the Code and in other special regulations. The law specifies in which circumstances assistance is needed and establishes the responsibilities therefrom.

For example, according to Article 13 of the Code, adolescents have legal capacity to form non-profit organizations and to perform civil acts related to their corporate purpose so long as they do not consist of the transfer of funds or patrimony, while children can only join such entities.

Civil Rights

The Code recognizes the basic civil rights of children and adolescents, including the right to life (Article 1), to personal integrity (Article 4), to liberty (Article 5), to live in a healthy and balanced environment (Article 3), to identity (Article 6), to be registered in the civil Registry of Persons (Article 7), to live in their natural family and the right not to be separated from them but for special circumstances defined by law and for the sole purpose of protecting them (Article 8), to expression and opinion (Articles 9 and 10), freedom of thought, conscience and religion (Article 11), freedom of movement (Article 12) and right of association (Article 13).

The right to identity includes the right to have a name, to have a nationality and to meet his/her parents and to use their forenames, if possible. The State is responsible to preserve their identity and to sanction those who alter, supplant or deprive it, in accordance with the criminal law; and if so, reestablish the real identity using the appropriate mechanisms.

According to this, Resolution Nº 389-2004-MINSA, issued by the Ministry of Health, states that Birth Certificates are free in all the health institutions of the country (both public and private).

Alternatively, it is important to highlight that the Code considers the following as violations of children’s personal integrity: forced labor, economic exploitation, forced recruitment, prostitution, child trafficking and all the other forms of exploitation of children.

Economic, Social and Cultural Rights

According to Article 14, children and adolescents have a right to education, which includes the right to access to free basic education for poverty-stricken persons, the right not to be discriminated in school on the grounds of their disabilities (if any), the civil status of their parents, or in the case of girls, because of pregnancy. The same article recognizes their right to culture, sport and recreation.

Article 16 also states that every child must be respected and protected by his/her teachers from any kind of mistreatment, harassment, bullying, abuse or sexual violence; while Article 17 states their right to be enrolled at school by their parents or caregivers. Article 17 also states the responsibility of the School Principal, in case of abandonment and other violations of fundamental rights of children and adolescents.

Regarding the right to health, Article 21 states that children and adolescents have the right to comprehensive health care through the implementation of policies directed to their physical and intellectual development in appropriate conditions; and to receive treatment in case of disability or drug addiction.

In the case of the right to work, the Code establishes in Article 22, that the working adolescent will be specially protected, and that they are allowed to work with the restrictions imposed by
the Code and as long as there is no economic exploitation, risk or danger to his/her health or his/her physical, mental, spiritual, moral or social development.

Protective measures for children in abandonment

Chapter IX of the Code foresees the protective measures to be taken in case of abandonment of children and adolescents. The measures that will be applied by the Ministry of Women and Social Development (now Ministry of Women and Vulnerable Populations), are the following:

The care in the home. The parents, relatives or guardians will be oriented to fulfill their obligations, with the support and time tracking of defense institutions.

a) Participation in the Official Community Advocacy Program with educational health and social services;
b) Joining a foster family or family placement;
c) Comprehensive care, on a special protection establishment; and
d) Providing for adoption of the child or adolescent, prior to a declaration of abandonment issued by the judge.

There is also an obligation of the responsibility for social care, and public or private health institutions, to report to the Ministry cases of neglected children and adolescents, within a maximum of seventy two (72) hours of having knowledge of the facts (Article 244).

Protective investigation

According to Articles 245 and 246, when notified of a case of a neglected child or adolescent, the Ministry must immediately open a Protective Investigation, involving the Office of the Family Prosecutor, issue provisional protective measures and order the following:

(i) The statement of the minor, or his/her physical description, as well as making handprints and footprints;
(ii) Psychosomatic examination to determine his/her age, state of health and psychological development. This will be done by specialized forensic officers and the results will be communicated within two (2) days. In the absence of a legal medicine unit, this examination will be conducted in establishments of the Ministry of Health, by medical professionals;
(iii) Pelmatoscopic forensic examination to establish the identity of the child or adolescent. The birth certificate and a copy of the forensic examination will be attached, and the report must be issued within a period of two (2) days. If it comes to a child or adolescent whose identity is unknown, a forensic report will be issued within a period of ten (10) calendar days, with a copy of the psychosomatic examination;
(iv) Multidisciplinary team report, to establish the factors used to determined the status of the child or adolescent;
(v) Multidisciplinary technical reports made by professionals of the shelter institutions; in addition to those sent periodically every three (3) months; and
(vi) The request will expose in detail the circumstances in which the minor was found in order to establish if there is an accusation of disappearance or kidnapping (the “Report of the Missing Persons Division”).

Once all the reports are issued, the Ministry will ask the National Police to locate the parents or guardians of the minor, attaching the form issued by the Civil Registry. If the minor is not found, the Ministry will order publication of the notification in the official newspaper and in
another widely circulated periodical, in the place of the last domicile of the missing person, if known, or in the place where the investigation is conducted.

The publication will be conducted every two (2) days. A notification through the official broadcast will also be done. In cases where the parents or guardians are not found, the Ministry will send the results of the investigation to the Judge, who will issue the Judicial Declaration of Abandonment.

**Judicial Declaration of Abandonment**

According to Article 248, the Judge may declare the state of abandonment of a child or adolescent, in the following cases:

(a) If he/she is a foundling;

(b) If the minor does not have any person who under the law is personally responsible for his/her upbringing, or if any, this person does not comply with those obligations or duties, or lacks the moral or mental quality to ensure proper care;

(c) If the minor is subject to abuse by those who are required to protect him/her or allows others to engage in such abuse;

(d) If the minor is presented by their parents or guardians to a public or private institution of social assistance, and they had unjustifiably neglected the minor for six (6) consecutive months, or when combined periods exceed the duration of this term;

(e) If the minor is left in a hospital or similar institution with the obvious intention of abandonment;

(f) If the minor was given by their parents or responsible person to public or private institutions for adoption;

(g) If the minor has been exploited in any form, or used in unlawful activities by their parents or guardians, when such activities are performed in their presence;

(h) If the minor was given by parents or other person responsible regardless of whether given for remuneration or not, or to be forced to perform work that is nor adequate with their age; or

(i) The minor is in a state of utter helplessness.

Once the dossier is received from the Ministry, the Judge will evaluate if the investigation has met all the proceedings and if all the necessary reports have been issued. If not, the Judge will return the dossier to the Ministry for completion.

The judge, following a favorable evaluation of the dossier, will forward it to the Family Prosecutor to issue its opinion in the next five (5) days. With or without this opinion, the Judge will issue a decision on the neglect of the child or adolescent, and send the entire file to the Ministry.

**b. Law 28190 (Protection of minors from begging)**

This law defines the term “begging”, as the practice of getting money and material resources through public charity. The law states that in the case of children and adolescents, begging causes irreparable damage to their personal identity and integrity, affecting their fundamental rights and placing them in a situation of vulnerability and risk.

The law also establishes responsibilities and foresees the measures to be taken by the government authorities and by the civil society.
In the case of the State, Article 3 establishes the responsibility of the Ministry of Women and Social Development ("MIMDES") (now known as the Ministry of Women and Vulnerable Populations), to adopt immediate measures and programs to prevent damage to the integrity of street children and youth. This Ministry will coordinate with the Office of the Public Prosecutor, the National Police and the Judiciary, who will impose the sanctions to those adults who allow or promote these activities.

In addition to the preventive measures, the following measures must be adopted:

(i) Removal and provisional safeguard of children and adolescents practicing begging;
(ii) Judicial measures for notification of the parents of minors practicing begging, in order to prevent this practice; and also the monitoring of these recommendations;
(iii) Safeguarding minors whose parents do not take measures to prevent the practice of begging, prior authorization of the Minors Judge, with the initiation of appropriate legal actions against those parents;
(iv) Examinations by health professionals, in order to prevent the existence of physical or moral damages resulting from the practice of begging, as well as the adoption of appropriate treatment; and
(v) Support programs and family and school reintegration for street children and adolescents found begging.

Article 4 foresee the actions to be taken by civil society, stating that local governments will have Participation Committees, summoning the people and institutions of civil society, in order to develop activities, policies and programs to support and take care of children and adolescents. These committees will develop the prevention measures and will promote policies for (a) the eradication of begging by minors, (b) the care of street children, including their physical and moral integrity, and (c) sanctions against those who promote it.

Committees shall also ensure that children and adolescents rescued from begging are directly served by food aid, health care and education programs provided by the State.

II. Child Welfare

1. Social programs to protect street children

In Peru, the scope of state intervention in the protection of street children is based on various social programs and policies on the most vulnerable sectors. For this purpose, the government of Peru has developed programs to address the current situation of children who are homeless, abandoned or abused. These programs are developed through various ministerial portfolios, with the support of institutions specialized in the study of vulnerable social groups.

2. The YACHAY program

The Peruvian National Program “YACHAY”, which in Quechua language means “learning”, aims to fight against the causes of the presence of children and adolescents in the streets. YACHAY considers two different situations: (a) children/adolescents with a family to which they return daily; and (b) children/adolescents without a family or relatives (or without any contact with them). In both cases, the most relevant factor is the lack of parental care and the vulnerability of the children.

YACHAY has identified four types of cases of children/adolescents living on the streets, that have made the street the place where they play, work or just survive:
- Children and adolescents working in the street (with family ties);
- Children and adolescents living on the street (with no family ties);
- Children and adolescents begging on the street (with or without family ties); and
- Children and adolescents involved in sexual exploitation (with or without family ties).

Despite the limitations that exist to determine the number of children and adolescents who are in the streets whether working, begging, living or in situations of sexual exploitation, due to the lack of studies and statistics; the situation of street children has been identified as a serious problem that requires a state policy to address it.

This situation sacrifices the future of these children, limits their opportunities for development, and exposes them to serious risks. However, the experience of working on the streets, as well as the statistics about the number of families in poverty, show that not all the children who live in difficult circumstances are pushed to the streets.

Even though many cases of children living on the streets have their origin in the economic situation of their families, there are other underlying causes that are no less important, such as cultural patterns, domestic violence and the lack of opportunities in families that do not have many resources. Thus, YACHAY has identified the following as causes that determine the presence of a child or adolescent in the street:

- Lack of family protection due to mistreatment and inappropriate relationships;
- Social tolerance to the situation of the children in the streets;
- Insufficient and disjointed policies carried out by the State; or
- Lack of family support to meet their needs and development.

To fight these causes, YACHAY has developed public interventions to protect the rights of the street children. The first is the “Street Educator”. Street Educators are professionals in health sciences, social sciences and education, motivated and trained to facilitate a change of attitude. Their work is focused on the places where street children live, work and socializes, like streets and markets.

The results obtained by YACHAY have shown the effectiveness of this intervention: children and adolescents reduced their working hours or stopped working, and in the case of children and adolescents who were living on the streets, in a large number of cases, they returned gradually to their family environment.

The YACHAY program also considers that the interventions to restore the rights of the street children must include actions taken by local governments (municipalities). These actions include, among others:

- The promotion of a culture of protection for these children (including workshops, technical assistance, training and community surveillance);
- The adoption of the strategy of Street Educators;
- The development and strengthening of institutions like Local Ombudsmen for Children and Adolescents (“DEMUNA”), Local Committees on the Rights of Children (“COMUDENA”), Regional Coordinator of Local Ombudsmen for Children and Adolescents (“CORDEMUNA”), and Special Units of the Police Department, etc…;
- The identification and implementation of public spaces for the proper use of leisure time and family gatherings;
- The development of reference centers and social programs; and
- The promotion of ordinances and regulations to protect street children and youth.

The National Plan of Action for Children and Adolescents 2012 - 2021 (“PNAIA 2021”) is the public policy framework of the Peruvian state that articulates the policies developed on childhood and adolescence. This instrument will guide the state and civil society action towards the comprehensive development of policies for children and adolescents, during this decade. This is the third PNAIA that has been developed since the Peruvian authorities signed and ratified the United Nations Convention on the Rights of the Child. The other two were executed for the periods of 1992-1995, and 2002-2010.

The objectives of the PNAIA are: (i) to ensure the growth and development of children from 0-5 years old; (ii) to ensure the continued growth and development of children from 6-11 years old; (iii) to consolidate the growth and development of the adolescents of 12-17 years old; and (iv) to ensure the protection of children and adolescents 0-17 years old.

4. The National Comprehensive Family Welfare Program

This is a program carried out by the Ministry of Women and Vulnerable Populations (“MIMP”), which is responsible for the care and support of children, adolescents, youth, and also women, adults, seniors and in general, of all persons at risk and abandonment.

The objectives of the program are: (i) to promote, facilitate and establish a social safety net that ensures attention to the most vulnerable social groups, living in poverty, exclusion, natural disasters, accidents, victims of family, social and political violence; and (ii) to consolidate the role of MIMP.

5. Mechanisms to protect and care of street children

5.1. Family protection

Aligned with the Convention on the Rights of the Child, Article 4 of the Peruvian Constitution establishes special protection for abandoned children and youth, emphasizing the promotion of family and marriage.

Similarly, the Code for Children and Adolescents details the scope of the above mentioned article, stating that every child and adolescent has the right to live, to grow and develop within their family and, even when they do not have one, they have the right to grow in an appropriate family environment. According to the law and following the principle of “the best interest of the child”, children can be separated from their families only if it is necessary for their own protection and in the situations specifically established by the law. It is worth noting that one of the principles of the PNAIA 2012-2021 is that “the family is a fundamental institution for the development of people”.

The General Law of Residential Care Centers for Girls, Boys and Adolescents, enacted by Law 29174, regulates the operation of Residential Care Centers, both public and private.

These centers shall be registered and controlled by MIMP, and they give care and proper attention to children without family support and in a situation that affects the exercise of their rights, but specially, to children in a situation of neglect, previously declared by a Family Judge after a due process. The cases in which this situation can be declared are listed in Article 248 of the Code for Children and Adolescents.

The General Law expresses the need to respect the principle of “promotion and strengthening of the family ties” stating that “any Residential Care Centre should promote and strengthen the preservation of
family ties when they do not generate an apparent risk to the integrity of the child or adolescent]\(^1\). The methodology applied by these centers is detailed in Article 7, as follows:

“The methodology should include working with nuclear or extended family, considering the characteristics of their local environment, in order to achieve their reintegration. In case they do not have a family, the Residential Care Center should perform the preparatory actions that facilitate and promote their adoption, together with the National Secretariat for Adoptions.

The Residential Care Center should consider mechanisms to ensure the participation of children and adolescents, and promote their family and / or social integration, as appropriate.”

5.2. Trafficking of Children

Considering the high volume of human trafficking, especially of children, Peru ratified in 2003 the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, to supplement the 2000 Convention against Transnational Organized Crime. This Protocol is not yet in force, but has been opened for signature, ratification and accession since 2000.

In 2004, Peru also modified some articles of the Criminal Code through Law 28251. Since then, Articles 179 to 181 of the Criminal Code establish different penalties for crimes such as encouraging prostitution, procuring prostitution or using the gain obtained from other’s prostitution. This modification also contains a specific provision (Article 182) that bans human trafficking with exclusive sexual purposes, including pornography and sexual slavery. All such crimes consider, as an aggravating circumstance, the fact that the victims are under eighteen (18) years old, and as major aggravating factor, if they are under fourteen (14) years old.

In 2007, the Criminal Code was modified again through Law 28950. Since then, Article 153 describes in detail the crime of Human Trafficking, including in its scope not only the person who retains or transfers a child, but also the person who promotes, encourages, finances or facilitates such acts, prescribing penalties from eight to fifteen years imprisonment. The objective of the deprivation of liberty was also expanded by this legal modification, to include not only prostitution or slavery, but also begging, forced labor and other methods of exploitation\(^2\).

Likewise, Article 153-A of the Criminal Code foresees aggravating factors in cases in which the victims are between fourteen (14) and eighteen (18) years old, prescribing penalties from twelve to twenty years. In the event the victim is under fourteen (14) years old, the penalty would be no less than twenty five (25) years imprisonment.

Decree N° 007-2008-IN regulates in detail the statements enacted by Law 28950. According to this decree, the Permanent Multi-sectoral Working Group against Human Trafficking shall establish a promotion, communication and training strategy aimed to position the fight against human trafficking as a state policy in Peru. This regulation also assigns different responsibilities to various government entities for combating trafficking purposes and determines a focus on children to some of them, such as the Ministry of Women and Vulnerable Populations, the Ministry of the Interior and the Ministry of Foreign Trade and Tourism.

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\(^1\) Law 29.174; Preliminary Title; Article III, Guiding Principles.

\(^2\) Peruvian Criminal Code

"Article 153 - Any person who promotes, encourages, funds, or facilitates the entrapment, transportation, transfer, harbouring, reception, or retention of another, in the territory of the Republic or introducing or removing that person from the country, making use of violence, threats or other forms of coercion, denial of freedom, fraud, deceit, abuse of power or of a situation of vulnerability, or the giving or receiving of payments or benefits, for the purposes of exploitation, sale of children, for the execution of prostitution, sexual slavery or other forms of sexual exploitation, enforced begging, forced labour or services, servitude, slavery and practices similar to slavery or other forms of labour exploitation, or removal or trafficking of human organs or tissue, shall be punished by a prison term of between eight and fifteen years.

The entrapment, transportation, transfer, harbouring, reception, or retention of a child or adolescent for purposes of exploitation shall be considered human trafficking even when none of the methods identified in the previous paragraph is used.”
In order to avoid and prevent damage to children’s identity, integrity and basic human rights, Law 28190 was enacted to protect children from begging on the streets for need or when obligated by their parents or tutors. The core responsibilities stated in the law fall on the Ministry of Women and Vulnerable Populations, which can request assistance from other public entities. The Decree Nº 001-2005 – MIMDES states two situations that should have government’s special attention:

“Article 6. Cases requiring priority attention:
Constitute an aggravating situation and should be given priority attention to the following cases:

a) When children under five are used by an adult or another minor to practice begging.
b) When children and adolescents with disabilities or serious or severe illness are used by an adult or another minor to practice begging.”

5.3. The General Protection to Street Children

The Code for Children and Adolescents approved in July, 2000, consecrates the principle of the “Best Interest of the Child” in children protection regulations. The Code also transfers to the Ministry of Women and Social Development (now called Ministry of Women and Vulnerable Populations) the responsibility for the execution of all the previous proceedings that must be completed prior to the declaration of abandonment of a child or adolescent.

The Code establishes a list of rights and programs for children in various areas. It is worth noting the reference to addictions in this law, highlighting that, children and adolescents addicted to psychoactive substances that produce dependency shall receive specialized treatment from the Health Sector. The Ministry of Women and Vulnerable Populations promotes and coordinates prevention, treatment and rehabilitation programs for these children and adolescents in public and private institutions.

Similar programs shall be created, according to the mentioned Code, for children victims of physical or psychological abuse or sexual violence in order to prevent, assist and reduce the effects of such violence and promote their physical and psychological recovery.3

The Code referenced above, in Article 40, also establishes the right of children and adolescents living on the streets to participate in comprehensive care programs aimed at ensuring their education and their physical and psychological development. The following article states that children without family or living in extreme poverty shall be integrated into care programs of public or private organizations.

6. The Ministry of Women and Vulnerable Populations, as the competent authority to protect the rights of street children

Since the ratification of the Convention on the Rights of the Child in 1990 by Peruvian authorities, the protection of children in Peru has been increasingly strengthened.

In the recent years, the Peruvian government has established various institutions in order to promote social development and respect for human rights of the child. Thus, the Ministry of Women and Social Development became the Ministry of Women and Vulnerable Populations, being the lead agency in the field of childhood and adolescence issues. Also, the Peruvian government created the Ministry of Culture, the Ministry of Development and Social Inclusion and the Ministry of Justice and Human Rights. In this way, the Peruvian State demonstrates its decision to promote and protect human rights.

As was previously mentioned, during the last twenty years, Peru has had three National Plans of Action for Children and Adolescents (PNAIA). The first one was focused on poverty alleviation (PNAIA 1992-1995), while the second one was focused on healthy living, education and guarantees for the protection

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3 Articles 37 and 38 of the Code for Children and Adolescents.
of the rights of the child and adolescent (PNAIA 2002-2010 gained force of law, becoming a national mandatory/compulsory Plan). The third one is focused on developing public policy on children and teens (PNAIA 2012-2021).

Hence, the national government, through the Ministry of Women and Vulnerable Populations, approved the National Plan of Action for Children and Adolescents (PNAIA) 2012-2021, which aims to develop public policy on children and adolescents with six guiding principles: (i) the interests of the child, (ii) equal opportunities, (iii) recognition of the child and the child as a subject of rights, (iv) progressive self-determination, (v) participation and (vi) family as the fundamental institution for the development of people, all aimed at ensuring the comprehensive development of children.

The Ministry of Women and Social Development - MIMDES - (now the Ministry of Women and Vulnerable Populations) in its capacity as lead agency of the National System of Integral Attention to Children and Adolescents, is responsible for formulating, approving and coordinating the implementation of policies for the comprehensive care of children and adolescents, including: promulgating technical and administrative rules dictating national and general character for the care of children and adolescents; ensuring compliance with the rules contained in the Convention on the Rights of the Child, the Code of Children and Adolescents and the domestic laws; and articulating and guiding institutional actions of the National System of Integral Attention, through various public and private bodies responsible for ensuring the protection of children and adolescents at begging.

Through its specialized agencies it is responsible for developing the policies for the prevention and care for children as beggars. Also, this agency is responsible for designing and implementing programs and projects to strengthen family relationships, responsible parenthood, and development of skills for work and education.

This Ministry is responsible for coordinating with regional and local governments, the National Police, the Public Ministry, the judiciary and other institutions working with children and adolescents, and for the adoption of appropriate prevention and protection measures. It is responsible for promoting coordination between the central government and state institutions to address the begging of childhood and adolescence actions.

The Ministry of Women and Vulnerable Populations is primarily responsible for supervising and monitoring programs of family and school reintegration. Through the Supreme Decree 001-2005-MIMDES, this agency has the responsibility for developing and adopting the Basic Protocol for Identification and Care for cases of children engaged in begging, and its corresponding operating manual.

This Basic Protocol was approved by Ministerial Resolution 701-2006-MIMDES, and was created to guide operators in the administration of justice, to direct public officials and employees so that their interventions were aimed at protecting and caring for begging children in high-risk cases, and to get into immediate communication with parents and to obtain intervention from the competent authorities to investigate, identify, arrest and punish those who engage in the trafficking and exploitation of children and adolescents.

Both municipal and regional governments are responsible for disseminating and promoting the rights of children and adolescents. The organization and implementation of local programs to provide assistance, protection and support to the population of children and adolescents at risk is a function of the municipalities.

7. Current status and projections on the protection of street children in Peru

There is a need to develop protective legislation and more public policies to protect street children. From 1996, the Ministry of Women and Vulnerable Population, through the Department of Children and
Adolescents and especially through the Department of Local Care is the central authority for the care of children and adolescents nationwide.

There are other institutions involved in this project, such as Local Ombudsmen for Children and Adolescents (“DEMUNA”), the International Labor Organization (“ILO”), and the Residential Care Centers of the Comprehensive Family Welfare Program (“INABIF”), providing all-round care to children and adolescents referred to them by the Family Courts or the Child Protection Unit and designing individualized intervention strategies for minors, offering them emotional and social support.

The Peruvian Government reports that for the prevention and treatment of family violence and child abuse in the country, there are several services such as the Child Protection and Teenager Modules Child Abuse (called “MAMIs”) of the Ministry of Health, installed in 21 hospitals in Peru.

The National Police of Peru has also implemented a section of family care to address the problem of family violence and the abuse against women and children, in each of the police stations in the Lima Metropolitan area. Likewise, the Ministry of Women and Vulnerable Populations implemented the National Program against Domestic and Sexual Violence in defense of the rights of victims of domestic and sexual violence.

It is estimated that the number of child victims of sexual exploitation in Peru could exceed 500,000. Most of the victims are girls, and the causes of their situation are associated with the fact that they suffered extreme economic needs, family breakdown, past sexual abuse and abuse in their families. Sex tourism has flourished in cities like Cusco, where there is a high volume of both domestic and foreign visitors.

The Internet is a communication channel accessible to all audiences from public booths, encouraging child pornography, since Internet suppliers do not use filters that can control this diffusion.

Also there are more and more children forced by their parents to get married at young ages in order to secure their family welfare, which retards or even stops their normal social and health development.

Beside that, the National Report of Peruvian Government estimates that there are 2 million children and adolescents who are involved in some type of work, very often including dangerous labor.

A standing multi-sectorial working group against trafficking in persons has been established, one of the main achievements of which has been the drafting and promulgation of Law 28950 against trafficking in persons and migrant trafficking and its implementing regulations. This regulation takes a comprehensive approach to the trafficking of persons, criminalizing it and introducing actions and measures from the three standpoints of prevention, prosecution and assistance to victims.

III. Criminalization of Homelessness

1. Introduction

Worldwide, governments have been enacting laws, regulations and administrative measures to prosecute, penalize or, at least, to stigmatize and to marginalize street-people, including street-youth. Usually, these policies are motivated by the desire to reduce the visibility of poverty, homelessness and youth abandonment, seeking to give an impression of security, and therefore, hiding the social problems. As a consequence, street-youth can be perceived as marginal, dangerous and even a factor in criminal-related activity.
Examples of such criminalization policies, include the following:

- Legislation that makes it illegal to sleep, sit or store personal belongings in public spaces;
- Ordinances that punish people for begging in order to move poor or homeless people out of a city or area;
- Local measures that ban or limit food distribution in public places in an attempt to curb the congregation of individuals who are homeless;
- Sweeps of areas in which homeless people are living in order to drive them out of those areas;
- Selective enforcement of neutral laws (e.g. crossing the street against the light, loitering, and public consumption of alcohol) against people who are homeless;
- Public health ordinances related to public activities and hygiene (e.g. public urination) regardless of whether public facilities are available; and
- Prohibition of removing items from rubbish or recycling bins.

Under such frameworks, living, working, wandering and begging in the streets or assisting people under such situation (e.g. distributing meals) are considered disturbing the peace, unhygienic, unsanitary or against the generally accepted moral codes and norms of public order, and thus penalized; despite, or without having implemented, social policies and programs to prevent or remedy such situation.

In the case of Peru, criminalization of street-youth is not a general practice.

2. **Peruvian Policy Framework**

According to the Peruvian Code of Children and Adolescents, policies for the attention of youth approved by MIMP shall be oriented to develop:

- a) Prevention programs that guaranty appropriate living conditions;
- b) Promotion programs motiving youth and their family’s participation and allowing them to develop their potential;
- c) Protection programs assuring their timely attention whenever they face situations of risk;
- d) Assistance programs to attend their needs when facing particularly difficult situations; and
- e) Rehabilitation programs allowing their physical and mental recovery and which offer specialized attention.

The Code expressly foresees that children and adolescents living in the street are entitled to participate in programs seeking to eradicate begging and to assure their educative process, as well as their physical and psychological development. The programs shall serve to strengthen the links of children and adolescents with their families, schools and communities. The MIMP, in coordination with the Regional and Local Governments shall promote and implement those programs.

At the same time, if the children and adolescent beneficiaries of such programs do not have a family or are in a situation of extreme poverty, they shall be integrated to public or private care programs.

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5 Article 32

6 Article 40
3. Peruvian Legal Framework

3.1. Abandonment

According to the Ombudsman Office Report N° 153 (issued in 2011), the National Integral Program for Family Welfare (“INABIF”) calculated that in Peru there were more than 17,000 abandoned children and adolescents, who were located in Residential Attention Centers. However, the Ombudsman Office acknowledges that such number “does not include those children and adolescents living in the streets as consequence of serious family breakdowns, which in many cases involves poverty situations”.

The Code establishes that people responsible for social and health assistance establishments, both public and private, are obliged to inform the MIMP about children and/or adolescents who might be in state of abandonment within seventy two (72) hours of acknowledgement.

Once informed by the police or others, the MIMP shall start a tutelary investigation, informing the Family Prosecutor, and shall provisionally impose the adequate protection measure (see Section 3.4).

The Judge can declare a child or adolescent in “abandonment status” if the child or adolescent:

a) Is a foundling;

b) Permanently lacks people that, according to law, are responsible for his/her upbringing, or in case he/she has them, they do not comply with their obligations or lack the required moral or mental qualities to assure his/her proper formation;

c) Is exploited in any form or used in unlawful activities or in activities against the moral conventions by his/her parents or guardians, provided such activities are carried out in their presence;

d) Is totally neglected (helplessness); or

e) Subject to other situations specified in the Code.

The Code also states that in no case can the lack of (enough) material resources justify the declaration of abandonment.

3.2. Juvenile Justice System

Pursuant to the Code, an adolescent is considered an “offender” when its responsibility as author or participant of an incident typified as crime or offense by the Criminal Law has been determined by a Judge. When the adolescent is fourteen (14) years old or older, he/she shall be subject to the education measures foreseen by the Code (i.e. rehabilitation). Younger adolescents and children are subject to protection measures.

The Code establishes different substantial processes and execution guarantees, which are at least similar to what is recognized for adults. Likewise, there are guarantees or specific rights recognized to particularly protect the adolescent’s identity and integrity.

There are specialized Courts and specialized Prosecutors, which operate with the support of a specialized unit of the National Police Department.

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7 According to the Ombudsman Office Report N° 153 (2011), from the perspective of the "Integral Protection Doctrine", the abandonment situation rather than representing an irregular situation, it is situation of rights infringement which imposes on the family, society and the State the obligation to implement protective actions. Abandonment is a situation of violation of the rights of a child or adolescent. It is a situation of vulnerability caused by different social and/or family circumstances.

9 Article 244

9 Article 243

10 Articles 183 and 184
Adolescents can only be arrested under judicial order or in case of flagrant infringement (as stated in the Code and in the Constitution). Then, the Public Ministry develops a process similar to the process for adults, but with the possibility that in case of minor offenses, the Family Prosecutor can order the Investigation Remission and direct the adolescent to an Orientation Program (including its family) carried out by a public or private institution authorized by the MIMP.

If the Prosecutor decides to charge the adolescent, then the documentation is sent to the Family Judge to begin the process. The process can be carried out with the adolescent at liberty (under his or her parents or guardians responsibility) or under precautionary confinement in a Juvenile Centre.

Precautionary confinement can only be ordered when there is a reasonable risk that the adolescent will elude the process, there is a basis to fear he/she will destroy or block evidence, and there is enough evidence of the adolescent’s authorship or participation in the offense.

During the judicial process, the adolescent can request the “Remission” (throughout an early termination request). If accepted, the Family Judge will proceed to impose a socio-educative measure (provided the process is not based on a serious offense).

In the event that the adolescent is found guilty, the Judge will order any of the socio-educative measures detailed in Section 3.4.

3.3. Gang Activity

Gang activity can be penalized when a group of adolescents between twelve (12) and eighteen (18) years old, get together and jointly act to infringe upon someone’s life, physical integrity, sexual freedom or patrimony or to damage public or private assets or to commit an outrage disturbing public order. The measures to be applied would depend on the age of the adolescents, as follows:

<table>
<thead>
<tr>
<th>Offense</th>
<th>Offender’s Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>“When acting as part of a gang…”</td>
<td>12 -14 years</td>
</tr>
<tr>
<td>a) The adolescent infringes upon someone’s patrimony or damages public or private assets.</td>
<td>Protective measures</td>
</tr>
<tr>
<td>b) The adolescent infringes upon someone’s physical integrity, sexual freedom or patrimony or damages public or private assets, using fire arms, bladed weapons, flammable material, explosives or sharp objects.</td>
<td>Protective measures</td>
</tr>
<tr>
<td>c) When as consequence of b), the victim dies or</td>
<td>Protective measures</td>
</tr>
</tbody>
</table>

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11 Article 206
12 Article 193
suffers serious injuries, or if the victim of violation of sexual freedom is underage or disabled.

<table>
<thead>
<tr>
<th>Protective measures</th>
<th>Socio-educational measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surveyed home care</td>
<td>Warning</td>
</tr>
<tr>
<td>Participation in a community or official program of Defense, with education, health and social focus</td>
<td>Community Services&lt;sup&gt;14&lt;/sup&gt;</td>
</tr>
<tr>
<td>Incorporation to a foster family or family placement</td>
<td>Assisted Liberty (under a guardian surveillance)</td>
</tr>
<tr>
<td>Integral attention in a special protection establishment</td>
<td>Restricted Liberty (daily participation in the Orientation Services Centre of the Judiciary)</td>
</tr>
<tr>
<td>Incorporation to an adoption program (provided if there is a previous judicial declaration of state of abandonment)</td>
<td>Internment&lt;sup&gt;15&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

In parallel, the Criminal Code<sup>13</sup> foresees that any adult participating in gangs, instigating or inducing minors to participate in them, in order to commit the offences detailed above and any outrage disturbing public order, could go to prison for at least ten (10) years, and for no more than (20) years.

3.4. Protective and Socio-Educational Measures

The Code foresees the following measures:

3.5. Parental Rights

According to the Code, among other scenarios, parental rights can be suspended in the event that parents allow their children or adolescents to wander or make them beg.<sup>16</sup>

3.6. County Ordinances

a. Rights Promotions

Local Governments shall enact complementary measures to assure the protection of the rights of children and adolescents, adapted to the particularities and characteristics of their local area. Likewise, they are expected to defend and promote the rights of children and adolescents. Hence, they must organize and implement a program of Municipal Advocacy for Children and Adolescents.

<sup>13</sup> Article 148-A
<sup>14</sup> See the applicable regulations approved by Administrative Resolution N° 085-2010-CE-PJ
<sup>15</sup> The adolescent can request the benefit of semi-liberty once two third of the ordered time has elapsed.
<sup>16</sup> Article 75
As such, there are several County Ordinances that create a Municipal Committee for the Rights of Children and Adolescents, including:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Regulation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lurigancho Chosica</td>
<td>Ordinance 167-MDL</td>
<td>Declare that Municipal Infant, Youth and Pregnant Mother’s Feeding Program, called “Piquicha” is of local public interest and regulates the organization and operation of public canteens as part of its implementation stage, modernization and sustainable growth.</td>
</tr>
<tr>
<td>San Luis</td>
<td>Ordinance 095-MDSL</td>
<td>Creates the Municipal Program to Prevent Drug Consumption and Gangs</td>
</tr>
</tbody>
</table>

b. **Homelessness Criminalization**

The following are examples of local laws, regulations and ordinances designed to address homelessness:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Regulation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lima</td>
<td>Ordinance 072-</td>
<td>New Markets Regulation</td>
</tr>
<tr>
<td>Lima</td>
<td>Mayoralty Resolution 290</td>
<td>Authorizes the demolition of general services modules and hygienic services “that the referred modules were being used by “pirañitas” (youth gangs) during the day and by clandestine prostitutes, which motivated the closure of the access doors, hence their demolition is advisable”</td>
</tr>
<tr>
<td>Lima</td>
<td>Mayoralty Decree 104</td>
<td>Approves the organization and formalization of garbage segregators and recyclers</td>
</tr>
<tr>
<td>San Martin de Porres</td>
<td>Ordinance 036-2001-MDSMP</td>
<td>Control and sanction rules against owners of lands without constructions.</td>
</tr>
<tr>
<td>Puente Piedra</td>
<td></td>
<td>Program for Drug Consumption and Youth Gang Activities Prevention</td>
</tr>
<tr>
<td>San Miguel</td>
<td>Ordinance 016-97</td>
<td>Markets Regulation Art 8.</td>
</tr>
<tr>
<td>Jesus Maria</td>
<td>Ordinance 54</td>
<td>Markets Regulation Art 9</td>
</tr>
<tr>
<td>Miraflores</td>
<td>Ordinance 190</td>
<td>Santa Cruz Market Regulation Art 23</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Regulation</td>
<td>Description</td>
</tr>
<tr>
<td>----------------------</td>
<td>-------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Lince</td>
<td>Ordinance 003-97-MDL</td>
<td>Orders the eradication of abandoned vehicles from public roads. States “that nowadays there is a considerable number of vehicles that are abandoned, which in many cases serve as public latrines and are used by wanderers and people of doubtful reputation to stay overnight”</td>
</tr>
<tr>
<td>Ate</td>
<td>Ordinance 041-99-MDA</td>
<td>Orders the eradication of abandoned vehicles from public roads.</td>
</tr>
<tr>
<td>Ate</td>
<td>Ordinance 002-00-MDA</td>
<td>Control and sanction rules against owners of lands without constructions. “that as from the standpoint of public safety, lands that have no fences serve certain times as meeting points of miscreants and antisocial people, who use them to commit acts against moral rules and criminal acts (e.g. felonies, dens, etc.)”</td>
</tr>
<tr>
<td>La Molina</td>
<td>Ordinance 173</td>
<td>Regulates the commercial use of the public ways.</td>
</tr>
<tr>
<td>San Juan de Miraflores</td>
<td>Ordinance 01-98-MDSJM</td>
<td>Article 1: “Local Governments are entities legitimized by the Constitution of Peru and article 109 of the Law 23853, Organic Law of Municipalities to take preventive measure, fight the drug addiction practices, crime, prostitution, smuggling, gangs, etc., illicit activities that undermine the morals, good customs and public health and control the strict compliance of the laws in force.</td>
</tr>
<tr>
<td>San Isidro</td>
<td>Ordinance 156-MSI</td>
<td>Establishes measures to protect the adornment of Miguel Dasso Street (Article 12: Activities not permitted on public streets)</td>
</tr>
<tr>
<td>San Isidro</td>
<td>Ordinance 046-MSI</td>
<td>Regulates the construction and maintenance of fences on property located in the district.</td>
</tr>
<tr>
<td>San Isidro</td>
<td>Ordinance 180-MSI</td>
<td>Declare the Reorganization of the Commercial activities in the district of San Isidro. “Article 10. - Begging: Begging is not recognized as an occupation by the International Labor Organization (ILO) or any authority; therefore, it is subject to municipal control. The activities performed by beggars, whether adults or children, jugglers, glass cleaners and other similar, will not be</td>
</tr>
</tbody>
</table>
Jurisdiction | Regulation | Description |
--- | --- | ---
 |  | considered in any form or circumstance, as commercial activities that may be exercised on public streets.”
 |  | “Article 13. Limitations on Commerce in Public Areas:
 |  | The authorized dealer on public areas is prohibited from:
 |  | e) Overnight or sleep inside the market stall and/or in public areas. (…)
 |  | g) Keep children in the market stall. (…)”
Carabayllo | Ordinance 007-2000-MDC | States the obligation to build a perimetric fence in the lands that have not been built.

IV. Cross Borders and Conflict

1. Introduction

Various factors such as globalization, explosive demographic growth or internal violence experienced in a country can determine a series of migrations which result in the uprooting and the presence of people living far from their homelands. In the case of children and adolescents, this may place them in high risk conditions due to their particular state of vulnerability, and because usually their mobilization is not carried out in the company of family members or relatives.

Such a situation means that many of these children and adolescents end up on the streets because they have no place to live or because, even if they have it, the street is the place in which they socialize and the only place they can use for their livelihoods. In Peru, many children and adolescents flock to the streets in order to sell products, clean cars, beg or perform street art.

These facts expose them to various risks, such as: the risk of not enjoying the minimum material conditions for an adequate livelihood and the malnutrition problems or deficiencies that affect their health; problems of access to basic services provided by the State; and risk of being victims of street violence or of being captured by mafias that will exploit or enslave them with threats that jeopardize their integrity.

This section will review Peruvian regulations on the protection of children and adolescents living in Peru but far from their homelands and the role the Peruvian State has in relation to this legislation.

2. The cases foreseen by Peruvian regulation

According to Peruvian law, the movement of children and adolescents across borders can be caused by different factors.

a. Child or adolescent that arrive in Peru in the company of their parents or with their permission:

The child or adolescent legally enters the country and his/her presence in Peru is considered legal and is not subject to further restrictions. This is the case regulated in the Aliens Act, approved by Legislative Decree No. 703. The vulnerability of the child or adolescent may arise
when, for some reasons, they are abandoned in the country and start to live without the company of family members and therefore, without any means to survive.

b. Child or adolescent that arrive in Peru alone or accompanied, as a refugee:

This is the case of the child or teenager who has left their own country due to possible persecution for reasons of race, religion, political beliefs, for violations of human rights or other exceptional circumstances, and to whom the Peruvian State has given refugee status. These cases are regulated by the Refugee Act (Law N° 2789), which establishes the assumptions to be considered a refugee and the procedure to obtain this condition.

c. Child or adolescent that arrive in Peru illegally, alone or accompanied, evading the legal migration control:

This case is punished with expulsion from the country and is also regulated in the Aliens Act, enacted by Legislative Decree No. 703.

d. Child or adolescent that arrive in Peru as a result of the commission of a crime, such as human trafficking:

These cases are regulated by the Criminal Code and the Law against Human Trafficking and Smuggling of Migrants, enacted by Law N° 28950, which condemns this type of behavior towards the aggressor but does not necessarily provide adequate protection for victims.

3. Peruvian regulation of cross-borders: the lack of mechanisms to protect children and adolescents who arrive to Peru

a. Constitutional level

The Convention on the Rights of the Child states in Article 2 that an important regulation for this topic, according to which all State Parties shall respect the rights contained in the Convention and ensure its application to each child within their jurisdiction without discrimination, regardless of their national origin, their parent’s or their legal representative’s. The constitutional status of the Convention in Peru means that this requirement of protection for children and adolescents is considered as a constitutional rule directly applicable to all the Peruvian authorities.

Moreover, it is important to note that the Peruvian Code of Children and Adolescents (hereinafter the “Code”), enacted by Law N° 27337, endorses the terms of the Convention and declares also that the protection of children in the Peruvian territory cannot depend on their national origin or to establish any restriction. It also states that all the protection contained in the Code (including specific rights, adoption rules and regulation of parental authority, etc.) is also applicable to children and adolescents who, despite being foreign, can be found inside the Peruvian territory.

Moreover, foreign children or adolescents who are stranded in Peru are subject to protection provided by Article 4 of the Peruvian Constitution, which expressly states that neglected children deserve special protection from the State.

In summary, from the constitutional level, it can be said that the Peruvian State has a commitment to give special protection to children and adolescents, that this protection must be equal and cannot depend on their national origin in order to impose restrictions. The statement of basic rights, moreover, is regulated by the Code at the legal level.
b. **Infra-constitutional level**

Below the constitutional level of regulation, there are three important rules to consider in the case of foreign children or adolescents entering the country.

First, the Refugee Act (Law No. 27891) establishes specific rules for persons entering the country due to political persecution because of their race, human rights violations or because their countries are in abnormal situations that constitute an emergency that places their lives in danger. This rule also governs the case of children and adolescents when they enter the country accompanied by their parents or legal representatives, however, they do not refer to cases in which they enter the country alone.

These rules do not set any provision to face the peculiarities of a child or adolescent with refugee status in Peru, nor even any specific reference to other rules or to institutions that could collaborate to their socio-cultural integration in the country.

Second, the Aliens Act (Legislative Decree 703) regulates the legal entry of foreigners into the country and establishes procedures and rules to obtain the appropriate immigration status. Although its Article 55 states that foreign citizens have the same rights as Peruvians (except for the limitations specifically established by the Constitution and laws), it does not refer to the particular situation of foreign children and adolescents who are in the country.

For example, Article 62° of the Aliens Act states that compulsory departure is the measure that must be applied in the case of an unlawful entry by an alien. However, the law does not foresee any provisions in case those aliens were children or adolescents. In those cases, it is not enough to seek the expulsion of these children and demand their return to their country of origin, but certain guarantees are needed during their stay in Peru and also to make sure that in their home country they will have a family environment with sufficient protection.

Similarly, the Code does not establish a special chapter dedicated to the rights of cross border children and the protection they should have, given their special characteristics.

Third, and perhaps the only regulation that specifically provides protection for foreign children and adolescents, is the Law against Human Trafficking and Smuggling of Migrants, enacted by Law 28950, which regulates those behaviors as crimes punished by Peruvian criminal law. In those cases, according to the law, the involvement of children and adolescents in the crime of human trafficking is considered an aggravated felony and, consequently, imprisonment may be up to twenty five years.

While the general regulation and the fact that they are subjects of rights in accordance with domestic law is relevant, the fact is that there is no specific regulation on foreign children and adolescents living in Peru, outside their country of origin, that address their particularities and special characteristics of vulnerability.

Thus, a specific regulation should establish mechanisms to ensure they have a right to cultural identity, to guarantee the use and study of their language, and the possibility of returning to their places of origin as soon as possible, the respect of their religious beliefs, etc. In addition to legislation, there are a number of mechanisms that require the coordination of resources, officials and institutions duly informed of their special protection.

4. **Measures that could be taken to improve the legal framework of their protection**

   From the research conducted and upon consultation of the website of the public entity responsible for providing official statistics in Peru - the National Institute of Statistics and Informatics ("INEI") - it has
been found that there is no statistical or census update on the number of foreign children or adolescents currently living in Peru, nor even how many of them are living in the street and/or in a situation of neglect. Having this information would be particularly useful to establish the most appropriate protection mechanism for these children.

Similarly, the domestic legal framework that governs the status of foreigners in Peru should have specific provisions aimed at the protection of foreign children and adolescents, as well as the particular obligations of state institutions in this matter (considering that in addition to the condition of minors, they are more vulnerable because they are outside their own country).

These specific legal frameworks should establish a set of rights and protection measures for these children and adolescents, including mechanisms to promote contact with their families abroad. Mechanisms to protect their cultural identity, their right to practice their religious expressions and to preserve and learn their language of origin, etc. should also be created. Likewise special instructions should be required for public centers that provide accommodation for children that have been abandoned, in order to grant the treatment and the instruction corresponding to these cross-border children, according to their own characteristics.

Similarly, information to orientate these children and adolescents about public institutions to which they can turn to for protection is insufficient and inaccessible. The same lack of information was found on the websites of various embassies established in Peru. In such situation, the publication of an official document or report on contact points to which these children can go to get some kind of protection, is recommended.

Finally, directives or regulations governing coordinated actions or procedures for cooperation between countries are required, in order to ensure that when children or adolescents return to their countries, they will rejoin their families and enter their countries with the necessary protection.

In summary, the Peruvian legal framework has a number of provisions that support the conclusion that foreign children and adolescents living in the country have the same rights than all Peruvian children and adolescents. However, we need to establish specific regulations that guarantee a set of rights for these children and, in consideration of their differences, provide protection mechanisms to prevent the violation of their rights.

V. Education and Employment

1. Introduction: the ban of child labor

In 1998, the International Labor Organization (the “ILO”) adopted The Declaration on Fundamental Principles and Rights at Work (hereinafter, the Declaration). This declaration established the following four basic principles: (i) freedom of association and the effective recognition of the right to collective bargaining; (ii) the elimination of forced or compulsory labour; (iii) the abolition of child labour; and (iv) the elimination of discrimination in respect of employment and occupation.

These principles correspond to the most important basic rights recognized by the ILO with a vocation for universality: “The Declaration makes it clear that these rights are universal, and that they apply to all people in all States - regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers. It recognizes that economic growth alone is not enough to ensure equity, social progress and to eradicate poverty.”

Hence, the abolition of child labor is one of the fundamental principles of the ILO. In the International Labor Conference, 101st session (2012), the ILO promoted the discussion of the fundamental principles and rights at work. Regarding Child Labor, the conclusion was:

“59. Not all work done by children is considered as child labour. Children under 18 years of age may legitimately be engaged in employment, which may even be beneficial in preparing them for a productive life as adults. Child labour means work that is prohibited for children of certain age groups. It is work performed by children who are under the minimum age legally specified for that kind of work, or work which, because of its detrimental nature or conditions, is considered unacceptable for children and is prohibited. The following are defined as the worst forms of child labour and require immediate action for their elimination: slavery, trafficking, debt bondage and other forms of forced labour, the forced recruitment of children for use in armed conflict, child prostitution and pornography, illicit activities and any work that is likely to harm the health, safety or morals of a child, either because of its nature or the conditions in which it is carried out (hazardous work).”

This definition states that not all work performed by a minor is child labor for the purposes of the Declaration. Only those jobs that involve minors who work under minimum age for the activity, or work that involves a serious risk to their health and safety is considered child labor and is banned. Obviously, street work is one of those forms of prohibited work and its abolition is promoted by the Declaration.

2. Domestic law on Child Labor

Peruvian labor legislation does not have a special regulation that addresses child labor. The general regulation obviously prohibits child labor that does not meet the minimum age and safety requirements. Furthermore, it only regulates the admitted forms of juvenile work. In fact, Article 22 of the Code of Children and Adolescents recognizes work as a right:

“The adolescent who works shall be specially protected by the state. The State recognizes the right of adolescents to work, with the restrictions imposed by this Code, as long as there is no economic exploitation and labor activity does not meet risk or danger, affects their education, or is harmful to the child’s health or their physical, mental, spiritual, moral or social development.”

The same Code establishes that adolescent labor has to be approved by the Labor Authority or by local governments.

2.1. Minimum legal age to work:

Peru has signed the ILO Convention N° 138, which rules that the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.

It also states that domestic laws or regulations or the competent authority may - after consultation with the organizations of employers and workers concerned, where such exist - authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

The Peruvian State has hosted the flexibility clause of the ILO Convention N° 138 for developing countries, and has declared a general minimum age of 14 years and an age of 12 years for admission to light work.

In fact, Article 51 of the Code of Children and Adolescents addresses the minimum age to work in general and in certain activities, as follows:

“Article 51. Ages required to work in certain activities
The minimum age required to authorize work by adolescents are:

1. In the case of paid employment or as employees:
   a) **Fifteen** years for non-industrial farming;
   b) **Sixteen** years for industrial, commercial or mining; and
   c) **Seventeen** years for industrial fishing.

2. In the case of other types of work the minimum age is **fourteen**.

   Exceptionally, permission could be granted from the twelve years if the work to be performed does not harm their health or development, or interfere or limit its assistance to schools and encourage their participation in guidance programs or vocational training.

   It is presumed that adolescents are authorized by the parents or guardians to work when they live with them, unless expressly stated otherwise.”

According to Article 50, adolescents require a license to work, except in the case of unpaid family workers. In that case, the head of family must enroll them in the corresponding municipal register. Article 54 sets the requirements to grant the work license for adolescents: (i) that the work does not disrupt regular school attendance; (ii) a medical certificate attesting to the physical, mental and emotional ability of the adolescent to perform the tasks; and (iii) that no teenager should be admitted to work without authorization.

2.2. **Hazardous work:**

   In compliance with the ILO Convention N° 182, Peru has published the Supreme Decree N° 003-2010-MIMDES18 updating the list of hazardous work and dangerous or harmful activities to the overall health and morals of adolescents. This Decree has divided the hazardous work into two groups: (i) activities that are dangerous by its nature, and (ii) activities that are dangerous for the conditions under which they are carried out.

3. **The National Strategy for the Prevention and Eradication of Child Labor**

   In the absence of specialized legislation, the State develops public policies to eradicate the banned forms of child labor. Indeed, on 2012 it published the Supreme Decree N° 015-2012-TR19 approving the National Strategy for the Prevention and Eradication of Child Labor for the years 2012-2021. In this strategy, the following data was analyzed:

   **Magnitude of child labor in Peru**

<table>
<thead>
<tr>
<th>Population</th>
<th>6-13 Years Old</th>
<th>14-17 Years Old</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population of children from 6-17 years old</td>
<td>4,520</td>
<td>2,582</td>
<td>7,103</td>
</tr>
<tr>
<td>(thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children that work (thousands)</td>
<td>832</td>
<td>826</td>
<td>1659</td>
</tr>
<tr>
<td>Percentage of children working about</td>
<td>18.4%</td>
<td>32%</td>
<td>23.4%</td>
</tr>
<tr>
<td>Total population of the age group</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


The National Strategy proposed, as a result of the analysis of the data, to pursue the following principles:

a) **The “superior interest of the child”** - This is a principle that requires the State and society to recognize and guarantee the human rights of children and adolescents and gives priority to the interests of the child over other interests and considerations.

b) **Equal opportunities** - According to this principle, the State and the society must eliminate all forms of exclusion and discrimination that undermine equality. Peru is a multicultural and diverse country, and any discrimination based on gender, age, ethnic origin, culture, language, religion or any other feature is unacceptable.

c) **Boys and girls as subjects of rights** - This principle responds to a very important transformation in the universal thinking on childhood and adolescence. Traditional paradigms considered the child as a “minor” who needed protection, compassion or repression. Today, girls and boys are not considered children, incapable or lacking, but complete human beings respected as such, possessing potential to develop and holders of civil, political, economic, social and cultural rights that must be recognized by the mere fact of existing.

d) **Progressive self-determination** - According to this principle, childhood and adolescence are stages in the life of a person, and have equal value to any other time of life; that is, they have a value in themselves and not as a simple transition to adulthood. Children and adolescents are in a progressive development of personal, social and legal determination given in line with the development of their faculties.

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20 The first six principles were adopted from the “National Plan of Action for Children and Adolescents - PNAIA 2012-202”
e) **Participation of the children and adolescents** - The children and adolescents should participate in matters and decisions that affect them and this participation should be promoted by the family, society and the State at different levels of government.

f) **The family as a fundamental institution for the development of peoples** - The family should not be a hierarchical and authoritarian structure but a democratic institution where mutual respect prevail, free from all forms of violence and where the development of each of its members has support. Families united by affection, solidarity, to provide love and protection to children and adolescents, will enable the development of Peru.

g) **Trajectory to decent work** - According to this principle, assuring paths to decent work involves education quality and the prevention and elimination of child labor.

To fulfill the purpose of eliminating all types of child labor, the National Strategy has foreseen that is necessary to raise two partial results. First, to eliminate child labor below the minimum age for admission to employment. Second, to eliminate hazardous child labor and child and adolescent exploitation. To achieve these results, the National Strategy proposes to work on the following six areas:

a) **Poverty**
   Specific objective N° 1: To increase the average income of poor families with children and adolescents at risk, or child labor in a sustainable manner.

b) **Education and use of free time**
   Specific objective N° 2: To increase the timely completion of basic education and creative use of leisure time of children and adolescents.

c) **Social Tolerance**
   Specific objective N° 3: To reduce social tolerance to child labor.

d) **Working conditions**
   Specific objective N° 4: To improve working conditions allowed on adolescent labor.

e) **Protection**
   Specific objective N° 5: To increase and strengthen screening, protection and punishment against hazardous child labor and exploitation of children and adolescents.

f) **Information and knowledge**
   Specific objective N° 6: To identify child labor and generate information and knowledge.

As is evident, the struggle of the State against child labor is not focused on punishing or penalizing child labor by itself, but in the development of elements to grant those children and adolescents the necessary conditions to avoid child labor in the future. In part, the existence of a social and economic problem is what obliges children and adolescents to work; so the proposed strategy recognizes this fact as being the most important way to reduce human poverty. There is a direct link between poverty and child labor, so the State recognizes this problem and pursues a solution.

4. **The Ombudsman Report N° 166: “Child Labor and the fundamental rights of working children and adolescents”**

Despite the above, this policy is insufficient to cope with the problem of child labor. The Report N° 166 issued last year by Peruvian Ombudsman, addresses in detail the child labor regulation and the fundamental rights of working children and adolescents. This report identified the following pending aspects in the regulation (including the policies above mentioned):
a. **Protection programs for working boys, girls and adolescents who are performing dangerous activities should be addressed in protection programs implemented at the regional and local level, in order to restore their rights**

The protection demanded by international treaties ratified by Peruvian authorities is not restricted to eliminating hazardous work performed by minors, but also requires the implementation of support programs for victims of hazardous work, and especially the worst forms of child labor (according to Article 7.2 of ILO Convention N° 182). Therefore, these programs are needed, with the participation of various State agencies and civil society.

b. **Updating of the list of hazardous work**

By Supreme Decree No. 003-2010-MIMDES, the government approved the list of hazardous and harmful activities for the health and moral values of adolescents. According to Article 4, that list should be updated.

This is justified to the extent that technological advances create new situations of helplessness, which need intervention to ensure the basic rights of minors. Also, the types of prohibited hazardous work can vary from country to country, depending on the socio-economic context and what is determined by the competent authority. So, an activity considered as dangerous (and therefore one of the worst forms of child labor) in one country, can be considered safe and normal in another.

Report N° 166 reveals that despite the existence of national legislation and policies committed to eliminate child labor, such legislation and policies have not taken into consideration two key elements. First, although there is a program to help victims of child labor, there is much less available to help the victims of the worst forms of child labor. Second, the list of hazardous work is not updated, considering the context in which the activities take place. An update is necessary considering that the last one was held in 2010.

5. **Conclusions**

5.1. Not all forms of work performed by a minor are considered Child Labor for the ILO principles. The particular task performed by minors determines the impacts on security (hazardous work) and the minimum working age. Street work performed by a minor is considered Child Labor in Peru.

5.2. There are two filters to determine prohibited child labor: the first is the minimum age to work, and the second is the list of hazardous work and work considered as one of the worst forms of child labor.

5.3. The minimum age to work in Peru is variable, and depends on the type of economic activity. Despite the signature of Peru to the ILO Convention N° 138, Peru has hosted the flexible clause that allows setting a minimum age for light work to 12 years old.

5.4. The list of hazardous work was updated in 2010, in compliance to the statement on ILO Convention N° 182. However, the *Ombudsman* Report N° 166 considers that this list should be updated again.

5.5. In the absence of specialized legislation, the State develops policies to eradicate the banned forms of child labor. Those policies prioritize the socio-economic framework in order to achieve the elimination of Child Work. Such policies also emphasizes the need to reduce social tolerance to child labor.

5.6. The *Ombudsman* has identified as a pending item, the creation of protection programs for children and adolescents who are performing dangerous work, in order to restore their basic rights.
VI. Minority Populations

1. Introduction

Peru is a diverse and multicultural country. Since ancient times, the Peruvian territory was inhabited by various peoples, each with different practices, customs and ways of conceiving life. However, the existence of different cultures in Peru, rather than valued as a contribution, has highlighted various modes of discrimination and exclusion of indigenous peoples, expressed in their low economic performance and lack of observance of rights, as well as the low participation in decision-making processes, even in the case of factors that affect their development.

As well as indigenous peoples and cultures, there are other minority groups suffering discriminatory treatment, whether as a result of language, disability, disease, economic status, religion, opinion, political affiliation, sexual orientation or any other nature.

The Peruvian Constitution states that everyone is entitled to their ethnic and cultural identity, to equality before the law, and may not be discriminated against on grounds of origin, race, sex, language, religion, opinion, condition economic or other purposes. Likewise, the Code of Children and Adolescents (the “Code”) also ensures equal opportunities and non-discrimination to all children and adolescents.

Despite the legislation described above and elsewhere herein, discriminatory practices are evident against many of these minority groups. However, for purposes of this section, we will only review discrimination in relation to indigenous children and those within the lesbian, gay, bisexual and transgender (“LGBT”) group.

2. Indigenous Children

2.1. Overview

The United Nations Convention on the Rights of the Child (hereinafter, the “UNCRC”) is a human rights treaty that intends to protect persons under the age of majority—usually 18 years of age—worldwide. Peru has ratified the Convention as well as other international treaties regarding children’s rights. Upon ratification of the Convention, each country is required to submit an initial report and then periodic reports, every five years on its progress.

These reports are examined by 18 independent experts elected to 4-year terms, also known as the Committee on the Rights of the Child (the “Committee”). The Committee provides general recommendations, such as tips on gathering accurate data, rather than dictating specific solutions. In addition to the UNCRC, Peru’s internal laws include a Code and other criminal codes that prohibit child exploitation.

Domestic law and international treaties typically focus on the following areas: the juvenile criminal system, use of corporal punishment, and the sexual and economic exploitation of children. Such laws and treaties also focus on questions, such as whether the laws guarantee the safety and dignity of children, especially minority children, like indigenous children, and if not, what can countries such as Peru do to guarantee improvement in the lives of minority and indigenous children?

While laws can ameliorate problems, they often do not create systemic change unless they remove legal barriers or improve access to essential services. In Peru, malnutrition, sanitation and safe drinking water are areas that impact children from the rural mountains and the Amazonia region.

Education is also a major concern, as children from rural and remote areas tend to have little or no access to education due to their parents’ insistence that their children work, the cost of education, or the poor facilities available. Even if education is available, it may not reach everyone: “In Peru (...) the
need to improve the relevance of bilingual education programs for children belonging to indigenous groups” is a major concern\textsuperscript{21}.

In fact, countries that want to guarantee child safety and dignity need to ensure that all children receive equal access to education and basic health care, especially in rural areas. Such an effort requires more than mere lawmaking—it requires transparent funding and efficient resource allocation, i.e., legal enforcement and implementation, not only legislative fiat.

Dr. Alejandro Toledo, former President of Peru, sees the problem as one of unequal social capital. He writes: “in addition to posing a profound moral problem, social exclusion produces a tremendous inefficiency that is detrimental to the economy, democracy, and the whole of society. Discrimination leads to a very unequal distribution of opportunities, which in turn prevents society from benefitting from a greater human capital, independent of race, which could contribute to higher rates of production, productivity, and competitiveness.”\textsuperscript{22}

Dr. Toledo credits his own success to education: “As one of sixteen siblings, I had to work in the street from the age of six, shining shoes and selling lottery tickets to supplement the family income...my own escape from poverty arose from an accidental opportunity to access education.”\textsuperscript{23} In a 2001 survey, “when asked to indicate the group most discriminated against, 27 percent of the respondents [in Latin America] indicated the poor, only 16 percent indicated the indigenous population, and 9 percent indicated black people. About 4 percent indicated that there is no discrimination. All of the 18 Latin American countries surveyed indicated that poverty is the main driver of discrimination.”\textsuperscript{24}

Around February 2015, a video appeared of an Indian five-year-old child laborer who sells pens outside a McDonald’s store in India, having his first meal inside the fast food restaurant. A benefactor bought the child food and asked him why he wasn’t in school. The child’s response was, “If I go to school, how will I feed myself?” When the benefactor continued to inquire about the child’s desire to attend school, the child was interested but asked once again: “If I go to school, how will I feed myself?”

As it can be seen, poverty and a lack of educational opportunities lead to a loss of social capital, which in turn causes governments to enact harsher juvenile justice laws, turn a blind eye to corporal punishment, and have fewer resources to spend on exploited children (given limited resources, governments tend to choose to focus on adult criminals). Considering this, how specifically can Peru guarantee the dignity and safety of its children?

2.2. Juvenile Justice

In Peru, the juvenile justice system continues to be a work in progress. Peru’s political violence and terrorism in the early 1990’s caused a “tough on crime” mentality that pointed to some children as terrorists or criminally liable. If a child was branded as a terrorist, he/she would not have access to civil courts and would be processed before a military judge or court.

As violence has abated, Peru has modified some of its laws, allowing the transfer of some terrorism cases to its civil courts\textsuperscript{25}. In addition, Peru is emphasizing the training of its judges on juvenile justice issues. Such training should continue, but the root cause of armed violence needs to be identified before

\textsuperscript{21} “What Happened?” Save the Children (Sweden) (2009) by Laura Theytaz-Bergman, pp. 15.
\textsuperscript{22} Discrimination in Latin America: An Economic Perspective, World Bank, Edited by Hugo Nopo, Foreword by Alejandro Toledo; Available in: http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2009/12/10/000333037_20091210020604/Rendered/PDF/S20980PUB0/EPH1101Officia l0Use0Only1.pdf
\textsuperscript{23} Id.
\textsuperscript{24} Id., Nopo, pp. 2.
\textsuperscript{25} “What Happened?” Save the Children (Sweden) (2009) by Laura Theytaz-Bergman, pp. 29
a long term plan can be created. Moreover, we return to the issue of efficient and transparent allocation of resources:

“Although funding for health and education in the national plan of action 1996–2000 set a target of between 8 and 12% of the budget, the Committee noted that budgetary restrictions did not allow social programs to be fully implemented and requested that the government take measures to the ‘maximum extent of available resources’ once again paying particular attention to children belonging to vulnerable groups.

Rather than increasing budget allocations for health and education, the Committee noted that budget allocations declined since the examination of the second report and that some of the budget that had been ear-marked for specific groups of children was not spent on these target groups.”

It is worth noting that poverty and terrorism have gone hand in hand in Peru: “[O]ne of the primary functions of terrorists in the Third World -- what buys them acceptance -- is protecting the possessions of the poor, which are typically outside the law. In other words, if government does not protect the assets of the poor, it surrenders this function to the terrorists, who then can use it to win the allegiance of the excluded”.

Once we realize that dealing with the causes of criminality creates a greater chance of long term reduction in crime, it becomes more apparent that upholding children’s rights should be part of the fabric of combating criminal activity. In other words, budget allocation discussions should not only look at expenditures, but the cost of not implementing social programs.

### 2.3. Health Care

One does not need to read books to realize that if a child is in pain or malnourished, he/she will not be able to properly concentrate in school, diminishing his/her progress:

“Regional disparities in access to health care were another area where the Committee felt that Peru needed attention. The Committee pointed out the need to ensure access to basic health care for children living in rural and remote areas and amongst indigenous children in order to reduce economic and social disparities between urban and rural areas.

No progress on this issue was made however leading the Committee to observe that access to health and health services in rural and remote areas was inadequate and that measures had to be taken to ensure that basic health care and services were provided to these areas.”

Without access to basic health care and sanitation, some children, especially those in rural areas, will find it difficult to succeed or to take school seriously. On this issue, access to clean water is paramount, as well as access to nutritious food, especially in rural areas.

When children become adolescents, they may become sexually active. In some cases, because of the lack of proper healthcare guidance, children suffer from unplanned pregnancies and/or sexually transmitted diseases, causing further losses of social capital. Health care professionals dispatched to all areas in Peru on a regular basis can provide not just basic healthcare, but basic education on these issues.

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26 Id. at 30.
28 Id. at 31
2.4. **Education**

With respect to indigenous children, bilingual education and immersion programs are necessary to ensure adequate educational access.

If a child does not speak the same language as the teacher, education becomes a pointless exercise. Peru must provide equal educational access by creating and implementing bilingual immersion programs starting from a young age. In this area, money and laws are not as important as finding adequate talent.

No costs are incurred by the government except the teacher’s salary and travel expenses. In most cases, if competent, the teacher becomes the most respected person in the village. If Peru can create consistent educational guidelines and train teachers willing to relocate for a few years to more rural areas, it can reduce the educational gap between children in rural areas, who are often indigenous, and other children.

2.5. **Conclusion**

By focusing on education, health care, and training for juvenile justice employees, Peru can further help guarantee the rights of minority children in general and indigenous children in particular.

3. **LGBT Youth and Homelessness**

Socially, politically and legally, Peru has yet to embrace the LGBT community. A heavily conservative and Catholic country, people who identify themselves as LGBT are ostracized by their societies and, sadly, in many cases by their families. The cumulative effects of homophobia on LGBT people have elevated threats of homelessness, violence, and discrimination in employment, healthcare, and educational opportunities.

Further, if an LGBT youth is also part of another minority group, such as the indigenous or Afro-Peruvian community, the threats of the aforementioned circumstances, are even greater.

Of the minorities on the streets, the LGBT population does not have an exclusive rank. They have been placed into the general minority population with no explicit laws, sanctions or protection. While they are deemed “protected” under Peruvian laws, including the Constitution, through their recognition as a “vulnerable” group, which generically protects against various acts of discrimination based upon sexual orientation or gender identity, there exists no definition and therefore no specific representation of the LGBT community.

The generic protection offered now may seem like enough to the lawmakers and the politicians, but it is not. Not defining this minority group contributes directly to the silence and invisibility of the myriad injustices against it.

In a 2013, a Human Rights Report conducted by the U.S. Department of State, documented discrimination and several cases of abuse suffered by LGBT minorities in Peru. As shown in the report, among the cases documented, all were linked back to the lack of laws specifically prohibiting discrimination based upon sexual orientation, including cases attributed directly to gang violence and corruption within the government and law-enforcement Peruvian parties.

Where cases were reported, many were not followed up by authorities in a timely manner, while others created additional violence and abuse. None of these received appropriate review, attention, or consideration in the Judiciary. Many cases were also determined to be at the hands of government authorities, including police, harassing or abusing LGBT persons. All of this was largely culturally acceptable. Many opportunities to create specific policies to protect the LGBT community have come and gone with little forward progress through the ultra-conservative hands of the state and church.
International organizations, such as the Inter-American Commission for Human Rights, have urged the governments to adopt measures to prevent violence and abusive acts against LGBT persons. While many bills and case law have reached the attention of the higher Peruvian courts, any changes or enactments to statutory law rarely impact the safety and protection of the LGBT community directly.

Special mention of plans that have been among those approved, include:

- The National Plan for Human Rights 2006-2010: Approved by the Ministry of Justice, enhances protection against discrimination to all persons in general.
- National Plan against Violence towards Women 2009–2015: Directed by the Ministry of Women and Social Development. This Plan includes a reference to the use of violent and homophobic language toward women discriminated against because of their gender identity or sexual orientation;
- Youth National Strategic Plan 2012-2021: Approved by the National Youth Secretariat, expressly includes LGBT people in its discussion around education and labor, but does not address measures to protect them from abuse.

In addition to the lack of specific rights and policies to protect LGBT people from abuse and violence, the same is true about labor and healthcare: there are no policies specifically designed for the LGBT community in these issues, and LGBT individuals must use the general protection framework against discrimination.

Article 26 of the Constitution includes the principle of equality of opportunities without discrimination. Legislative Decree 728, known as Law of Labour Productivity and Competitiveness, also includes provisions regarding the use of hostile language or hostility in the workplace and the dismissal that occurs as a result of discrimination on the grounds of race, sex, opinion, disability or otherwise.

Likewise, healthcare policies generically apply to the LGBT community. The Universal Health Assurance framework guarantees health care and protection for all individuals, without discrimination, in all stages of life (including childhood and youth).

Regulation of the Universal Health Assurance framework further enforces the statute by not allowing institutions and service providers to discriminate or contribute to the differential treatment of people on the grounds of race, sex, political opinion, or other factors. In a study sponsored by non-governmental organization PROMSEX, it was demonstrated that health services that were directed at the LGBT community focused primarily on the prevention and treatment of HIV/AIDS.29

Sadly, things are different with respect to education. In this field, there is no express rule that prohibits discrimination in education against LGBT people. The General Law of Education (Law 28044) only has a general clause that ensures basic education to all individuals and prohibits discrimination for race, sex, gender, or other differentiating factors.

Despite all of the above, most educational and health services cost money and are largely unavailable to the homeless youth as a result: they have no financial ability to escape their cities and the disparities they suffer as a result of their LGBT identification. Furthermore, the fact that Peruvian society overall does not accept the LGBT community, impacts any attempts one might make to obtain an education or adequate employment.

Unfortunately, homophobia and transphobia are deeply rooted in all societies. Therefore, enforcement of any policies or protections of the human rights of vulnerable people is truly improbable when it comes to the LGBT community because Peruvian society fails to care.

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This was further confirmed in June 2014, when a public information campaign was conducted by the Office of the High Commissioner for Human Rights (“OHCHR”) that focused on violence and discrimination against the LGBT community. The campaign was coordinated in concert between OHCHR and the Purpose Foundation, which has extensive experience in developing and sustaining large-scale campaigns on human rights worldwide. The premise of this campaign was to promote the idea that “all human beings are born free and equal in dignity and rights,” but the case law and personal stories reported during the campaign identified the substantial degradation and often violent discrimination suffered by the LGBT community in Peru.

A transformational societal change is first required in order to positively impact the LGBT homeless youth of Peru. More organizations like OHCHR exist and attempt to shed light on the rampant and usually violent discrimination of the LGBT community; however, they still are largely without a voice and without sponsors in the Peruvian environment to effect positive change. So long as the church and government leaders remain set in their prejudiced and corrupt ways, the LGBT community in general, let alone the homeless youth within it, will continue suffering at the hands of injustice and discrimination.