



PERU

AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 14TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2012

FOLLOW UP TO THE PREVIOUS REVIEW

During its first Universal Periodic Review in 2008, Peru supported recommendations to report regularly to the human rights treaty bodies and to respond to Special Procedures' communications and questions;¹ to co-ordinate with civil society in developing human rights policy and involve them in follow-up to the UPR;² and to co-operate more closely with the UN Committee against Torture by setting up a national complaint registration and investigation system and a national preventive mechanism.³

As regards the national preventive mechanism, there has been some progress in that a bill was proposed in 2010 for the human rights ombudsman (*Defensoría del Pueblo*) to take on the functions of a national preventive mechanism. However, to date no concrete measures have been taken to establish such a mechanism.

Peru further indicated that it would study all the recommendations, and these would "serve as substantial guidance for the human rights agenda".⁴ However, important recommendations were made to Peru in areas where key human rights concerns persist. These include recommendations to promote and protect the human rights of vulnerable groups, in particular Indigenous Peoples;⁵ to fully implement the recommendations of the Truth and Reconciliation Commission;⁶ to address the issue of prison overcrowding and poor prison conditions, including providing prisoners with access to medical staff and court-appointed counsel, especially in the Challapalca prison;⁷ and to ensure that human rights defenders can carry out their human rights work freely and without fear of intimidation.⁸

THE NATIONAL HUMAN RIGHTS FRAMEWORK

INTERNATIONAL AND NATIONAL HUMAN RIGHTS FRAMEWORK

Amnesty International notes that Peru has yet to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the International Convention for the Protection of All Persons from Enforced Disappearance. It is encouraging, however, that the government is carrying out consultations on the National Human Rights Plan 2012–2016 as a follow-up to the previous plan.

LAW ON THE RIGHT OF INDIGENOUS PEOPLES TO PRIOR CONSULTATION

In August 2011, a new law was passed on the right of Indigenous Peoples to prior consultation in relation to projects and laws that might affect them. The Law on the Right of Indigenous Peoples to Prior Consultation (*Ley del Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios*) has been welcomed by Indigenous organizations and other stakeholders. While some aspects of the law may be improved, the key challenge for the authorities is to implement it in an effective way and in a manner that is consistent with international standards on the human rights of Indigenous Peoples.

In November 2011, the government presented Indigenous organizations with a draft decree on a regulatory framework for the implementation of the Law on the Right of Indigenous Peoples to Prior Consultation,⁹ and launched a consultation process with Indigenous organizations with a view to adopting this regulatory framework. This process finished on 29 February 2012.

However, several Indigenous organizations and NGOs have expressed concerns about the nature and methodology of the consultation process, claiming that it failed to comply with the contents of the law it aims to regulate, as well as breaching international standards on the right to consultation. Of particular concern were the restrictions on the number of Indigenous organizations that could take part in the consultation, the failure to inform Indigenous Peoples adequately of the content and implications of the draft framework, and the fact that the timeframe did not respect key characteristics of decision-making within Indigenous groups which emphasize consensus decisions. As a consequence, most Indigenous organizations withdrew from the consultation process. The adoption of the final text is expected soon.

THE HUMAN RIGHTS SITUATION ON THE GROUND

IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

Impunity for human rights violations carried out during the internal armed conflict (1980 – 2000) continues to be a serious concern. According to the report of the Truth and Reconciliation Commission published in 2003, nearly 70,000 people were killed or subjected to enforced “disappearance” during the 20 years of internal armed conflict. Although there have been some advances, Amnesty International is concerned that progress has been very slow in ensuring truth, justice and reparation. Moreover, the Ministry of Defence has reportedly not co-operated with the civilian courts investigating military offences and past violations.

SEXUAL AND REPRODUCTIVE RIGHTS

Women, particularly those from poor and marginalized communities, continue to face economic, cultural and social barriers in exercising their sexual and reproductive rights. Although the ratio of maternal mortality - previously one of the highest in the region – has decreased overall, Amnesty International is concerned that it has not decreased in rural areas. Despite a number of positive measures taken by the government, several ongoing flaws and key gaps remain which create barriers for women in accessing maternal health care essential to the elimination of preventable maternal deaths. Among the most worrying of these is the apparent lack of co-ordination between different government policies and initiatives, the lack of adequate implementation and monitoring of these policies and initiatives, and linked to this, the lack of clarity around responsibility and accountability for resourcing and implementing these policies and initiatives.

Article 119 of the Penal Code provides for abortion when this is the only way to save the life of the mother or to prevent grave and permanent damage to her health, and is carried out by a doctor with the consent of the pregnant woman or her legal representative. However, to date, the authorities have not issued any national guidelines to regulate therapeutic abortion or to inform the decisions taken by women or the advice of health professionals. As a result, women are still at risk of dying from pregnancies that are recognized by health professionals as posing a grave risk to their health.

In the absence of such guidelines, Peru failed to respond appropriately and in a timely manner to the November 2005 decision by the UN Human Rights Committee regarding the case of a 17-year-old girl compelled in 2001 to carry to term an anencephalic foetus (a foetal disorder resulting in the absence of a major portion of the brain and the overlying skull and scalp). The Committee found that the government had violated the girl’s rights to freedom from cruel, inhuman or degrading treatment, to privacy and to the special protection that must be accorded to children.¹⁰ It declared that the government should redress the lack of effective remedy in cases where women were denied access to legal abortion and take steps to ensure that violations of their rights to access legal abortion do not occur in the future.

In order to prevent and respond adequately to the sexual abuse of children, the authorities in 2006 passed Law No. 28704 raising the age of consent for sexual relations from 14 to 18 years. Amnesty International is concerned, however, that the implementation of the 2006 law may have (unforeseen) negative consequences for the maternal health of girls under 18, in that it may deter girls from attending prenatal check-ups and from giving birth at a health centre for fear that this may

result in legal proceedings against the father, as provided for by the law.

During the last term of Alberto Fujimori's presidency in the 1990s, thousands of women were forcibly sterilized as part of a government-sponsored family planning programme. Indigenous and peasant women from impoverished rural areas were the main targets for the procedure, which resulted in the death of at least one woman, María Mamérita Mestanza Chávez, in northern Peru in 1996. In November 2010, the Inter-American Commission on Human Rights criticized Peru's failure to implement a 2003 agreement between the state and the petitioner to ensure truth, justice and reparation for the women who had been forcibly sterilized. In October 2011, government officials announced that the Public Prosecutor had reopened the investigation into the forced sterilizations of women. Amnesty International hopes that this will result in a prompt, effective, thorough, independent and impartial investigation into forced sterilizations of women, and that all those who were forced to endure this procedure receive reparation.

HUMAN RIGHTS VIOLATION IN THE CONTEXT OF PROTESTS

The authorities appear to be growing increasingly intolerant of dissent, including in the context of continuous protests against the social and environmental impacts of large-scale development projects. Amnesty International is concerned that the rights to freedom of expression, association and assembly appear to have been violated, with reports that excessive use of force has been used in the context of policing such protests.

In April 2011, three protesters were killed and scores injured in clashes with police during protests against the "Tía María" copper mining project in Islay province. Shortly thereafter, the authorities cancelled the project, which the community had said would contaminate the water they used for agriculture.

Amnesty International is particularly concerned about two laws, Legislative Decrees No 1094 and No 1095, which allow the military to use force in situations of social conflict and protest. Under these Decrees, the military can be deployed to deal with "hostile groups"; however, the definition of "hostile groups" in this legislation is very broad and could potentially include human rights defenders and others who are part of social movements or take part in public demonstrations. Moreover, the use of the army to maintain law and order has in the past led to violations of human rights. Finally, the legislation also provides that cases involving excessive use of force by the armed forces can be tried in military courts, which Amnesty International is concerned are neither independent nor impartial and have a long history of perpetuating impunity.

INDIGENOUS PEOPLES

Amnesty International remains concerned at the persistent failure of the authorities to respect the rights of Indigenous Peoples to free, prior and informed consent in administrative and legal measures that affect them, despite attempts to bring in new legislation and regulations (see above). In the meantime, scores of new concessions continue to be granted to companies for oil exploration and other large development projects without the free, prior and informed consent of the affected communities.

The systematic failure on the part of the authorities to consult with Indigenous peoples on such development projects has eroded trust between authorities and Indigenous peoples and the absence of a dialogue has often resulted in violent clashes between activists and the security forces.

On 5 June 2009, 33 people died (including 23 police officers) and at least 205 people were injured when the police intervened to end protests by Indigenous groups near the town of Bagua, in the department of Amazonas. The relatives of those killed are still calling for truth, justice and reparation. A military-police court, which Amnesty International is concerned is neither independent nor impartial, convicted three members of the security forces in March 2011. These convictions may block proceedings currently underway in the civilian courts. As of April 2012, nobody had been convicted for the acts of violence, including the killings of civilians and police officers, which took place at the time.

HUMAN RIGHTS DEFENDERS

Human rights defenders working to protect the rights of Indigenous Peoples, the environment and the rights of communities affected by extractive projects are reported to have suffered human rights abuses at the hands of both state

and non-state actors.

Amnesty International is concerned that the justice system has been misused against human rights defenders in an attempt to halt their human rights work, including by bringing of spurious legal actions against them. For instance, two foreign priests faced expulsion from Peru in 2010 because of their work defending the rights of local communities in the context of large-scale economic projects. One of the priests, Father Bartolini, was accused of public security offences, but was subsequently acquitted in December 2010. In the same trial, five Indigenous and community leaders were convicted and given suspended sentences of four years' imprisonment. All the charges appear to have been brought in order to prevent the human rights work of the accused.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Peru:

International and national human rights framework:

- To ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the International Convention for the Protection of All Persons from Enforced Disappearance;
- To develop a National Human Rights Plan for 2012–2016 with the participation of all sectors of civil society, including a timetable for implementation, indicators, adequate resources and clarity on responsibilities for implementation.

Indigenous rights:

- To ensure the effective implementation of the Law on the Right of Indigenous Peoples to Prior Consultation, with adequate resources and in a manner that is consistent with international standards, including as regards ensuring the free, prior and informed consent of affected communities;
- To continue to strengthen the legal framework on Indigenous rights in collaboration with Indigenous Peoples, including the draft regulatory framework for the implementation of the Law on the Right of Indigenous Peoples to Prior Consultation in a way that is consistent with national and international legislation on Indigenous rights;
- To promptly conduct a full, impartial and transparent investigation into the events of 5 June 2009 in the town of Bagua in the Amazonas Department, where 33 people were killed and at least 205 people injured after police intervened to end Indigenous protests, ensuring that those responsible for human rights abuses on that day are brought to justice in fair trials, and that the victims of the violence receive reparation.

Impunity for past human rights violations:

- To ensure the full implementation of the recommendations of the Truth and Reconciliation Commission, with a view to ensuring accountability for past human rights violations;
- To ensure that the Ministry of Defence collaborates with the investigations and provides all necessary information to identify and bring to justice those responsible.

Sexual and reproductive rights:

- To make clear and accessible information available to all, especially poor and marginalized women, to enable them to access sexual and reproductive health services and make informed decisions;
- To prioritize access to maternal and child healthcare for women living in Indigenous and rural communities with few resources;
- To co-ordinate measures to prevent and reduce maternal mortality, including by adopting and implementing a national protocol on therapeutic abortion;
- To ensure that Law No. 28704, which raised the age of consent for sexual relations from 14 to 18 years, does not negatively impact on girls' readiness to access to maternity services;

- To ensure that a prompt, effective, thorough, independent and impartial investigation is carried out into forced sterilizations of women and to guarantee that those forced to endure this procedure receive reparation.

Freedom of expression, association and assembly in the context of protests:

- To promote, protect and respect the right to freedom of expression, assembly and association, including in situations where protesters are demonstrating against government policies, laws and actions;
- To review Legislative Decrees 1094 and 1095 to ensure that they are in line with international human rights standards;
- To abide by international standards on the use of force and to ensure that all security forces personnel involved in policing of demonstrations receive adequate training on alternatives to the use of force and firearms, including peaceful settlement of conflicts, understanding of crowd behaviour, and methods of persuasion, negotiation and mediation.

Human rights defenders:

- To ensure that human rights defenders – including victims of human rights violations, witnesses, prosecutors, forensic experts, journalists and trade union workers – can carry out their human rights work freely and without fear of intimidation, including by refraining from subjecting them to criminal investigations based on unfounded allegations.

¹ Report of the Working Group on the Universal Periodic Review of Peru, 28 May 2008 (A/HRC/8/37) recommendation 52.17 (Slovenia).

² A/HRC/8/37, recommendation 52.20 (USA, UK).

³ A/HRC/8/37, recommendation 52.4 (b) (Mexico).

⁴ Report of the Human Rights Council on its Eighth Session, 1 September 2008 (A/HRC/8/52) paragraph 698.

⁵ A/HRC/8/37, recommendation 52.1 (Philippines, Algeria).

⁶ A/HRC/8/37, recommendation 52.9 (France, Canada, Philippines, Germany, Republic of Korea, Netherlands, UK).

⁷ A/HRC/8/37, recommendation 52.12 (Canada, Uruguay).

⁸ A/HRC/8/37, recommendation 52.14 (Australia, Netherlands, Belgium, Brazil).

⁹ Borrador de Reglamento de la Ley de Consulta Previa (N° 29785).

¹⁰ Human Rights Committee, Communication No. 1153/2003, CCPR/C/85/D/1153/2003 (2005).