

# Peru

## Amnesty International submission to the UN Universal Periodic Review

Second session of the UPR Working Group, 5-16 May 2008

**Key words:** right to maternal and infant health, death penalty, impunity, prison conditions, human rights defenders

In this submission, Amnesty International provides information under sections B and C (as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*):

- Under B, Amnesty International raises concern over discrimination in the access to health care services and the retention of the death penalty in domestic legislation.
- In section C, we describe concerns related to the right to health, impunity for human rights violations, harsh prison conditions and harassment of human rights defenders.
- In each section Amnesty International makes a number of recommendations in the areas of concerns listed.

### **B. Normative and Institutional Framework**

#### **Right to maternal and infant health care denied to poor and marginalised women and children**

1. Despite the development of a free governmental health programme providing services for poor and marginalized communities in Peru, the Comprehensive Health Service (*Seguro Integral de Salud*), effective health care is not reaching many women and children in such communities. In these communities women are at greater risk of health problems during pregnancy and childbirth, and children face higher risks of illnesses during the first years of life.<sup>1</sup>
2. Research carried out by Amnesty International in 2005 revealed a number of economic, cultural and social barriers to accessing maternal and infant health care by poor and marginalized women and children.<sup>2</sup> The death rate of women and children in poor and rural areas remains worryingly high, higher even than in other countries in the region whose national income is much lower. However, with sufficient political will, adequate funding and appropriate services, these deaths are entirely preventable.
3. Amnesty International's key findings were the following:

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<sup>1</sup> The Special Rapporteur on the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health, following his mission to Peru in 2004, urged the authorities to formulate an equitable health strategy and policy in favour of poor people underpinned by the right to health, to address inequality and discrimination (E/CN.4/2005/51/Add.3).

<sup>2</sup> See Amnesty International's report, *PERU: Poor and excluded women - Denial of the right to maternal and infant health* (AMR 46/004/2006), July 2006.

4. Although special health care is available to poor and marginalized women and children through the *Seguro Integral de Salud*, clear and accessible information is not available for poor and marginalized communities on how to access this service.
5. The identification and registration process to access special health care services is slow and bureaucratic, thereby preventing the very women and children the policy aims to benefit, from accessing the free health care services.
6. Fines were imposed on women who do not attend pre-natal health checkups or do not give birth in health centres despite such fines being illegal. Thus women from poor and marginalised communities who want to give birth at home or who cannot travel to health centres are being penalised.
7. Women who give birth at home are not granted certificates of live birth free of charge, thus effectively denying children of poor and marginalised communities the legal document that identifies them as a person. This places these children outside the State's juridical system and deprives them of the rights enshrined in national and international law.
8. Not all health professionals receive adequate training with regard to their duties and rights in delivering special health service or the rights of women and children in poor and marginalised communities to access adequate, acceptable and good quality maternal and infant health care services without discrimination.<sup>3</sup>
9. In presenting these concerns to the government in 2006 Amnesty International urged it to address all of these issues, including through the development and implementation of a comprehensive national plan of action to end all forms of discrimination within the health system against women and children on the basis of their economic, social and cultural status.
10. In April 2007 the Peruvian Ministry of Health responded to Amnesty International's concerns and recommendations and provided the following information:
11. Guidelines have been issued on the rights of users to access information on the right to health and the provision of health care services;
12. Training programs for health professionals have been initiated;
13. Steps have been taken to increase the number of people from marginalised communities registered to receive special health care under the Comprehensive Health Service;
14. A National Directive was issued by the Ministry of Health reaffirming that although institutional childbirth should be encouraged, there should be no sanctions for women who give birth outside health centres, such as fining or withholding of live birth certificates.
15. *Amnesty International urges the Peruvian authorities to establish mechanisms to monitor, evaluate and report on the implementation of these directives to ensure access*

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<sup>3</sup> As identified by the Committee on Economic, Social and Cultural Rights in General Comment No.14 (2000,) The right to the highest attainable standard of health, 11/08/2000, E/C.12/2000/4

*to health care for women and children in marginalized communities and to reduce maternal and infant mortality.*

### **The death penalty**

16. At the end of 2006, a few months after President Alan Garcia took office, four draft bills on the use of the death penalty were before Congress. Three of these draft bills would extend the scope of the death penalty to offences including the rape of children and people with physical or mental disabilities, and the fourth draft bill would regulate the enforcement of the death penalty in terrorism-related cases. In January of 2007 Congress rejected the fourth bill; however, the first three bills remain pending before Congress.
17. The draft bills also propose the withdrawal by Peru from the American Convention on Human Rights, which prohibits the extension of the death penalty.<sup>4</sup> At present Peru's Constitution allows for the death penalty for treason in time of war and for terrorism; however, no one has been sentenced to death since the Constitution came into force in 1993.
18. *Amnesty International urges the government to remove from domestic legislation all provisions allowing for the death penalty and to refrain from attempting to extend the use of the death penalty for further crimes in accordance with the American Convention of Human Rights.*

## **C. Protection and promotion of human rights in Peru**

### **Justice and Impunity**

19. Impunity for human rights violations carried out during the last 20 years continues to be a serious concern and despite some developments, progress has been slow and those responsible have still not been brought to justice and victims have not been given adequate redress and reparations.
20. The Truth and Reconciliation Commission, set up in 2001 to establish the circumstances surrounding human rights abuses committed by the state and by armed opposition groups between May 1980 and November 2000, delivered its final report in August 2003. The Commission concluded that of the estimated 69,000 people killed or disappeared in the 20 year period, 54 percent of these cases were the responsibility of the armed opposition group, *Shining Path*, and 46 percent the responsibility of the armed forces. Hundreds of *Shining Path* members, including its leadership, are currently in prison. The first trials against members of the armed forces reportedly responsible for 47 cases started in 2005 under very difficult circumstances. There are concerns that detention orders against military and police officers accused of human rights violations were not being enforced, that some of the cases continued to be tried in military courts, and that the Ministry of Defence had reportedly not co-operated with the civilian courts investigating military officers of past violations. According to information from the Ombudswoman's Office, 28 of the 47 cases filed before the Public Ministry by the Commission remain pending.

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<sup>4</sup> Article 4 of the American Convention of Human Rights states that the application of the death penalty shall not be extended to crimes to which it does not presently apply.

21. In 2006 the Peruvian Congress passed the Regulation of the Comprehensive Reparation Plan to provide redress to victims of human rights violations during the 20-year armed conflict. The National Council of Reparations, responsible for creating an official registry of victims, was established in October 2006. By the end of 2007 the Commission had registered cases in more than 800 communities.
22. In 2006 legislation was passed to grant legal aid to military officers accused of past human rights violations. However, no legal aid was granted to the victims of such violations and their relatives, despite reports that nearly 70 percent of them had no access to legal representation.
23. The program, recommended by the Truth and Reconciliation Commission, to protect those who survived human rights abuses during the 20-year armed conflict, their relatives as well as witnesses and lawyers, has still not been implemented.
24. *Amnesty International urges the Peruvian authorities to ensure that the recommendations of the Truth and Reconciliation Commission are fully implemented; that all cases of human rights violations committed during the 20-year armed conflict are investigated promptly, impartially and effectively, including by strengthening the witness protection program; that those responsible are brought to justice in trials that meet international standards of fairness; and that victims and their relatives receive adequate redress.*

#### **Harsh prison conditions in Challapalca Prison**

25. The Challapalca Prison, which is situated over 4,600m above sea level, in the Puno department has started being used again in 2007 as a detention centre. Twenty-four prisoners were transferred there in October 2007. In 2005, all prisoners were transferred from the prison following national and international pressure, including by the Inter-American Commission on Human Rights, due to its inaccessibility and the resulting limits imposed on prisoners' rights to maintain contact with the outside world, including with relatives, lawyers and doctors.
26. *Amnesty International urges the Peruvian authorities to permanently close down, as a matter of urgency, the prison facility in Challapalca and to take measures to ensure prison conditions elsewhere in the country are improved in line with international standards.*

#### **Human Rights Defenders**

27. Human rights defenders, including victims of human rights violations and their relatives, witnesses, prosecutors and forensic experts, as well as journalists and trade unionists continue to be threatened and intimidated because of their human rights activities. Threats against them are rarely investigated and none of the alleged perpetrators have been brought to justice.
28. At the end of 2007, Amnesty International reported a series of death threats against Gloria Cano, a human rights lawyer representing the families of the victims in the trial against former President Alberto Fujimori.<sup>5</sup>

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<sup>5</sup> Amnesty International Urgent Action on Gloria Cano: UA 05/08, Fear for safety/Death threats, AMR 46/001/2008

29. Similar concerns have been raised in relation to human rights defenders involved in mining projects. Human rights defender Javier Rodolfo Jahncke Benavente received death threats in March 2007, apparently because of his work in Piura Province with the Muqui network. The network seeks to ensure that communities have access to information about projected mining activities and to a transparent and fair consultation process before any such projects are carried out.
30. *Amnesty International urges the Peruvian authorities 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.*

**Appendix: Amnesty International documents for further reference**

- Amnesty International annual report entries for Peru, 2005-2007
- PERU: Poor and excluded women - Denial of the right to maternal and infant health, AMR 46/004/2006, July 2006
- Denial of the right to maternal and child health: 'Why have children when you are so poor?', AMR 46/004/2007, April 2007
- Denial of the right to maternal and child health: 'This is the law and you can tell whoever you like', AMR 46/005/2007, April 2007
- Denial of the right to maternal and child health: Illegal charges for health services, AMR 46/006/2007, April 2007
- Denial of the right to maternal and child health: Summary of Amnesty International's findings and recommendations, AMR 46/007/2007, April 2007
- Perú: Juicio Fujimori – amenazas abogados ponen juicio en peligro, January 2008
- Urgent Action on Gloria Cano: UA 05/08, Fear for safety/Death threats, AMR 46/001/2008, January 2008