

PERU

Human rights concerns in Peru

*Amnesty International
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**AMNESTY
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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review of Peru taking place in October-November 2012, Amnesty International comments on the implementation of recommendations that the government supported during its previous UPR in April 2008, concerning its cooperation with human rights treaty bodies and Special Procedures, consultation with civil society on human rights policy, and the creation of a national mechanism to prevent and investigate cases of torture.

As regards Peru's human rights framework, 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 Disappearances. Amnesty International notes that the law on the right of Indigenous Peoples to prior consultation has been adopted, but however has concerns about its further implementation.

In respect to the human rights situation on the ground, Amnesty International draws attention to the ongoing impunity for human rights violations carried out during the internal armed conflict. The organization is also concerned about the barriers women continue to face in exercising their sexual and reproductive rights.

The authorities have reportedly failed to obtain the free, prior and informed consent of Indigenous Peoples on measures that affect them. In the context of social protests against large-scale development projects, human rights abuses have been reportedly committed by authorities, including Indigenous groups and human rights defenders.

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 communications from the Special Procedures;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 such functions. However, to date no concrete measures have been taken to establish this mechanism.

Peru further indicated that it would study all the recommendations and that 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

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 has carried out consultations on the National Human Rights Plan for the period 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.⁹ While some aspects of the law could be improved, the key challenge for the authorities is to implement it effectively and in a manner 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 law and launched a consultation process with them.¹⁰ Several Indigenous organizations and NGOs 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 and also breached international standards on the right to consultation. Of particular concern were 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 processes within Indigenous groups. As a consequence, most Indigenous organizations withdrew from the consultation process. At the time of writing, the regulatory framework has not yet been adopted.

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. Despite 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 flaws and gaps remain which create barriers for women in accessing maternal health care essential to the elimination of preventable maternal deaths. Among the most worrying aspects of these government policies and initiatives are their apparent lack of co-ordination, inadequate implementation and linked to this, the lack of clarity about who is responsible and accountable for their resourcing and implementation.

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.¹¹ 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 such violations do not occur in the future.

In 2006, in order to prevent and respond adequately to the sexual abuse of children, the authorities 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 this law may have negative consequences for the maternal health of girls under 18, in that it may deter girls from attending prenatal check-ups and giving birth at a health centre for fear that this may result in legal proceedings against the father, as provided for by the Law No. 28704.

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 forced sterilizations of women. Amnesty International hopes that this will result in a prompt, effective, thorough, independent and impartial investigation, and that those forced to endure this procedure receive reparation.

HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF PROTESTS

The authorities appear to be growing increasingly intolerant of dissent, including in the context of 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 of excessive use of force 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 said would contaminate the water they use 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. The legislation also provides that cases involving excessive use of

force by the armed forces can be tried in military courts; Amnesty International is concerned that those courts are neither independent nor impartial and have a long history of perpetuating impunity.

INDIGENOUS PEOPLES

Amnesty International remains concerned about the persistent failure of the authorities to respect the right of Indigenous Peoples to free, prior and informed consent in administrative and legal measures that affect them. 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 and initiate dialogue with Indigenous Peoples on such development projects has eroded mutual trust and has often resulted in violent clashes between activists and 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 these acts of violence, including the killings of civilians and police officers.

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 responsibility for implementation;

- To strengthen the legal framework on Indigenous rights in consultation with Indigenous Peoples and in line with international human rights standards.

Indigenous rights:

- To respect the right of Indigenous Peoples to consultation and free, prior and informed consent regarding legislative and administrative measures that affect them;
- To refrain from authorizing further development projects which may impact on Indigenous communities until those communities have been adequately consulted and have given their consent, in line with international standards;
- 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, and to ensure that those responsible for human rights abuses are brought to justice in fair trials, and 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 achieving 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 provide clear and accessible information to all women, especially poor and marginalized women, to enable them to access sexual and reproductive health services and make informed decisions about their sexual and reproductive health;
- 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 maternity services;
- To ensure that prompt, effective, thorough, independent and impartial investigations are 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 No. 1094 and No. 1095 to ensure that they are in line with international human rights standards;
- To abide by international standards on the use of force and ensure that all security forces personnel involved in the 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, and to refrain from subjecting them to criminal investigations based on unfounded allegations.

ENDNOTES

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 Ley del derecho a la consulta previa a los pueblos indígenas u originarios, reconocido en el Convenio 169 de la Organización Internacional del Trabajo, Ley N° 29785 (Law on the right to prior consultation to Indigenous or Originary Peoples, recognized in Convention 169 of the International Labour Organization, Law number 29785).

¹⁰ Borrador de Reglamento de la Ley de Consulta Previa No. 29785.

¹¹ Human Rights Committee, Communication No. 1153/2003, CCPR/C/85/D/1153/2003, (2005).

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE

Americas: Sacrificing rights in the name of development: Indigenous Peoples under threat in the Americas (Index: AMR 01/001/2011), available at <http://www.amnesty.org/en/library/asset/AMR01/001/2011/en/252e3768-5d1b-4078-9d29-4a4c7b3df619/amr010012011en.pdf>

Peruvian Congress unanimously passes Indigenous consultation law, 25 August 2011, available at <http://www.amnesty.org/en/news-and-updates/peruvian-congress-unanimously-passes-indigenous-consultation-law-2011-08-25>

Two killed in clashes over Peru mining project (Index: PRE 01/196/2011), available at <http://www.amnesty.org/en/for-media/press-releases/two-killed-clashes-over-peru-mining-project-2011-04-08>

Investigate violence against Indigenous people in Peru, 4 June 2010, available at <http://www.amnesty.org/en/appeals-for-action/investigate-violence-against-indigenous-people-peru>

Risk of rights violations during Peru water protests, 24 September 2010, available at <http://www.amnesty.org/en/news-and-updates/risk-rights-violations-during-peru-water-protests-2010-09-24>

Peru: More deaths as a result of police response to demonstration (Index: AMR 46/004/2010), available at <http://www.amnesty.org/en/library/asset/AMR46/004/2010/en/a13d787f-fc4d-4a29-8e0c-2961e76a8633/amr460042010en.pdf>

Peru: Trade union leaders released pending trial: Further information (Index: AMR 46/004/2011), available at <http://www.amnesty.org/en/library/asset/AMR46/004/2011/en/04070b57-7d30-4884-a897-f63c5b43de4f/amr460042011en.pdf>

Peru: Bagua victims still waiting for justice (Index: AMR 46/003/2011), available at <http://www.amnesty.org/es/library/asset/AMR46/003/2011/es/d6107da4-dd1b-4671-99e4-03589483cb4a/amr460032011en.pdf>

Peru: Bagua, six months on "just because we think and speak differently, they are doing this injustice to us" (Index: AMR46/017/2009), available at <http://www.amnesty.org/en/library/asset/AMR46/017/2009/en/fea8db2d-a1e1-4440-9d5e-a13d3631e555/amr460172009en.pdf>

La promulgación de la Ley de Consulta en Bagua es un paso histórico, ahora el gobierno debe implementarla teniendo en cuenta todos los estándares internacionales (Index : AMR 46/008/2011), available at <http://amnesty.org/es/library/asset/AMR46/008/2011/es/29c102f6-aec9-41cd-acd9-805d884e13d9/amr460082011es.pdf>

Peru: Excessive force against protesters feared (Index: AMR 46/016/2010), available at <http://www.amnesty.org/es/library/asset/AMR46/016/2010/es/aac6e419-e6d6-4054-96d4-9fcf81f74e9/amr460162010en.pdf>

Missionary defending Amazon tribes in Peru must not be deported (Index: PRE 01/227/2010), available at <http://www.amnesty.org/en/news-and-updates/missionary-defending-amazon-tribes-peru-must-not-be-deported-2010-07-07>

Solutions to the historic violation of indigenous rights will only be found through respectful dialogue, in good faith, with Indigenous Peoples (Index: AMR 01/004/2009), available at <http://www.amnesty.org/en/library/asset/AMR01/004/2009/en/65324480-80e4-4de1-a664-efb848089378/amr010042009en.pdf>

Fatal flaws barriers to maternal health in Peru (Index: AMR46/008/2009), available at <http://www.amnesty.org/en/library/asset/AMR46/008/2009/en/442a4678-9f6d-4f91-9045-3c47198144d7/amr460082009eng.pdf>

Deadly inequalities maternal mortality in Peru (Index: AMR46/002/2009), available at <http://www.amnesty.org/en/library/asset/AMR46/002/2009/en/60b0be04-1cda-45e3-9349-a9b46aa7fd2a/amr460022009en.pdf>

Peru revokes law denying justice for victims of past crimes, 15 September 2010, available at <http://www.amnesty.org/en/news-and-updates/peru-revokes-law-denying-justice-victims-past-crimes-2010-09-15>