



# PERU

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

### 28<sup>TH</sup> SESSION OF WORKING GROUP ON UNIVERSAL PERIODIC REVIEW, NOVEMBER 2017

#### FOLLOW-UP TO PREVIOUS PERIODIC REVIEW

During the second cycle of the Universal Periodic Review in November 2012, Peru received 129 recommendations from other states.<sup>1</sup> Peru fully accepted 120 recommendations<sup>2</sup> and partially accepted one recommendation,<sup>3</sup> and of these it considered seven to have been already implemented or in the process of being implemented. Peru also rejected eight recommendations.<sup>4</sup>

In this submission, Amnesty International focuses on the recommendations it considers to be most relevant in light of the human rights situation in Peru.

#### **Sexual and reproductive rights**

Peru accepted a number of recommendations related to sexual and reproductive rights, including to ensure access to sexual and reproductive health services for women and girls and access to therapeutic abortion; however, abortion remains criminalized, except in cases where the health or life of the pregnant woman and girl is at risk. However, since approval by the Ministry of Health of the technical guidelines on therapeutic abortion in 2014, by 2015 only 24 legal abortion procedures had been registered at the national level.<sup>5</sup> Despite the adoption of the guidelines clandestine and unsafe abortions are predominant.<sup>6</sup>

Peru accepted a recommendation aimed at achieving justice and reparation for the victims of forced sterilization during the government of former president Alberto Fujimori between 1990 and 2000, yet they have not been granted comprehensive reparations, nor have the perpetrators been punished.<sup>7</sup>

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<sup>1</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review – Peru, A/HRC/22/15, 27 December 2012, paragraph 116-119.

<sup>2</sup> A/HRC/22/15, paragraphs 116, 117, 118, and 119, and A/HRC/22/15/Add.1, page 4.

<sup>3</sup> A/HRC/22/15/Add.1, page 3.

<sup>4</sup> A/HRC/22/15/Add.1, pages 2-5.

<sup>5</sup> There are no updated figures on legal abortions carried out to date and it is the government's responsibility to compile this information and make it public.

<sup>6</sup> A/HRC/22/15, recommendations 116.94 (Iraq), 116.97 (Finland), 116.98 (Mexico), 119.6 (France), 119.7 (Portugal), 119.8 (Slovenia), 119.9 (Norway) and A/HRC/22/15/Add.1.

<sup>7</sup> A/HRC/22/15, recommendations 116.31 (Slovakia), 116.56 (Belgium).

### **Human rights defenders**

Peru committed to guarantee the protection of human rights defenders in the face of threats and intimidation and work together with them to tackle violations of their human rights.<sup>8</sup> However, human rights defenders remain unprotected in Peru and continue to be subjected to violence and harassment.

### **Rights of Indigenous Peoples and rural communities**

Despite advances in the implementation of free, prior and informed consent (FPIC) with Indigenous Peoples in relation to projects and activities which affect their territory and ways of life, in accordance with accepted recommendations aimed at ensuring effective implementation of the Consultation Law,<sup>9</sup> the Peruvian government has approved legislation on licenses for and development of extractive projects, such as Law 30230 of 2014, which fails to allow for due recognition of their rights to the land and territory which they have traditionally occupied. Currently, the constitutionality of Law 30230 is under review by the Constitutional Tribunal.

### **Excessive Use of Force**

Despite the fact that the Peruvian government has committed to adopt measures to avoid human rights violations by the Armed Forces and National Police Force during civil unrest,<sup>10</sup> excessive force is still used during such times of unrest and has led to death and injury. In addition, the lack of investigations as a means to punish those responsible for these actions is of concern.

## **NATIONAL HUMAN RIGHTS FRAMEWORK**

### **Institutional framework for the promotion and protection of human rights**

Amnesty International is concerned about the Ombudsperson's weakened actions to guarantee respect for human rights in the country.<sup>11</sup> The change in staff in 2016 has weakened specialized areas within the institution, such as human rights, constitutional matters, civil unrest and Indigenous Peoples.<sup>12</sup> Amnesty International is concerned that despite the fact that the law appointing the Ombudsperson as the body responsible for the National Preventive Mechanism against Torture (NPM) was passed at the end of 2015, this has yet to be implemented.<sup>13</sup>

The Vice-Minister for Human Rights and Access to Justice is currently carrying out a consultation process together with civil society and rights-holders in order to create the 2017-2021 National Human Rights Plan, including consultation with groups such as LGBTI people, women, Indigenous Peoples, human rights defenders and people with disabilities.

### **Ratification of international human rights instruments**

In 2016, Peru ratified the Agreement on Privileges and Immunities of the International Criminal Court,<sup>14</sup> and the UN Arms Trade Treaty.<sup>15</sup> In addition, Peru recognized the competence of the UN Committee on Enforced Disappearances to receive and review communications from or on behalf of individuals subject to its jurisdiction, claiming to be victims of a

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<sup>8</sup> A/HRC/22/15, recommendations 116.72 (Australia), 116.74 (Netherlands).

<sup>9</sup> A/HRC/22/15, recommendations 116.108 (Greece), 116.109 (Trinidad & Tobago), 116.111 (Germany), 116.112 (Hungary), 116.113 (Mexico).

<sup>10</sup> A/HRC/22/15, recommendations 116.34 (Poland), 116.53 (Canada).

<sup>11</sup> National Human Rights Coordinator In defence of the Ombudsperson. Available at: <http://derechoshumanos.pe/2016/12/en-defensa-de-la-defensoria/>.

<sup>12</sup> National Human Rights Coordinator Statement in defence of the Ombudsperson 23 December 2016. Available at: <http://derechoshumanos.pe/2016/12/en-defensa-de-la-defensoria/>.

<sup>13</sup> A/HRC/22/15, recommendations 116.16 (Morocco), 116.17 (Mexico), 116.18 (Spain).

<sup>14</sup> Supreme Decree No. 070-2016-RE, 6 September 2016.

<sup>15</sup> Supreme Decree No 004-2016-RE, 13 January 2016.

violation of the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance. However, the government has not yet recognized the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under the Convention (article 32). Additionally, Peru maintains its declaration on the application of the 1968 Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity to crimes that are committed after its entry into force for Peru.<sup>16</sup> Amnesty International considers that such a declaration is a disguised reservation and should be promptly withdrawn.

The Peruvian government has still not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, despite committing during the last review to promote dialogue and public debate on its adoption.

### **Human rights defenders**

There is no public policy aimed at safeguarding the work of human rights defenders in Peru. This increases the risk they face, in particular peasant farmers and Indigenous leaders who are harassed and threatened for protesting against extractive projects which affect their land, territory and the environment. Lawyers defending victims of human rights violations also face persecution and legal harassment to prevent them from carrying out their work effectively.

### **Rights of Indigenous Peoples**

The implementation of the Law on Prior Consultation has been inadequate, in particular in relation to international standards on the rights of Indigenous Peoples, including in cases involving mining projects. In addition, the rules of procedure of Congress have not been amended in order to allow for the free, prior and informed consent of Indigenous Peoples on legislation affecting the rights and ways of life.

The approval of legislation which undermines their exercise of their rights to land, territory and natural resources is of concern. Law No 30230, which allows the expropriation of Indigenous land and weakens the requirement to assess the environmental impact of large-scale extractive projects without consultation with Indigenous Peoples violates their human rights, including land rights.

## **PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **Impunity for past human rights violations**

Impunity for human rights violations committed during the internal armed conflict (1980-2000) continues to be a cause of great concern to Amnesty International, notwithstanding several emblematic rulings.

After 31 years, in August 2016, 10 military personnel were found guilty of the extrajudicial execution of 69 people, among them 23 children, during an army patrol in 1985 (the Accomarca case). In addition, Vladimiro Montesinos and other former high-ranking army officials were found guilty of the enforced disappearance of two university students and a professor in 1993. The sentencing confirmed that during the internal armed conflict the government of Alberto Fujimori repeatedly used furnaces to disappear those they abducted in the basement of the Army Intelligence Service building.

The search for and identification of the disappeared is an outstanding task for the Peruvian government. The estimated figure of victims of enforced disappearance lies between 13,000 and 16,000.<sup>17</sup> Following demands from victims and human rights organizations, in June 2016 the Law on the Search for the Disappeared was passed, and in December the same year the Plan for the Search for the Disappeared was approved by the Ministry of Justice. However, the lack of standardized statistics risks obstructing the search and identification work.

### **Sexual and reproductive rights**

Women and girls continue to face obstacles in exercising their sexual and reproductive rights. Despite a number of

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<sup>16</sup> Declaration of Peru on the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity.

<sup>17</sup> Figures of the International Committee of the Red Cross, the Public Prosecution Service and the Peruvian Forensic Anthropology Team available at: Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Peru, A/HRC/33/51/Add.3, 3 July 2016, para 10.

positive measures taken by the government,<sup>18</sup> Amnesty International is concerned about the increase in adolescent pregnancy rates and the maternal mortality ratio due to preventable causes related to pregnancy and childbirth. In Peru, every day 58 under-age girls give birth; three of them under 15 years old. In some regions of the Amazon, the pregnancy rates for 15-19 year-olds reached 32.8%, while 60% of adolescent pregnancies among girls aged 12 and 16 years old were the result of sexual abuse. The main consequences are maternal deaths and adolescents dropping out of school.<sup>19</sup>

Amnesty International is concerned that abortion continues to be criminalized in Peru in cases of severe or fatal foetal impairment and sexual violence. Women and girls who have become pregnant as a result of sexual violence are denied access to safe and legal abortion services and post-rape care.

### **Rights of lesbian, gay, bisexual, transgender and intersex persons**

Amnesty International is concerned about the persistent discrimination and social exclusion which LGBTI people in Peru face due to their sexual orientation or gender identity. Prejudice, stigma and stereotypes fuel homophobia and transphobia which in turn create barriers to equal access to comprehensive health services, education, work, housing and freedom of movement without fear of being harassed or discriminated against. LGBTI people also suffer harassment and violence due to their sexual orientation or gender identity from within their own families as much as in public spaces and institutions.

The Peruvian government has not eradicated discrimination due to sexual orientation or gender identity by only allowing transgender people to change their name and sex in the civil registry via a civil court.<sup>20</sup> In addition, despite the 2016 judicial order recognising same-sex marriages contracted abroad in the Peruvian civil registry, in Peru persons of the same sex are not allowed to marry, which is a violation of the right to equality, non-discrimination.

### **Human rights violations in the context of protests**

Amnesty International is concerned about violent repression of social protests by security forces and law enforcement officials. In the past four years, over 78 people have lost their lives in situations where security forces have used violence and lethal weapons indiscriminately to repress protests.<sup>21</sup> In the majority of cases there is no record of advances in the investigations into and punishment of the perpetrators of these deaths; rather impunity persists for these crimes.

The rights of Indigenous Peoples and rural communities affected by extractive projects to freedom of expression and assembly have been violated when they have protested against the lack of attention to their claims from the authorities. They also frequently face arbitrary detention and violence by the security forces.

Amnesty International is concerned by article 20, subparagraph 11 of the Criminal Code, which absolves "any member of the Armed Forces or National Police Force of Peru who, in discharge of their duties and using their weapons or any other means of defence, causes injury or death" of criminal responsibility. It puts at risk the protection of the right to life and physical integrity and fuels impunity by allowing any use of force and absolving the security forces who use excessive

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<sup>18</sup> Some of these measures include the incorporation of a focus on gender equality and comprehensive sexual education in school curricula, the approval of a resolution which allows teenagers to access information on sexual and reproductive health in health centres without the need for them to be accompanied by their parents, the issue of a judicial resolution which orders the Ministry of Health to distribute emergency oral contraception (EOC) free of charge and approval of the Intercultural Health Protocol.

<sup>19</sup> Amnesty International. The rights of women, girls, Indigenous Peoples and LGBTI people are at risk. Available at: <https://www.amnistia.org.pe/noticia/derechos-en-riesgo/>

<sup>20</sup> A/HRC/22/15, recommendations 116.15 (Canada), 116.32 (Slovenia).

<sup>21</sup> EFE. Mining-related conflicts have left 50 people dead and 750 injured in Peru since 2011. 13 July 2016 Available at: <http://www.efe.com/efe/america/sociedad/los-conflictos-mineros-dejan-en-peru-50-muertos-y-750-heridos-desde-2011/20000013-2984807>. Ombudsperson, Monthly Reports on Civil Unrest August 2016 to February 2017. Available at: <http://defensoria.gob.pe/temas.php?des=3#r>.

force of criminal responsibility.<sup>22</sup>

### **Indigenous Peoples and rural communities**

Amnesty International is concerned at the lack of implementation of free, prior and informed consent rights in projects which affect the ways of life and territory of Indigenous Peoples. Among the key concerns expressed by Indigenous organizations and human rights organizations is the lack of intercultural dialogue, lack of participation in decisions that affect them by the communities, particularly women on equal terms with men, the lack of clarity in relation to the obligation by the government to carry out consultation with Indigenous Peoples at all stages of extractive projects which affect them, and the lack of political will to implement the outcome of FPIC processes for mining projects.

The lack of a public policy and an official registry of land titles for Indigenous Peoples and rural communities has led to legal uncertainty as to the ownership and possession of the land. Moreover, the impact of extractive activities on the rights of Indigenous Peoples and rural communities is alarming. In 2016 alone, 12 oil spills were registered in the Northern Peruvian Oil Pipeline, contaminating bodies of water and Indigenous territory in the Amazon River basin. The impact on the health, life and territory of the affected communities has so far not been dealt with effectively.

### **Human Rights Defenders**

Human rights defenders face violence, harassment and attacks at the hands of government and non-state actors. Amnesty International is particularly concerned about the situation of defenders working on land, territory and the environment who voice their objection to projects related to natural resource extraction and infrastructure.

One case is that of Hitler Ananías Rojas Gonzales, president of the Rio Marañón Defence Front, who was killed on 28 December 2015, one day after becoming Mayor of the town of Yagén in the district of Cortegana, Celendín, in the department of Cajamarca. Hitler was a well-known defender of the environment and opposed the Chadin II hydro-electric project on the Marañón River.

Amnesty International is also concerned about the situation of women defenders, who face gender-based violence, both physical and symbolic, smear campaigns resorting to defamation and rumours about their sexuality and womanhood. These kinds of tactics risk reinforcing gender stereotypes and can have a damaging effect on women's leadership of organizations and other movements.

The misuse of criminal law to criminalize the work of defenders is also a concern. Máxima Acuña and her family, who are peasant farmers from Cajamarca, have been involved in a legal dispute with the Yanacocha mining company since 2011 over the ownership of the land which she and her family have lived on since 1994.<sup>23</sup> Despite precautionary measures by the Inter-American Commission on Human Rights to safeguard her life and physical integrity, these have not been implemented by the state to ensure her protection.

## **RECOMMENDATIONS FOR ACTION TO THE STATE UNDER REVIEW**

### **Amnesty International urges the Peruvian government to:**

#### *Institutional framework for the promotion and protection of human rights*

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<sup>22</sup> Amnesty International. Law 30151 sends a dangerous message and could lead to impunity in cases of human rights violations. Available at: <http://www.amnistia.org.pe/publicaciones/ley-30151-envia-una-senal-peligrosa-podria-dar-lugar-impunidad-en-casos-de-violaciones-de-derechos-humanos/>

<sup>23</sup> Amnesty International Peru: Defender Máxima Acuña criminalized by a groundless criminal charge of land invasion, 14 March 2017 AMR 46/5879/2017. Available at: [https://www.amnesty.org/es/documents/amr46/5879/2017/es/?utm\\_source=twitter&utm\\_medium=article&utm\\_term=&utm\\_campaign=social](https://www.amnesty.org/es/documents/amr46/5879/2017/es/?utm_source=twitter&utm_medium=article&utm_term=&utm_campaign=social).

- Provide the Ombudsperson with the necessary means to implement the National Preventive Mechanism against Torture;
- Accept the competence of the UN Committee on Enforced Disappearances under article 32 of the Convention for the Protection of All Persons from Enforced Disappearance;
- Withdraw its declaration on the application of the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity.

#### *Impunity for past human rights violations*

- Guarantee the rights of all victims of human rights violations committed during the internal armed conflict to know the truth and receive fair and adequate reparations;
- Implement the National Plan for the Search for the Disappeared in a manner which is effective and respects the dignity of the disappeared and their families, including by allocating the resources necessary.

#### *Sexual and reproductive rights*

- Abolish all legislation which classifies abortion as a crime and guarantee access to medical services, including safe and legal abortion, for survivors of sexual violence;
- Guarantee women and girls' access to comprehensive sexuality education, including information on sexual and reproductive health and rights, to enable and empower them to make informed decisions, and ensure they can access to all forms of modern contraception and family planning;
- Guarantee access to truth, justice and comprehensive reparations for the thousands of Peruvian women who were subjected to forced sterilization between 1996 and 2001.

#### *Rights of lesbian, gay, bisexual, transgender and intersex people*

- Enact legislation recognizing LGBTI people's equal right to enter into marriage and found a family;
- Enact legislation that guarantees transgender people's right to legal recognition of their gender identity, including by establishing a quick, accessible and transparent administrative process to change their name and sex in official documents which respects their dignity and privacy;
- Ensure that laws prohibit all crimes that are perpetrated against individuals or property because of their real or perceived sexual orientation or gender identity.

#### *Violations of human rights in the context of protests*

- Ensure that the use of force and fire arms is regulated in law in accordance with international standards, and that reports of violations of human rights which occur during protests are investigated and the perpetrators brought to justice;
- Abolish article 20 subparagraph 11 of the Criminal Code without delay.

#### *Indigenous Peoples and rural communities*

- Ensure the effective implementation of the right of Indigenous Peoples to free, prior and informed consent in all development projects which affect their way of life, with the appropriate resources and in a manner consistent with international standards,;
- Establish public policy to process claims of acknowledgment and property titles for peasant farmer communities and Indigenous Peoples in an effective manner, in order to provide legal security for their land and territory;
- Revoke any laws or measures which affect the rights of Indigenous Peoples, including Law 30230, which violates the legal security of Indigenous territories.

#### *Human Rights Defenders*

- Create and implement a public policy of protection and comprehensive assistance for human rights defenders, and include them in the design of the policy,;

- Develop awareness raising actions to increase the legitimacy, acknowledgment and safety of human rights defenders.