



Human Rights Concerns in Peru
Peru Support Group Submission to the UN Universal Periodic Review – November
2017

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SUMMARY

The Peru Support Group (PSG) would like to bring the current human rights situation in Peru to the attention of UN member states, as part of the UN Universal Periodic Review taking place in November 2017. We first note the recommendations that the government agreed during the previous UPR in 2012. Then we highlight the issues that we find of concern: rights abuses and judicial harassment against people taking part in social protests, including human rights defenders, in the context of projects related to the extraction of natural resources; Indigenous peoples' right to free, prior and informed consent, and issues related to the right to effective remedy. We also highlight the continued barriers facing women's access to justice and reparations for human rights violations committed against them, including in relation to forced sterilizations.

FOLLOW UP TO THE PREVIOUS REVIEW

During its second Universal Periodic Review in 2012, Peru accepted 113 recommendations made, and stated that a further 7 recommendations had been implemented or were in the process of implementation. Ten further recommendations were noted as having a commitment to be examined.

However, important recommendations were made to Peru in areas where it is still essential to make improvements. These include recommendations concerning:

- The right to effective remedy, including the need to take necessary legal and other measures to implement reparation programs,ⁱ such as the issue of forced sterilizations during the Fujimori regime;ⁱⁱ
- The need for effective measures to prevent human rights abuses by the armed forces and national police during armed conflicts;ⁱⁱⁱ
- The need to involve Indigenous peoples and peasant communities in the implementation and planning of extractive projects.^{iv}

INTERNATIONAL AND NATIONAL HUMAN RIGHTS FRAMEWORK

The Peru Support Group recognises recent positive developments, particularly in terms of treaty ratification and incorporation of international obligations into domestic legislation. However, deep concerns persist regarding the implementation of human rights policy frameworks in practice. Priority concerns include:

- *International Obligations:* We commend the recent recognition by Peru of the competence of the Committee on Enforced Disappearances to receive individual communications in accordance with article 31 of the International Convention for the

Protection of All Persons from Enforced Disappearance. The Peruvian government needs to recognise the same competence of the Committee for Economic Social and Cultural Rights by ratifying the Second Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

- *National Preventive Mechanism (NPM)* under the Optional Protocol to the Convention Against Torture:^v in December 2015, Peru finally designated its Human Rights Ombudsman as its NPM after a nine-year delay since ratification. However, Law No. 30394 designating the office provides for no additional budgetary allocation, as required by the OPCAT. Indicative of limited resources, the Ombudsman is yet to establish an internal NPM unit.^{vi}

- *National human rights institution (NHRIs)*: The human rights ombudsman has historically stood out among Peru's public institutions both for its effectiveness and high popular approval. This has also made it a target for political interference. Congress overcame five years of deadlock in September 2016, at last appointing a new human rights ombudsman. Concerns have been raised regarding the political independence of the new ombudsman as well as allegations of his past collusion in human rights violations. Recent public statements by the ombudsman appear to downplay the human rights protection function of the office.^{vii}

IMPUNITY

- *Accountability for past human rights violations*: Recent successful prosecutions, including that of 10 military personnel in August 2016 for the extrajudicial execution of 69 people in the village of Accomarca in 1985, serve as important advances for legal accountability. In June 2016, Peru also enacted legislation to create a national registry of victims of disappearances occurring during the armed conflict. The Justice Ministry is now required to conduct a national search plan. However, concerns persist regarding the effective implementation of prosecution and remedy recommendations identified by the Truth and Reconciliation Commission.

In December 2015, the *Lugar de la Memoria, la Tolerancia y la Inclusión Social* was opened in Lima. This Museum seeks to provide some measure of redress to the victims of human rights abuses by making their plight more visible. In March 2016, the online centre for documentation and research was also made available. These are welcome steps in the process for recovering historical memory. 15,000 people are still disappeared and the process of identifying the missing and bringing those responsible to justice remains slow.

INDIGENOUS RIGHTS

- *Free, Prior and Informed Consent*: The enactment of the Consultation Law in September 2011, and the subsequent enactment of the regulatory framework in April 2012, were positive steps towards recognising the right of Indigenous people to free, prior and informed consent, although they fell short of recognising and complying with international standards of consent, and there is still ambiguity as to the binding nature of the decisions reached. Many still believe that “consulting” communities is the only requisite they need to fulfil, and that their opposition to a particular project does not stop the project from going ahead. Many social disputes often relate to failure by the state authorities to involve indigenous communities in prior consultation before extractive activities begin. Mining concessions are routinely awarded without prior consultation.

Up to March 2017, there have been 40 consultations, 28 of which have reached conclusion.^{viii} There has been a lack of implementation of agreements reached between the communities affected by extractive industries and the State. In the processes of consultation carried out under the law to date, the agreements reached have not been fully implemented. In January 2017, the government announced the creation of a multi-sectoral commission for the implementation of prior consultation, responsible for overseeing the implementation of the agreements reached, but to the PSG’s knowledge they have yet to develop a working plan and the set of principles that would govern this body. As a result, to date there is no oversight and accountability mechanism in place to ensure compliance.

After the enactment of the Consultation Law, concerns were raised about the failure of the Peruvian government to publish a final version of the official database of Indigenous communities, thereby enabling communities with the right to be consulted to be clearly identified, particularly in the Andean highlands, where most of the mining extractive projects are based. According to the Ombudsman’s office, in 2014 alone there were 14 mining projects approved, 9 of which took place in indigenous communities’ territories in the Andean region; 5 were based on denial of the communities’ indigenous identity, an issue which was highly contested.^{ix} It is now acknowledged that the database does not have a constitutive character, but is only a source of reference that can be continuously extended. However, there has been no attempt to review the situation of indigenous communities excluded from the consultation process since the legislation came into force.

- *Oil spills*: Another area of concern has been the lack of prevention and remediation mechanisms to deal with a number of oil spills in the Peruvian Amazonia, caused by lack of maintenance and subsequent damage to the northern Peruvian pipeline. According to the agency in charge of environmental oversight, OEFA, from 2011 until February 2016 there were 20 oil spills. Including the further spills that took place after that, the number is close to 30. These have had serious consequences for the local environment as well as the health

and livelihoods of people living in the area, as a result of polluted water. At the end of 2016, ministers from the current government met with indigenous leaders from communities affected, gathered at Saramurillo, signing what became known as the Saramurillo accords. The government promised effective remediation of contaminated sites along the course of the pipeline during this year, along with an independent inspection of the pipeline itself in the first six months. There appears to be no progress in the implementation of these promises.

A report from the Ombudsman's office published in December 2016 points to the weakness of regulatory norms protecting the environment and their implementation in practice, offering recommendations as to how these could be improved.^x While it is too soon to know how far these will be put in place, we hope the government will thoroughly assess them and incorporate them into any modifications to current environmental regulation and practice.

SOCIAL PROTESTS

We remain concerned about the nature of confrontations between protestors and security forces during social protest, the allegations of use of excessive force by the security forces, and the use of criminalisation (or the threat of it) against protestors, including human rights defenders. According to the Ombudsman's office, approximately 70% of these conflicts refer to instances where communities find themselves in conflict with extractive industries and which relate to social and environmental problems, conflict often stemming from the lack of prior consultation, as indicated above.^{xi} A further issue is the misuse of the 'dialogue table' or discussion forum, the government's main instrument for dealing with conflict, in that agreements are often not followed up, there is an inadequate representation of stake holders, and poor preparation.

- *Excessive use of force:* In recent years many people have been wounded and killed in protests, where instructions to avoid the use of firearms are frequently ignored. The Ombudsman's office has recorded 58 civilian deaths and well over 1,000 people injured in such clashes between 2012 and 2015 in circumstances that indicate that the security forces did use excessive force. Law no. 30151, passed in January 2014, effectively makes it impossible to hold police officers who use lethal force unlawfully accountable.

The authorities have frequently used the declaration of 'states of emergency' to deal with social protest, which involves the suspension of civil liberties and enables the police and other officials to deal summarily with protesters and to curtail the right of assembly. In recent times, such measures have been taken at Constancia and Las Bambas.

- *Criminalisation of human rights defenders*: Despite government assurances as to the protection of civil society organisations and human rights defenders, in practice they face routine legal harassment. The criminalisation of social protest is now commonplace, with judicial proceedings taken against those perceived as involved in protests. Local prosecutors routinely accuse demonstrators of breaching the law, and are entitled to order their preventive imprisonment for up to 18 months (extendable for a further 18 months). When courts finally adjudicate such cases, the evidence is found to be unreliable and the accused are eventually acquitted. This, however, can take several years, as with the acquittal of 52 Indigenous leaders in 2016 accused of the 2009 killings at Bagua (Amazonas).^{xii}

Harassment of human rights defenders is commonplace in sometimes long-running disputes. On 6 March 2017, oral proceedings continued in the trial against 16 human rights defenders involved in the Conga protests dating back to 2012. Many NGOs voiced their concerns over the allegations against the activists, and pointed specifically to the lengthy and disproportionate penalties being sought (36 years in prison). On this occasion, clashes between police and protesters resulted in the death of 5 people, including a 16-year-old.

Another example of harassment against an HRD is that of environmental activist Maxima Acuña and her family in Cajamarca, who have been repeatedly targeted because of their refusal to give up their land to the Yanacocha mine. She and her family have been granted precautionary measures by the Inter-American Commission on Human Rights, but the Peruvian authorities continue to fail to provide her with protection; investigations into the threats against her have yielded no results.

GENDER VIOLENCE

- *Forced Sterilisations*: the mass forced sterilization carried out during Alberto Fujimori's second administration between 1995 and 2000 has not been fully investigated. Some 300,000 women and an estimated 30,000 men were sterilized without their consent. In 2015, Legislative Decree N°006-2015-JUS ruled that the case was to be given national priority and a National Register of Victims (REVIESFO) was created. In January 2016, the register began to function in the provinces of Cusco, Cajamarca, Piura, Huancavelica and Lima. In July 2016, this was expanded to Lima Centro, Lima Sur and San Martín. The process has not been conducted in a clear and effective way and many victims have not been able to provide their testimony. There have been repeated reports from victim groups that some areas have still not been provided with a space to give their testimonies and some regions do not yet have a dedicated office. In Cuzco, the area with the highest number of victims, so far only 1,185 reports have been filed. The authorities have also failed to provide the women victims with justice and reparation. On 7 December 2016, the prosecutor in charge

of the investigations ruled that the case brought by 77 women against ex-president Alberto Fujimori and three of his ministers of health should not proceed. This is the seventh time that the case has been blocked in the court.^{xiii}

RECOMMENDATIONS

The Peru Support Group calls on the government of Peru to:

International and national human rights framework:

- Ratify the Second Optional Protocol to the Covenant on Economic, Social and Cultural rights;
- Ensure that the National Preventive Mechanism under the Optional Protocol to the Convention against Torture is independent and has the necessary human, material and financial resources to fulfil its mandate;
- Ensure the independence of the national human rights ombudsman office, and continue playing a vital role in protecting human rights within its functions;
- Ensure the next national human rights plan gives special attention to Indigenous peoples and human rights defenders, and affirms the government's commitment to economic, social and cultural rights, in particular trade union and labour rights;

Accountability for past human rights violations:

- Ensure accountability and eradicate impunity with the full implementation of prosecution and remedy recommendations identified by the Truth and Reconciliation Commission;
- Ensure that the search for the missing is completed, identifying mass graves and supporting the retrieval of human remains, their identification and return to family members.

Indigenous rights:

- Ensure that all Indigenous communities affected by extractive projects are adequately consulted, including those communities living in the Andean region (where most of the mining projects operate), which until recently have been excluded from consultation processes;
- Guarantee that consultation is carried out in line with international standards, including taking place before the decision or measures has been agreed or implemented, and aiming at reaching the consent of indigenous communities;

- Provide the new multi-sectoral commission for the implementation of consultation agreements with the necessary infrastructure to function properly, including clear guidelines of responsibilities, and financial resources to ensure they have the capacity to monitor implementation. These guidelines should be developed with the full participation of civil society, and should contain an accountability mechanism;
- Make good on all the commitments reached with the communities affected by the oil spills, including providing effective remediation of contaminated sites along the course of the Northern Peruvian pipeline and carrying out an independent inspection of the pipeline;
- Implement the Ombudsman's recommendations regarding environmental regulation.

Social Protests:

- Refrain from using "states of emergency" in situations of social protests;
- Abide by international standards on the use of force and ensure that all security forces receive adequate training on policing protests;
- Investigate promptly, impartially and independently and prosecute if evidence is found all cases of alleged use of force by the security forces;
- Ensure that human rights defenders are free to carry out their legitimate work without fear of intimidation and judicial harassment; authorities should refrain from the use of the justice system to prosecute human rights defenders, community leaders and others involved in social protests;
- Guarantee that all attacks and acts of intimidation against HRDs are investigated and the perpetrators brought to justice;
- Guarantee protection to HRDs in accordance with their wishes;
- Institutionalise the dialogue tables as a method of resolving disputes and monitor the implementation of agreements reached.

Gender Violence

- Register all victims of the forced sterilizations in an effective and transparent manner;
- Fulfil their promise to provide women who have been victims of forced sterilization with legal, medical and psychological support;
- Continue the investigation into complaints of forced sterilization in order to determine all the responsibilities at all levels, bring perpetrators to justice and offer adequate reparation to the victims, as agreed with the Inter-American Court of Human Rights.

ENDNOTES

ⁱ Report of the Working Group on the Universal Periodic Review of Peru, 27 December 2012, A/HRC/22/15, recommendations 116.58 (Argentina), 116.60 (Ecuador), 116.61 (Germany), 116.62 (Netherlands), and 116.63 (Tunisia)

ⁱⁱ A/HRC/22/15, recommendation 116.56 (Belgium)

ⁱⁱⁱ A/HRC/22/15, recommendations 116.34 (Poland), 116.53 (Canada)

^{iv} A/HRC/22/15, recommendation 116.111 (Germany)

^v A/HRC/22/15, recommendations 116.16 (Morocco) and 116.17 (Mexico)

^{vi} Instituto de Democracia y Derechos Humanos, “Ministerio de justicia indica que PNDH incorporará recomendaciones y críticas”, <http://idehpucp.pucp.edu.pe/comunicaciones/notas-informativas/ministerio-de-justicia-indica-que-pndh-incorporara-recomendaciones-y-criticas/>

^{vii} Lamula.pe, “¿Para qué sirve la defensoría del pueblo? Esta es la respuesta de Walter Gutiérrez”, <https://redaccion.lamula.pe/2016/09/11/para-que-sirve-la-defensoria-del-pueblo-esta-es-la-respuesta-de-walter-gutierrez/jorgepaucar/>

^{viii} CAAAP, “Como va la aplicación de la consulta previa en el Perú”, <http://www.caaap.org.pe/website/2016/12/20/como-va-la-aplicacion-de-la-consulta-previa-en-el-peru-avances-y-retos-2/>

^{ix} Peru Support Group, “Report criticises shortcomings in honouring Convention 169 commitments”, <http://www.perusupportgroup.org.uk/news-article-1043.html>

^x Peru Support Group, Ombudsman issues a damning report on the reputation of environmental impacts, <http://www.perusupportgroup.org.uk/article-1306.html>

^{xi} Defensoría del Pueblo, “Reporte de conflictos sociales, Febrero 2017”, <http://www.defensoria.gob.pe/conflictos-sociales/home.php>

^{xixii} Peru Support Group, Bagua protesters absolved, <http://www.perusupportgroup.org.uk/news-article-1192.html>

^{xiii} La verdad estuvo de su lado, <http://www.noticiasser.pe/15/03/2017/echar-raices/esterilizaciones-la-verdad-estuvo-de-su-lado>