



Torture in Peru

Alternative Report Submitted to the Human Rights Committee

March 2013

(Chapter on Torture from [CNDDHH Joint Shadow Report](#))

As set out in this section, measures taken by the State to prevent and combat torture have been inadequate. This includes the lack of a national registry of complaints for acts of torture or cruel, inhuman or degrading treatment, the lack of effective investigations, and the lack of prosecutions for torture. A number of factors contribute to this worrying trend such as the lack of protection for victims, and the lack of independence and impartiality of investigations into torture. As highlighted in this section, victims of torture in Peru have not received adequate reparation. This also applies to Peru's administrative reparation programme which, among other issues, fails to take into account the individual circumstances of each victim's case.

11. Please indicate the measures taken to prevent torture and other cruel, inhuman or degrading treatment, to ensure that all the population has access to fast, confidential and safe complaints mechanisms and to guarantee that victims can obtain effective remedies and reparation. Also indicate the compensation awarded to the victims in the cases of torture mentioned in the State party's report. Please describe the progress made towards establishing the national mechanism for the prevention of torture and to equip the corresponding institution with the human and material resources it needs to function properly.

Torture in Peru, while no longer practised in the systematic manner seen in the 1980s and 1990s,¹ is still widespread. The CNDDH and other civil society groups have documented cases of torture from across the country at the hands of members of the armed forces, by members of the National Police, as well as agents of the National Penitentiary Institute and of the Serenazgo. Serenazgo is a private security service subcontracted by the municipality, tasked with protection of individuals or property and maintaining public order. Torture and cruel, inhuman and degrading treatment (ill-treatment) is primarily, but not exclusively, committed in places of detention against suspects as a means of extracting a confession, and

¹ Peruvian Truth and Reconciliation Commission, Torture and other cruel, inhumane and degrading treatment, Vol. VI, available at: <http://www.cverdad.org.pe/ifinal/pdf/TOMO%20VI/SECCION%20CUARTA-Crimenes%20y%20violaciones%20DDHH/FINAL-AGOSTO/1.4.LA%20TORTURA.pdf>

in detention centres against detainees and military quarters against soldiers or young men during their mandatory military service as a means of discipline. It is also committed against vulnerable groups such as members of the lesbian, gay, bisexual and transgender (LGBT) community, who are routinely subjected to violations by members of the National Police and the Serenazgo.² For example, Yefri Edgar Peña Tuanama, who is transgender, was denied urgent assistance from the Police after being beaten by unknown assailants in 2007, which nearly resulted in his death. Luis Alberto Rojas Marín was raped with a rubber baton and subjected to verbal threats and abuse by three members of the National Police in 2008 after he was illegally and arbitrarily detained.³ Despite their being well known, the State has failed to adopt the legal or other measures necessary to respond to such violations.

Torture was recognised as a separate criminal offence in the Peruvian Criminal Code (article 321⁴) in 1998. However, fifteen years on, there have been few prosecutions for torture that resulted in a low number of convictions. The Ombudsman's Office reports have indicated that from 2003-2011 it received 764 complaints of alleged torture and ill-treatment. According to information provided by the National Criminal Chamber of Peru, the court responsible for hearing cases involving human rights violations, from September 2004 until February 2011 there were 37 prosecutions for torture, of which only 17 resulted in convictions.⁵ A major factor contributing to the paucity of prosecutions and convictions for torture is the failure of prosecutors to bring charges of torture, and instead bringing charges for lesser crimes. This is due to a number of factors, including a lack of awareness of the criminalization of torture in the penal code and a tendency to favour charges carrying minimum penalties for perpetrators.

Furthermore, in practice judges and magistrates have in many cases failed to find perpetrators guilty of torture due to their interpretations of article 321 that suffering and injuries incurred by victims must be sufficiently grave, i.e. requiring 30 days of medical attention, in order to qualify as torture, or that a 'political conflict' is a necessary context in order for acts to constitute torture. As a result of these interpretations that effectively narrow the definition of torture by linking severity to the level and duration of the medical treatment required by victims or requiring certain contextual situations, prosecutors and judges frequently qualify acts that constitute torture or ill-treatment under international law as a crime of assault, abuse of power, or sexual violence instead. Furthermore, the definition of torture in the Criminal Code does not include the grounds of discrimination of any kind as an element for the crime of torture, creating a serious obstacle for victims of torture on the grounds of gender or sexual orientation to access justice.

² See PROMSEX, CNDDHH and REDRESS, *Torture and the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Peru: Alternative Report Submitted to the Committee Against Torture*, 12 October 2012. Available at: <http://www.redress.org/downloads/publications/Shadow%20Report%20Peru%20-%20PROMSEX%20CNDDHH%20REDRESS.pdf>.

³ Ibid.

⁴ Article 321 of Peru Criminal Code: "The official or civil servant or any person with his consent or acquiescence, that inflicts on another severe pain or suffering, be it physical or mental, or submits him to conditions or methods that obliterate his personality or diminish his physical or mental capacity, even if they do not cause physical or mental pain, for purposes of obtaining from the victim or a third person a confession or information, or of punishing him for any action he may have committed or is suspected of committing, or of intimidating or coercing him, shall be punished with a jail sentence of not less than five nor more than ten years. If the torture causes the death of the victim or produces serious harm and the agent could have foreseen this result, the jail sentence will be respectively not less than eight or more than twenty years, or not less than six or more than twelve years."

⁵ Information provided to REDRESS by Peru partners.

Given the number of cases reported to the Ombudsman's Office (and not even taking into account the significant under-reporting of the crime, reasons for which are outlined below), it is clear that the number of prosecutions for torture does not reflect the reality of its prevalence in Peru. Measuring the progress made by the authorities in responding to torture and ill-treatment is difficult as there is no official registry of complaints of torture or ill-treatment. In fact, the Public Prosecutor's Criminal Record Office, which is a virtual space that contains all information regarding crimes committed at the national level, contains no information about the crime of torture. There are other registries maintained by the Public Prosecutor where information can be found in relation to complaints of torture brought, such as the *Sistema de Apoyo al Trabajo Fiscal (FIAFT)*, the *Observatorio de la Criminalidad*, the *Registro Nacional de Detenidos y Sentenciados a pena privative de la Libertad Efectiva (RENADESPPLE)*, as well as the *Sistema de Informacion Defensorial (SID)* of the Ombudsman's Office. However, these registries either do not contain information specifically regarding cases of torture, or, in the case of the registry of the Ombudsman's Office, (i) they do not provide a full record of cases and (ii) they do not contain disaggregated data about the identity or specific circumstances of the case.

In addition to the lack of a national registry for complaints of torture, there is also a serious problem of under-reporting of acts of torture and ill-treatment. This has in large part been attributed to the intimidation and harassment faced by victims from the perpetrators, resulting in victims' lack of willingness to lodge formal complaints, lack of trust in the system and fear of discrimination and stigma. For example, in 2011, 'Yanet', a gay transgender person, was subjected to extortion by police officers who demanded money in return for not denouncing him as a pimp. He did not bring a complaint because of his fear of reprisals from the police who would be involved in investigating the allegations.⁶ Such practices, and the lack of any form of State-provided protection services or programmes available to victims who may fear or be at risk of such reprisals, serve as a further impediment to accountability for perpetrators of torture.

Where complaints are filed, in many, if not most cases, investigations into allegations of torture or ill-treatment fail to meet international standards of independence and impartiality. Under article 9 of the Law of the Public Ministry (*Ley Organica del Ministerio Publico*) and article 159(4) of the Constitution of Peru, preliminary investigations into complaints of torture fall under the remit of the Public Prosecutor, with the assistance of the police of the Public Ministry (*Policia del Ministerio Publico*). As such, when a complaint is brought to the Public Prosecutor, it is sent to the Public Ministry police for investigation. However, the fact that in most cases the alleged perpetrators are themselves members of the National Police raises serious concerns regarding the independence and impartiality of these investigations. There have been reports of investigating Police officials actually destroying evidence that would implicate alleged perpetrators who are their colleagues.⁷

Investigations into torture are also hampered by the lack of effectiveness. This applies in particular to the lack of implementation of international standards for the documentation of the physical and psychological evidence of torture, which constitutes a crucial prerequisite for the prosecution of alleged perpetrators of torture. . In some cases on file, physicians who conducted medical examinations of victims of torture expressly stated in their findings that the injuries suffered did not amount to torture despite having registered physical signs of injury produced by beatings (such as swelling or subcutaneous effusions of blood caused by blows, etc.). This was based on the argument that given the lack of signs of hanging, use of electrical charges on the genitals, drowning or other similar techniques, it

⁶ Alternative Report to CAT, n. 3 above.

⁷ Information provided to REDRESS by Peru partners.

was impossible to find that acts of torture had been committed. Such findings and reasoning reveal a fundamental misconception of torture and lack of familiarity with internationally recognised standards of documenting torture as set out in the Istanbul Protocol. In the case of Luis Ismael Ugaz Velasquez, who was detained and brutally beaten by members of the National Police while he was at the police station in Lambayeque in March 2012 enquiring about his property which had been confiscated in error, the psychologist examining the victim found that there was no torture. The psychologist also noted that she did not use the Manual on the Examination of Psychological Injury or the Istanbul Protocol because she did not have access to either in the case. This is one of several such cases that we are aware of. One of the reasons for this is the lack of training for medical practitioners on these manuals.

It is important to note that though article 9 of the Constitution of Peru establishes that international treaties ratified and entered into force form part of national law, this is not the case in practice. Furthermore, the lack of knowledge on the part of judicial officers (police, prosecutors and judges) on international human rights norms and standards is a widespread problem throughout the country. Even when such officials are aware of Peru's international human rights obligations, in the majority of cases they fail to implement those standards adequately or refer to them only cursorily as a way of indicating that the State respects international standards of human rights, but in fact these interpretations do not provide greater protection for victims.

Reparation

Victims' are entitled to reparation under articles 92 and 93⁸ of the Criminal Code of Peru, however these provisions are contrary to international norms and standards on human rights. This provision has been interpreted by courts to consist of only monetary compensation, and the amounts awarded have been insignificant. For example, Manuel Cruz Cavalcanti who was severely beaten by police to obtain a confession during his interrogation after being arrested for theft. As a result of the beatings, he sustained permanent injuries to his feet resulting in constant pain and significant difficulty walking. This in turn resulted in his inability to resume his role as the main breadwinner of his family due to these injuries. The psychological impact of the consequences of the torture, arising from the incident itself, the on-going pain and his inability to work, have posed a huge strain on his home and family life. In this case, the amount of compensation awarded was S./ 10,000 (Nuevo Soles), equivalent to approximately US\$3,700. This was appealed, with the prosecutor requesting S/.50,000.00 (approximately US\$ 18,000.00), and CNDDH, the organisation representing Mr. Cavalcanti, requesting S/.185,000.00 (approximately US\$ 66,000.00). In its judgment, the Supreme Court raised the amount of compensation to S./15,000 (approximately US\$ 5,692.60), a paltry amount considering the pain and suffering experienced by the victim at the hands of public officials. Furthermore, in issuing such awards for compensation, judges have failed to provide reasoning or grounds for the amount of compensation awarded, a lack of transparency that gives rise to perceptions of arbitrariness. Forms of reparation other than compensation have been awarded in only two cases of torture in which the National Criminal Chamber included physical and psychological assistance for the victims.

Another systemic problem facing victims of torture is the lack of any policies or laws to ensure that victims of torture receive reparations awarded within a reasonable time frame. In Peru, perpetrators of torture (and indeed any crimes) can serve their sentence and be released from prison even if they have failed to pay the compensation awarded to victims as part of their punishment.

⁸ Criminal Procedure Code of Peru, Article 92: Civil damages are determined together with the penalty; Article 93: Civil damages contain 1) Restitution of property or if not possible the payment of the property's value; 2) Compensation for damages.

Victims can also pursue reparation through civil actions, but these only allow for awards of monetary compensation. Civil suits for damages in cases of torture do not depend on the outcome of criminal prosecutions. However, in practice, such cases are extremely difficult to pursue as the burden of proof rests with the victim who in most cases faces major obstacles in obtaining evidence due to the prevalence of ineffective investigations carried out by authorities lacking independence and impartiality, as described above.

As the State has acknowledged,⁹ Peru does not have a programme providing specialised medical and psychological services to victims, including rehabilitation services. Instead, victims have had to rely on services provided by non-governmental organisations such as the Centre for Psychosocial Attention (CAPS) to receive psychological support and other fundamental rehabilitation services.

12. Please describe the measures taken, following the establishment of the National Criminal Court, the special prosecutor's offices and the National Criminal Prosecutor's Office, to ensure the investigation and punishment of the human rights violations committed during the armed conflict between 1980 and 2000. Also please specify the steps taken to implement the recommendations of the Truth and Reconciliation Commission regarding access for victims to truth, justice and reparation, especially for vulnerable groups. Please describe the measures taken to implement the reparation programmes, including collective reparation. In that regard, please specify how the State party has taken into account the gender perspective and the needs of the most vulnerable groups, especially members of the indigenous peoples who have borne the brunt of the violations.

Reparations for victims of political violence from 1980-2000

The Peruvian Truth and Reconciliation Commission (TRC) was established following the end of the Fujimori presidency in 2000 and of two decades of internal conflict in Peru. In 2003, the TRC issued its final report, which included recommendations to the State for the provision of reparation to victims of the political violence that occurred in the country between 1980 and 2000. This led to the establishment of a High Level Multi-Sector Commission in 2004 to follow up on the recommendations of the TRC regarding reparation and national reconciliation. In 2005, Law No. 28592 was adopted, establishing the Integral Reparation Plan and a Reparation Council responsible for registering individual victims and communities that were eligible for reparation.

While the Integral Reparation Plan provides for both individual and collective reparation, in practice the main emphasis has been on collective reparation delivered in the form of infrastructure projects. To date, no serious efforts have been undertaken to implement the other forms of reparation recommended by the TRC, including education-focused reparation, symbolic reparation, and restitution of rights and housing. The government has interpreted collective reparation to consist of the restoration of basic community services and development initiatives. Many victims do not view these measures as reparation. The inadequacy of such measures has been specifically noted by the Committee Against Torture's recently adopted General Comment No. 3, which states that "a State party may not implement development measures or provide humanitarian assistance as a substitute for redress for victims of torture or ill-treatment..."¹⁰ In addition, the General Comment clarifies that reparation for torture should be victim specific, stating that "in the determination of redress and reparative measures provided or awarded to a victim of torture or ill-treatment, the specificities and

⁹ Peru State Party Report to the Committee Against Torture. ADD URL

¹⁰ CAT, General Comment No. 3, para. 37.

circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed against them.”¹¹

In 2011, the Peruvian government announced the commencement of the individual economic reparation programme through the adoption of Supreme Decree No. 051-2011-PCM. This decree set the date of 31 December 2011 as the deadline for victims to register with the TRC Universal Victim’s Register for the purposes of obtaining individual economic reparation. This deadline has been criticised for being discriminatory and unfair, as many victims were unable to register due to geographic inaccessibility, lack of funds, or lack of knowledge of the Integral Reparation Plan. The deadline has had a disproportionate impact on those victims who are members of indigenous groups living in remote parts of the country, who in large part bore the brunt of the violations committed during the period in question. This goes against the principle that reparation should be non-discriminatory as set out in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,¹² and more recently by the Committee Against Torture in its General Comment No. 3.¹³

Furthermore, the Decree sets the amount of compensation to be awarded to individual victims at S./10,000 (approximately US\$3,700), regardless of the extent or number of violations they were subjected to. This amount is to be distributed as follows: “When the surviving spouse or domestic partner presents him or herself with other relatives of the disappeared or dead victims, 50 per cent will correspond to the spouse or partner and the remaining 50 per cent will be distributed in equal parts among the relatives.”¹⁴ In addition, where a victim and his or her direct heirs have died, the indirect heirs (such as grandchildren) are not entitled to receive the reparation award. The amount has been criticised by victims and civil society for being paltry to the point of being degrading, particularly in light of how it is to be distributed amongst the direct and indirect victims.

Recommendations to the Government of Peru

Legislative and Institutional Reforms

- Amend the Criminal Code to include discrimination as an element for the crime of torture and interpret the element of gravity required for an act to constitute torture so as to meet the definition of the crime under international standards and Peru’s treaty obligations.

¹¹ Ibid, para. 6.

¹² Basic Principles and Guidelines on the Right to an Effective Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: “The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.”

¹³ CAT General Comment No. 3: “States parties shall ensure that access to justice and to mechanisms for seeking and obtaining redress are readily available and that positive measures ensure that redress is equally accessible to all persons regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, gender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction, and including those marginalized or made vulnerable on bases such as those above. Culturally sensitive collective reparation measures shall be available for groups with shared identity, such as minority groups, indigenous groups, and others.”

¹⁴ Supreme Decree No. 051-2011-PCM, Article 3.2.

- Ensure that all investigations into allegations of torture meet international standards of prompt, impartial and effective investigations, and in particular that necessary reforms are adopted to ensure the independence and impartiality of the Prosecutor's office.
- Ensure that Prosecutors are aware of the definition of torture as recognised in international law, including under the ICCPR, and that in cases of torture, charges brought against perpetrators reflect the gravity of torture and ill-treatment, and that such acts are not treated as lesser offences such as abuse of power or assault.
- Establish a complete and integral registry system containing the requisite information to identify the extent of torture and track the measures taken in response to, and outcome of complaints made by or on behalf of persons who allege to have suffered torture or other forms of ill-treatment. In particular, such registry should specifically include the categories of gender identity and sexual orientation so that cases of torture and ill-treatment against LGBT persons and other forms of gender-based and sexual violence, can be identified and monitored, and their outcome evaluated.
- Adopt the necessary measures to use the Istanbul Protocol as the manual for documenting cases of torture or ill-treatment, and ensure further training for public officials on what constitutes torture and the multiple forms it can take. In particular, ensure that physicians confine their findings to medical statements, avoiding legal opinions as to the legal qualification of the injuries. The impact of such training sessions should be regularly assessed to identify any problems, good practices, successes and failures.

Reparations

- Ensure the judiciary provides awards of reparation in line with recognised forms of reparation, including ensuring that the determination of the quantum of compensation as well as non-monetary forms of reparation, including measures of satisfaction such as symbolic reparation, restitution, rehabilitation, and guarantees of non-repetition to ensure judges award reparations that are in line with international standards.
- Develop public policies for the rehabilitation of victims of torture, including both national and local programmes providing victims with free medical and psychological assistance from specialised personnel, as well as other services required. The State party should allocate sufficient annual funds to ensure adequate implementation of these programmes and the provision of services for victims of torture.
- Re-open the Universal Victims' Registry to enable all victims of violence and abuse committed between 1980 and 2000 to register in order to be eligible for individual compensation under the administrative reparations programme.
- Remove the fixed amount of administrative reparation compensation that an individual victim is entitled to receive in order to ensure that all reparation awarded takes into account the specificities of each individual case, and reflects the severity of pain and suffering incurred, and also takes into account the indirect victims who are also entitled to receive reparations.