



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture

UN Human Rights Committee 107th Session (11 to 28 March 2013)

APT submission on Peru

Submission from the Association for the Prevention of Torture (APT) to the Human Rights Committee on the national implementation of articles 2(2) and 7 of the Covenant in relation to Peru, whose fifth report will be considered by the Committee during its 107th session in Geneva.

Submitted 7 February 2013

***The Association for the Prevention of Torture (APT)** is an independent NGO based in Geneva, working globally to prevent torture and other ill-treatment. To achieve this vision the organisation works within three integrated areas:*

Transparency in places of detention - Promoting a system of visits by independent experts to prisons and other places where people are held in detention.

Effective laws and policies - Lobbying with governments to ratify the Optional Protocol to the UN Convention against Torture and other international and regional anti-torture treaties.

Capacity for prevention - Creating partnerships for prevention within countries, bringing governments, police services, judges and lawyers, national human rights institutions and civil society together in the fight against torture.

1. Summary

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is recognised as a particularly effective way of preventing torture.

Despite ratifying the instrument in 2006, Peru has yet to take necessary steps to implement it in practice.

APT encourages the Human Rights Committee to recommend that Peru comply with the OPCAT by establishing an independent national mechanism to prevent torture.

2. The role of the OPCAT in the prevention of torture

The risk of torture and other ill-treatment exist in all situations where people are deprived of their liberty, particularly in places closed to the outside world.

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the UN General Assembly in 2002 and came into force in 2006. It aims to minimise the risks of abuse by opening up prisons, police stations, mental health institutions and all other places of detention to examination by independent watchdogs.

The basic premise behind the OPCAT is that the more open and transparent places of detention are, the lesser the risk for abuse.

3. Background information on Peru

Peru ratified the Optional Protocol to the Convention against Torture (OPCAT) on 14 September 2006. According to the process for national implementation, the State should have designated its national mechanism to conduct visits to places where persons are deprived of liberty (the National Preventive Mechanism, or NPM) by September 2007. Peru is over five years late in complying with its obligation of establishing the NPM under the OPCAT.

In June 2010, the National Human Rights Council recommended the Executive to designate the Ombudsman's Office (*Defensoría del Pueblo*) as the NPM, due to its long-term experience in monitoring conditions of detention. The Ombudsman's Office agreed with this decision, but drew attention to the need to earmark sufficient budgetary funds to enable the national preventive mechanism to fulfil its mandate and effectively prevent torture.¹

The current criminal justice policy of the State has led to an increase of 33.98% of the prison population between August 2006 and July 2011² and, as a result, to a high

¹ Defensoría del Pueblo, *Aportes al Examen Periódico Universal*, Perú, (April 2012), 13-15, at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/PE/DP_UPR_PER_S14_2012_DefensoriaDelPueblo_S.pdf

² Defensoría del Pueblo, *El sistema penitenciario: componente clave de la seguridad y política criminal* (2011), p.210, at: <http://www.defensoria.gob.pe/modules/Downloads/informes/defensoriales/informe-154-FINAL.pdf>

level of prison overpopulation (above 100%, according to the National Penitentiary Institute).³ To improve this situation and to guarantee the dignity and security of persons deprived of their liberty, the Ombudsman's Office highlighted the need for a comprehensive penitentiary reform and for the State to fulfil its pending obligation to designate the NPM in its 2011 report on the penitentiary system in the country.⁴

At the time of this writing, there are two draft bills to create the NPM, but no consensus has been achieved, despite the commitment expressed by Peru in November 2012, during its second Universal Periodic Review, "to find a consensus in order to propose a law to Congress and ensure the allocation of the necessary funds so as to be able to comply with this international obligation within the next year."⁵

The first draft bill was drafted by an inter-sectorial working group within the National Human Rights Council, comprised of representatives of the Executive, the Public Prosecutor's Office, the Ombudsman's Office and civil society organisations.⁶ The bill was eventually approved by the National Human Rights Council in December 2011.⁷ The NPM bill is currently before the Council of Ministers, and has not yet been submitted to the Congress.

A second draft bill to designate the Ombudsman's Office as NPM was drafted by a group of parliamentarians and submitted to the Commission of Justice and Human Rights of the Congress in October 2012.⁸

4. Suggested recommendations

In light of the background material above, the APT proposes that the Human Rights Committee make the following recommendations to the delegation from Peru:

Article 2

- Peru should accelerate the process to establish and designate an independent NPM by ensuring that legislation on the NPM is introduced in Congress, adopted and implemented.

Article 7

- The State must grant the Ombudsman's Office with the necessary human, material and financial resources to be able to adequately fulfil its new mandate to prevent torture as the NPM.
- The State should ensure that civil society participate actively in the functioning of the NPM.

³ UN Human Rights Council, National report, Peru, UN Doc. A/HRC/WG.6/14/PER/1, 7 August 2012, 68.

⁴ Defensoría del Pueblo, *supra*. p.216.

⁵ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review of Peru, UN Doc. A/HRC/22/15, 27 December 2012, 34.

⁶ UN Committee against Torture, Sixth periodic report of Peru, UN Doc. CAT/C/PER/6, 15 September 2011, 240 and 241.

⁷ UN Human Rights Council, National report of Peru, UN Doc. A/HRC/WG.6/14/PER/1, 7 August 2012, 96 and 97.

⁸ UN Human Rights Committee, *Respuesta de Perú a la lista de cuestiones*, UN Doc. CCPR/C/PER/Q/5/Add.1, 21 January 2013, 100