

# **ALTERNATIVE REPORT ABOUT TORTURE SITUATION IN PERU BY THE GROUP AGAINST TORTURE OF THE NATIONAL COORDINATOR OF HUMAN RIGHTS**

## **I.- Presentation:**

The National Coordinator of Human Rights (CNDDHH) is a human right's collective which groups 79 non-governmental organizations dedicated to defend, promote and educate in human Rights in Peru.

It is also, an organization with a special consultative status in the Social and Economic Council of United Nations (UN) and is credited to participate in activities of the Organization of American States (OAS).

The present report was developed by the Work Group against Torture of the CNDDHH, specifically on behalf of the Executive Secretariat of the CNDDHH, the Episcopal Commission for Social Action (CEAS), the Center for Psychosocial Care (CAPS) and the Human Rights Commission (COMISEDH).

This report expects to report the human rights situation in our country, dealing specifically with problems regarding torture, taking as starting point the information delivered, on behalf of the Peruvian State, in the document called: "Sixth Periodical Report that the State parties must present in 2009, submitted in response to the list of issues (CAT/CPER/Q/6) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24). Peru" dated 28<sup>th</sup> July 2011.

The information delivered will regard issues that the Committee against Torture (CAT) has formulated to the Peruvian State, taking into account the information we have according to the lines of work of each institution which took part developing the present report.

## **II.- Information regarding the Conventions articles**

### **ARTÍCULO 2°**

#### **1. Please give information, that will allow the Committee to have a clear vision of the situation regarding protection against torture, since 2005:**

Currently, in our country torture is not a systematic and/or generalized practice like it occurred during the period of the armed conflict in the 1980's and 1990's<sup>1</sup>. However, we can affirm that it is an extended practice at national level due to the detection of cases in most of the regions in Peru, which are persistent; its practice has very concerning levels of repetition. Also, in many cases torture or cruel, inhuman or degrading treatments are socially accepted by some sectors of the population or the society in general, when directed to persons investigated for suspicion of having committed a crime.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, is presented mainly, although not exclusively, in detention centers, such as police stations or other police facilities, against suspects or accused persons of having committed a crime; in penitentiary facilities, against sentenced inmates or persons subject to preventive detention. Also, in military facilities, against soldiers or recruits who carry out military service, basically.

---

<sup>1</sup> COMISIÓN DE LA VERDAD Y RECONCILIACIÓN. Tomo VI. La Tortura y Otros tratos crueles, inhumanos o degradantes. See: (<http://www.cverdad.org.pe/fiinal/pdf/TOMO%20VI/SECCION%20CUARTA-Crimenes%20y%20violaciones%20DDHH/FINAL-AGOSTO/1.4.LA%20TORTURA.pdf>) (web page visited on September 26th 2012).

In the frame of the criminalization of the social protest produced in Peru, due to a normative frame which over criminalizes conducts linked to social protest and that is very permissive regarding the violent repression on behalf of the States law enforcement agents, demonstrators or protesters in public demonstrations have been victims of torture or cruel, inhuman or degrading treatment (See numbers pointed out in part 5, paras. 5 and 7, page 5).

The main perpetrators of torture are the law enforcement forces, especially and in great measure, the National Police, like agents from the National Penitentiary Institution, who work in the guard service of the aforementioned places; and the Peruvian army. However, in the last years these acts have also been committed by staff of other public forces, such as “Serenazgo”<sup>2</sup>; and by private security forces who count with the consent of the law enforcement forces.

Regarding the information about torture cases, we have not been able to obtain information from the Public Ministry. A request submitted to this entity by the CNDDHH<sup>3</sup> has not been answered. On the other hand, we could verify that the Observatory of Crime of the Public Ministry, virtual platform of this State organization containing information of crimes and denunciations committed at national level and registered in weekly, monthly and annual newsletters, had no data on this crime.

On its behalf, the People’s Ombudsman before our request of information on complaints for alleged torture, cruel, inhuman or degrading treatment, between January 2011 and March 2012, informed us that they received 13 complaints, of which, 11 were concluded and 2 are being processed, and regarding the concluded cases, 8 have been declared well founded and 3 unfounded. Regarding the information submitted by offices at national level, during the mentioned period we have been informed that 18 cases have concluded and 16 are being processed, informing that from the concluded cases, 8 have been declared well founded and 10 unfounded.

Additionally the Ombudsman has informed us that during period 2009-2010 they have received 110 complaints<sup>4</sup>.

In previous years, the Ombudsman informed that during period 2003 to 2010, the number of registered complaints of cases of alleged torture and cruel, inhuman or degrading treatment is 640. From the 57 complaints registered in 2009, 39 were against the Peruvian National Police (PNP), 8 against municipal officials (Serenazgo), 6 against members of the Army (FFAA) and 5 against officials from the National Penitentiary Institute (INPE). On the other hand, regarding the 53 complaints received in 2010, 32 were against the PNP, 10 against INPE officials, 7 against municipal officials and 4 against the Army.

At judicial level, the National Criminal Court of the Supreme Court of Justice, particularly court hearing cases of human rights violations, including torture crimes, reported that in the period September 2004 to December 2011, they sentenced a total of 138 defendants for torture crime, of which only 35 of them were convicted, and the 103 remaining defendants being acquitted. Also, as an update to March 2012, regarding the judicial proceedings for torture, 8 are under instruction (judicial investigation) and 3 in oral proceedings (part of the judicial process in which evidence is acted upon)<sup>5</sup>.

---

<sup>2</sup> Security Corps of local governments created to support citizenship security tasks, whose work is coordinated with the National Police.

<sup>3</sup> The request N° 053-2012- CNDDHH was submitted to the Coordinating Prosecutor of the National Criminal Superior Prosecutor and Supra Provincial Prosecutors.

<sup>4</sup> This information was delivered by the Ombudsman through a letter N° 016-2012-DP/ADHPD dated March 15th 2012.

<sup>5</sup> This information was delivered to the CNDDHH by an officially written notice N° 087-2012-MC-SPN dated March 13th 2012.

These figures, given both by the competent court to see this kind of human rights violations, and by the state body supervising the actions of the state apparatus, we would note that there is a big problem of access to justice by victims of torture cases.

It also notes the existence of a subfield of committing acts of torture. People who are victims of this crime do not report these facts because of several factors: fear of retaliation, mistrust and little or no credibility in the system (in most cases the acquittal of the accused), the distorted registration of this crime by actors in the system (police, prosecutors and even judges) who qualify the facts for abuse of authority or criminal injuries; which are among the most important factors.

**2. Please indicate the incidence of torture denunciations in the military especially affecting those serving in the military and what are the measures taken to prevent and investigate such occurrences.**

We have not been able to generally access the figures that allow us to show the actual number of complaints of torture occurred in military facilities, especially of persons providing voluntary military service. As for the measures taken to prevent and investigate such occurrences, we should note, from the cases that the defense agencies of human rights members of the National Human Rights come to know and sponsor, on the contrary, there is a clear instruction of achieving impunity in such human rights violations.

This can be verified in a serious case of sexual violence as torture committed against a minor (17), which provided voluntary military service in a military base in Cusco, which was subsequently doped and violated with such ferocity that suffered a torn anus (great rectal prolapse). Out of fear and shame he would not report it until the pain was unbearable and asked to be taken to the nearest hospital. His immediate superior ordered him to say that all physical injuries sustained were the result of excessive exercise.

Although the case became publicly relevant in the city, the prosecutor who was initially in charge closed the investigation. This decision was challenged and overturned by a superior prosecutor. Currently, the investigation has been restarted.

As we can see, there is a serious sign of concealment of such serious human rights violations, and above all there is also a lack of awareness on behalf of the legal operators in charge of investigating and prosecuting these serious crimes.

**4. Please indicate whether the Public Ministry established a national register of all complaints received from people claiming to have been victims of torture, cruel, inhuman and degrading treatment.**

The Public Ministry has not implemented, a national register of all the complaints received, more like we reported in Part 1 of Article 2, we have requested the Public Ministry for information about torture nationally, and given the special competence with certain prosecutors but we have not received a response to our request.

We also followed up on the information contained in the Observatory of Crime of the Public Ministry, and we note that there is no specific section related to crimes against humanity, therefore there is no information regarding cases of torture.

**5. Please indicate what measures have been taken to scrupulously respect during periods of declaration of state of emergency (if any, and the circumstances that led to taking it) the obligations undertaken by the State party in the field of human rights.**

Our legal system establishes at constitutional level the discretionary faculty of the Executive Power to establish exception states, specifically a state of emergency, Article 137 of the Constitution of Peru, which indicates that the state of emergency can be given "If disturbance of the peace or internal order, disaster or serious circumstances affect the life of the nation. "

Regarding the regulations related to the use of force, but as stated the Peruvian state in paragraph 65 of its report to the CAT, the existence of Legislative Decree No. 1095, which establishes the rules of employment and use of force by the armed forces in the country, is currently in force, this has been challenged by an action of unconstitutionality – presented by 6.430 citizens- that has yet to be resolved by the Constitutional Court because of serious questions about the contents, since it allows the intervention of the military in situations not authorized by the Constitution of Peru. Furthermore, the ambiguity of concepts such as hostile group, used by the aforementioned Legislative Decree, threatening the rights of participation and freedom of assembly.

Another aspect of concern is the bill No. 81-2011/CR, approved in Congress regulating the use of force by the National Police and that contravenes the provisions of international standards on the matter, considering that it authorizes the use of firearms beyond the cases provided for in international law.

On the other hand, it seems relevant to report that from May 1, 2011 to July 28, 2012, 63 states of emergency have been declared, that is, an average issue of a state of emergency every 7 days. Of these 50 are based on a natural or imminent disaster, 10 needed to combat Shining Path forces and 3 of them to repress social protests, but more revealing is that 21 of them affect infra-district constituencies, 22 to infra-provincial, 20 to infra-regional and only two of them to a regional constituency, that is that the emergency states considering its geographical dimensions can hardly fit into a circumstance that affects the life of the nation like its stated in our Constitution.

In the context of social protest and repression by the respective Peruvian government, we can report that the National Coordinator of Human Rights has been reporting the number of injuries and deaths in the context of criminalization of social protest. During the government of Alan Garcia, between June 2006 and June 2011, 66 civilians were killed as a result of the intervention of the law enforcement in repressing social protests.

The last months of this administration were marked by an unusual police brutality repressing protests: in just 6 months 17 civilians were killed. The figure is even higher than in the first half of 2009 (eleven victims). In this same period, we recorded 598 people injured by the law enforcement. 52% were due to firearm projectiles, 57% were affected in the context of conflicts qualified by the Ombudsman as social-environmental. About 7% of the cases involved minors.

The second half of 2011, under the government of Ollanta Humala, was not exempt from abuse, having registered 71 people affected, one of whom was killed. During 2012, we have registered 17 victims of death, of which 99% were killed in contexts of social unrest due to bullet wounds in various parts of the body (head, face, chest, back, etc.). The Peruvian government issued a statement released on March 16, 2012, which accounted for 38 wounded in contexts of social protests in the country.

#### **ARTICLE 4°**

- 8. Please inform the Committee whether the legislation prohibiting torture and other cruel, inhuman or degrading treatment to criminalize the prohibited conducts by the Convention takes into account a gender perspective and whether it includes sexual violence.**

Peruvian law on torture does not have a gender perspective and does not include rape as a form of torture.

However, since civil society has been promoting inter-agency working groups, which has been promoting the passage of a bill to establish within the Peruvian Criminal Code, crimes against International Law of Human Rights and International Humanitarian Law, which seeks to incorporate the standards established not only in the Rome Statute, but international standards on human rights and international humanitarian law.

#### **ARTICLE 10**

- 9. Please indicate what measures the State party has undertaken to expand training programs with respect to the obligations under the Convention for the police officers, the military, the prison system, as well as prosecutors and judges, particularly with respect to the proper classification of cases of torture.**

In terms of the Public Ministry (Prosecutors), we have been able to access the Annual Operating Plans of the Public Ministry School which is a centralized and specialized technical body that directs institutional training tasks.

The Annual Operating Plan 2012<sup>6</sup>, does not identify any training for prosecutors at national or regional level over torture and related offenses, the only activity that we have seen that involves the issue of human rights is the training that was conducted during January, February and March, on 3 occasions, and directed to 70 participants in total.

This activity was called: "Criteria for the performance of the armed forces in emergency zones, in respect of fundamental rights and coordination with the Public Ministry," which aims to "provide military personnel of the Armed Forces of Peru, Air Force of Peru, Peruvian Army and Navy of Peru, training and information necessary for the development of its operations in emergency areas, for basic legal criteria to be taken into account in their actions ", whose content is detailed as follows:

- a. Fundamental Rights and Human Rights: Equal treatment of citizens and lawbreakers
- b. State of Emergency and Constitutional Guarantees
- c. Fight against organized crime and illicit drug trafficking
- d. Officials Corruption Crimes
- e. Recommendations for action by the armed forces in their operations
- f. How to contact the civilian population?
- g. Identification of suspects
- h. What to do when detaining citizens?
- i. Protecting the crime scene
- j. How to coordinate actions with the National Police and the Public Ministry?
- k. Excesses in the performance of the Armed Forces

---

<sup>6</sup> See Operational Plan 2012 of the Public Ministry School in:  
([http://www.mpfn.gob.pe/escuela/contenido/plan\\_operativo/PLAN\\_2012.pdf](http://www.mpfn.gob.pe/escuela/contenido/plan_operativo/PLAN_2012.pdf))

Meanwhile, in 2011<sup>7</sup> and 2010<sup>8</sup> the Public Ministry has not carried out any activity directed to retrain prosecutors in human rights, much less specifically on the issue of torture.

Regarding the National Penitentiary Institute (INPE), it is important to note the progress that meant the adoption of the *"Handbook of human rights applied to the prison work"* but it has not been important in the training of prison staff for the prevention and eradication of torture in prisons. There has been no proper monitoring after its publication and training activities conducted by the INPE with the cooperation of human rights organizations of civil society.

Also the content of the handbook should have been disseminated to all levels of the prison administration of the country to achieve its incorporation into the daily work, also make efforts needed so it would be made aware for the inmates, their families and others who are linked to the prison work, however, regarding the dissemination of the handbook as a legal-normative instrument, INPE limited it only to be published on its institutional website.

Pastoral agents of the Catholic Church doing pastoral work in the prisons of the country have been able to verify, through direct inquiries with prison staff working in prisons, both staff dedicated to security work and treatment of inmates, that the handbook has not been distributed to prisons servers, so it is not known and even less valued.

The training conducted by INPE regarding the handbook, concentrated mostly in the years 2008 and 2009, after which there has been no follow-up of this training, which has caused it to be an isolated action without leading to a real public policy on prisons.

The INPE made a great display of effort in 2010 for the selection and training of prison staff in various prisons in the country as "human rights instructors." However, once this trained personnel returned to their original prisons, as pastoral workers were able to confirm, there has been no training activity related to the theme, organized by human rights instructors, which accounts for the lack of commitment of the instructor prison officers, in some cases; and in other cases, the lack of support and commitment of the prison authorities to promote education and training in human rights directed to prison staff developed by trained instructors.

Regarding the training received by prison staff, INPE has a National Center for Criminal and Penitentiary Studies - CENECP responsible for educating and training its staff. To fulfill its mission, and when necessary, the Center invites teachers to give them the responsibility to form or train, but, INPE is not an academic or pedagogic body trained to properly form their servers, there must be an institution suitable for this purpose and this way meet the goal of having an appropriate server and efficiently prepared.

**10. Please also indicate if you have developed training courses for medical staff dedicated to the detection and diagnosis of cases of torture, as well as those who assist in the rehabilitation of torture victims?**

According to the 2012 Annual Operating Plan, of the Public Ministry School<sup>9</sup>, only one training was scheduled for members of the Institute of Legal Medicine (IML), within the Specialization

---

<sup>7</sup> See Operational Plan 2011 of the Public Ministry School in: ([http://www.mpfn.gob.pe/escuela/contenido/plan\\_operativo/PLAN\\_2011.pdf](http://www.mpfn.gob.pe/escuela/contenido/plan_operativo/PLAN_2011.pdf))

<sup>8</sup> See Operational Plan 2010 of the Public Ministry School in: ([http://www.mpfn.gob.pe/escuela/contenido/plan\\_operativo/PLAN\\_2010.pdf](http://www.mpfn.gob.pe/escuela/contenido/plan_operativo/PLAN_2010.pdf))

<sup>9</sup> See Operational Plan 2012 of the Public Ministry School in: [http://www.mpfn.gob.pe/escuela/contenido/plan\\_operativo/PLAN\\_2012.pdf](http://www.mpfn.gob.pe/escuela/contenido/plan_operativo/PLAN_2012.pdf)

Courses called "Course II: Evaluation of physical and psychological torture", which took place in May, with a duration of 03 days, for about 60 members of the Institute of Legal Medicine.

During 2011, members of the Institute of Legal Medicine, received a training course entitled: "Medical Assessment Workshop Course in torture cases (in person and teleconference)"<sup>10</sup> workshop that was carried out in August during 03 days, with the participation of approximately 200 members of IML nationwide.

The same year, IML members received the "Training Workshop for Pilot Application Protocol of Psychic Damage Assessment in Victims of Violence" which took place in January and had the participation of 30 psychologists and psychiatrists from judicial districts of Lima, Huanuco, Cusco, Piura, Junin, Ucayali, Ancash, Loreto, San Martin, Puno, Arequipa, Madre de Dios, Huancavelica, Tumbes, La Libertad, Ayacucho, Cajamarca, Lambayeque. The event was held in coordination with member institutions of CNDDHH like Manuela Ramos and Center for Psychosocial Care - CAPS.

While members of the Institute of Legal Medicine are being trained in torture or related courses, we believe that the amount of training is not enough, because the instruction does not reach all staff and they do not achieved to train and create awareness of the officials constantly with respect to the issue of torture. It is not possible, on the other hand; to actually measure the quality of the training.

Despite these efforts so that doctors and psychologists from IML may have better tools and training and a permanent education, there are serious problems regarding physicians and psychologists when interpreting what constitutes torture, and severe limitations in their perception, thus we find that these efforts are insufficient and not generating the desired impact. In some prosecution investigations, medical experts have argued in their medical reports the absence of torture despite reported signs and symptoms of hard punches and kicks. The same happens in the psychological evaluation. This stems from the belief and conviction that these professionals can only talk of torture when there are signs of certain types of punishment ("hangings", drowning, and application of electricity, among others).

## **ARTICLE 11**

- 11. Please describe the procedures in place to guarantee compliance with Article 11 of the Convention and provide [information] on rules, instructions, methods, practices or new arrangements to imprisonment that may have been introduced. Also please indicate how often they are reviewed.**

While there are rules that guarantee the rights of persons deprived of liberty, there is no actual compliance with those standards. Recently, Ms. Amparo Abanto (lawyer) –from NGO GRUFIDES- and a Commissioner of the Ombudsman Genoveva Gomez were dragged by the hair, beaten and humiliated by two dozen police officers from the First Precinct of Cajamarca. The same happened with the human rights activist and environmental leader Marco Arana, who was the victim of a beating by the police in the city of Cajamarca. In addition, a prosecution investigation was opened and he was credited with committing a series of crimes (disturbances and other similar) when it was of public domain that he was brutally intervened when sitting peacefully on a bench in the main square of this city.

---

<sup>10</sup> See Operational Plan 2011 of the Public Ministry School in:  
[http://www.mpfj.gob.pe/escuela/contenido/plan\\_operativo/plan\\_operativo\\_2011.pdf](http://www.mpfj.gob.pe/escuela/contenido/plan_operativo/plan_operativo_2011.pdf)

**12. Please provide information on measures taken to implement the National Plan for Penitentiary Treatment.**

After passing the National Plan for Penitentiary Treatment a commission was created to follow up the plans recommendations, however, we are not aware of actions taken by it that have helped improve the country's prisons, not even progressively, on the contrary, the prison situation remains dramatic and little or no progress on the recommendations outlined in the Plan do not represent significant progress in the implementation of prison policy guidelines in the short or medium term to allow the proper treatment for actual rehabilitation and reintegration of prisoners.

The UN Minimum Standard Rules for the Treatment of Prisoners states that treatment "should appeal to religious assistance, instruction, guidance and professional training, individual social assistance methods, employment counseling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner." (No. 66).

The treatment in prisons is still far from meeting the minimum requirements of this standard. The factors are many, including: insufficient staff to do this work, the lack of logistical resources to adequately develop treatment tasks, difficulties in infrastructure, internal classification according to certain variables (primary offender, re-offenders, organized gangs, youth, adults, etc.), and the treatment of staff, among others. These factors are rooted, in most cases, in the situation of overpopulation and overcrowding existing in prisons in Peru.

According to INPE staff distribution, within the treatment area includes health professionals, social work, psychology, legal, education and labor. Each prison should have each of these professionals, but in practice this is not true. According to data provided by the pastoral workers who visit prisons for religious care and, in some cases, INPE's own information, there are penitentiary facilities inside the country that do not have any professionals in the treatment area, or which are not complete. From 5.485 of prison workers that existed in 2011, only 1.075 were destined for treatment work.

In this situation the state can not leave the attention to the crisis in the prisons solely in the hands of the prison administrations. However, it has not been undertaken in a coordinated and articulated manner with other sectors involved to it, quite the contrary, the only action taken is perhaps the one that mostly contributes to maintain the current conditions of prisons, that is, the existence of a criminal policy that prioritizes repression through penitentiary laws which are over criminalizing and which reduce penitentiary benefits. In the last 3 years there have been amendments to the substantive criminal law (29 provisions that have reformed 125 articles in the Penal Code); in procedural matters (13 provisions) and criminal enforcement (4 provisions).<sup>11</sup>

**Existing prison population in active prisons, Inmates access to Education and Work, Training of prison staff.**

In the period covered by this report, the prison population increased by 33.98% to a level of 70% over-population regarding its real holding capacity. These conditions lead, permanently, to an increasing deterioration of prison conditions, basic services and resocializing treatment and security in prisons.

Education and prison labor, both key aspects of prison treatment components, have been

---

<sup>11</sup> Data extracted from document "Executive Summary. Ombudsman Report N° 154-2011/DP. The Penitentiary System: Key component to Security and to Criminal Policy. Problems, challenges and perspectives", p.6.



overwhelmed by the number of inmates; nationwide addressing only approximately 22% in education and in the work area 37%.

Although there are significant contributions from civil society organizations and churches in conducting activities and educational programs, only some of them manage to be considered in the official record of INPE for sentence reduction programs for work or education, which sometimes affects the participation of inmates in these programs, generating the low value of them to make them look just as activities aimed at good use of free time and not as complementary treatment.

**12. Please provide information on the number of prisons, quotas, number of inmates, measures adopted for education and work. Also on the number of staff in charge of monitoring and training they receive to do their job, and which is the body responsible for the training.**

Currently within the curriculum CENECP training course on human rights, but this is not enough to develop a culture of respect for them. Referring to the treatment on behalf of security staff an inmate states: *"The treatment of INPE staff is average. At times we are given advice or offered some encouragement (...) sometimes the INPE 's do not respect the visitors and react with attitudes that give people a lot to think about people supposedly prepared ... The rehabilitation is carried out by the own inmate, if anything could be said that the workers of INPE give us some scope of what our rehabilitation should be, but make mistakes that jeopardize the rehabilitation of an inmate. I think to the extent that if the worker respects the rights of the inmate, they respect themselves.. "*

In turn, an inmate says: *"For obvious reasons the treatment is tense because of the mentality that the inmates are subhuman. It is a hard work for the inmates to gain respect and assert their rights, and we have only lost our freedom, I can not fail to recognize honorable exceptions of some officials who have treated us well ... The abuses of inmates have always occurred... there are many technicians who verbally humiliate inmates, some people like harassing inmates, looking for a Sol (local currency) or the inmates reaction ... "*

Testimonies of this kind are received every day by pastoral workers, relatives of prisoners and others who visit the prisons, which reveals the existence of institutionalized practices of mistreatment of inmates accepted as the most effective way to control the prisons. Unfortunately these abuses and others more serious, including torture cases, fail to be reported by inmates due not only to threats and in some cases their perpetration, transfers to other prisons, but mainly by the long experience of impunity in crimes of this type. In the prisons, the recurrence of torture and cruel inhuman and degrading treatment that the inmates account to, unofficially, are given generally to punish inmates.

Within cruel, inhuman and degrading treatment representing one of the most serious violations of the rights of detainees we note the existence of punishment cells in Peruvian prisons, which are banned by national and international regulations protective of fundamental rights.

These are environments that do not meet the conditions for long-term placement of inmates, most do not have toilets or any kind of furnishings, many of them do not even have electricity. The environments for punishment are formally prevention environments, that is, they serve to place inmates when they enter the prison while waiting to be sorted and placed in wards, which should occur almost immediately on admission, however, there are prisons that this classification may be delayed up to three or four weeks after admission. The conditions in which, in particular, occur in these environments are worsened when they arrive to locate, at the same time, the new inmates entering the prison (often without a final sentence) and punished inmates. In some women prisons in Lima, pastoral agents and lawyers have come to the

conclusion that even pregnant women and women over the age of 60 are punished it's possible that they may fulfill their punishment in these places.

Another situation that has serious faults in the treatment of prisoners is one that has to do with the disciplinary proceedings that must precede the imposition of a sanction, by reference to the inmates it is known that they are not massively informed about disciplinary proceedings, specific penalties for specific offenses and duration of these sanctions, as well as the existence of means of recourse and the authority that must solve them. In some cases even the inmates do not know that sanctions can not be applied by any prison server. Also, they are hardly heard before a sanction is being imposed.

**14. Please indicate what measures have been taken to reduce overcrowding in prisons, the priority given to improving access of prisoners to medical professionals and public defenders. Please indicate the number of lawyers who provide public defense and the number of doctors serving the prison population per prison.**

The Peruvian government has taken measures which, on the contrary, are causing more overcrowding, including the approval of criminal laws, procedural and criminal enforcement that increase sentences and reduce prison benefits. This has been noted by the Ombudsman in the Defense Report No. 154-2011/DP, "The Prison System: A key component of security and criminal policy."

The effect has been the increase of the prison population. Data published by the National Penitentiary Institute (INPE) <sup>12</sup> show that in April of 2012 they had a total population of 56.055, with a holding capacity of 28.257, resulting in an overpopulation of 27.748 (98%). Furthermore, the data reveals that INPE under staffs for legal assistance (1 lawyer for 529 inmates) and medical care (1 doctor for 890 inmates) of the inmates.

**Access to health of the Prison Population**

Prison health services are insufficient to meet the prison population's needs, besides lacking prison health policies. Despite the existence of the standard of comprehensive health insurance, not all the prison population has been affiliated, because, among other reasons, the ignorance of the procedure and lack of prison staff who can do it.

Health personnel in prisons it is highly inadequate: 63 doctors, 34 nurses, 202 health technicians, 30 dentists and 16 obstetricians, this amount of care professionals for over 48,000 inmates. Even more serious is the situation of 28 prisons which lack any medical personnel.

On health care, an inmate testifies: *"The health service is average. The low budget and lack of equipment do very little to ensure the health and understaffed facilities to meet their commitments. Dental care also presents serious deficiencies. The treatment and professional care are acceptable. The most common illnesses are gastrointestinal, respiratory, skin and urinary tract infections. There are only basic medicines, they lack specific drugs. It is necessary to implement a basic hospital service ... "*

One of the great challenges for a person who is incarcerated is to be evacuated to a hospital and it is a prerequisite to go through a medical board. However, in most prisons there are no professionals required to perform this action, delaying the evacuation and hence the worsening of the disease or condition of the offender.

---

<sup>12</sup> National Penitentiary Institute (INPE). Penitentiary Problematic. Lima, April 13th 2012.  
[http://www.inpe.gob.pe/pdf/inpe\\_resumido.pdf](http://www.inpe.gob.pe/pdf/inpe_resumido.pdf)

**16. Please indicate if the Yanamayo prison is closed and if not why?**

We know that the Yanamayo prison still running, as pointed out by the Peruvian state in its report to the CAT.

It seems relevant to further inform that the Challapalca prison is still running:

Challapalca Prison is located over 4,600 meters of altitude, between the departments of Tacna and Puno in the Andes, near the border of Peru and Bolivia. Given the extreme conditions of detention at the prison, the Inter-American Commission on Human Rights since 1998, after its first on-site visit to Peru and this prison in particular recommended to the Peruvian State the disqualification of Challapalca prison and Yanamayo prison, located in the department of Puno. However, the State has not taken into consideration the reports and recommendations of both the Commission and the Ombudsman's Office and both prisons remain active.

The conditions of Challapalca prison, caused by the geographical location of the prison, as the Commission noted, are additional punishment for inmates, their families and prison staff themselves serving in the prisons of Yanamayo and Challapalca.

In principle, the extremely cold weather that reaches a temperature of minus 26 degrees Celsius in winter, creating a situation that particularly affects people accustomed to living on the coast, at sea level.

On the other hand, its location also makes visiting rights of the family very difficult due to that it is located in an inhospitable place and is difficult to reach, either because of the cost to get there and the exposure to health damage.

**17. Please indicate what measures have been taken in the judicial small prisons in the premises of the National Police to monitor the correct operation of the officials in the custody of prisoners and their access to legal medical service.**

According to the Resolution of the Executive Committee of the Public Ministry No. 627 - 2000-MP-CEMP<sup>13</sup>, the person offended by torture crime must be assessed by the medical examiners with the Protocol for Legal Medical Examination for Detection of Injuries or Death resulting from Torture. In many cases of arrests, they hardly fulfill such provision.

Proof of this, is the intervention made by the police force in the socio-environmental protest in Espinar, Cusco (Xstrata Tintaya Mine), in which social leaders were arrested, as well as human rights defenders (members of the Vicariate of Solidarity Sichuan, CNDDHH member) who were tortured by the police and did not pass a legal medical review, let alone the application of the Protocol for Legal Medical Examination for Detection of Injuries or Death resulting from Torture.

The same happened inside police facilities in Cajamarca, in the context of social protests regarding the execution of the Conga mining project, where a human rights defender (belonging

---

<sup>13</sup> Public Ministry. Resolution of the Executive Commission of the Public Ministry N° 627 – 2000 –MP –CEMP. Published in the Official newspaper El Peruano on September 12th 2000. Available in: <http://www.mpfm.gob.pe/descargas/normas-imi/94new.pdf>

to the organization GRUFIDES, CNDDHH member) and a commissioner of the Ombudsman's Office, were tortured, leaving these cases in total impunity.

### **ARTICLE 13°**

- 19. Please provide information on measures taken to guarantee the protection of all persons reporting acts of torture or mistreatment from intimidation and retaliation. Please also provide information on the establishment of an appropriate mechanism to protect witnesses and victims and the institution in charge and the qualities of the officials who are part of it.**

There is a Comprehensive Protection Program for witnesses, experts, victims or collaborators involved in investigations and criminal proceedings, approved by Supreme Decree No. 003-2010-JUS. However, there are not any specific measures for crimes such as torture or other serious human rights violations. The situation is even contradictory and paradoxical due that the security is provided by police staff, and they are the main agents in torture cases.

### **ARTICLE 14**

- 20. Please provide information on progress regarding the implementation of the recommendations of the report of the Truth and Reconciliation Commission, in particular those related to vulnerable groups. Please also indicate what progress has been made in implementing the Comprehensive Reparations Program, and what resources have been provided thereon.**

#### **Comprehensive Reparations Program**

The Truth and Reconciliation Commission (TRC), made among its recommendations to the Peruvian State the obligation to provide integral reparation for victims of political violence occurred in our country during the period 1980-2000. According to these recommendations, the Peruvian State created in 2004 a High Level Multisectoral Commission (CMAN), responsible to monitor and coordinate the implementation of the actions and policies in this field. Approving Law No. 28592 creating the Comprehensive Reparations Plan and Victims Register (RUV), and then installed a Reparations Council responsible for defining the universe of beneficiaries (individual and collective) for reparation policies, the RUV.

The repair process and its implementation in the country, has been partially developed, in recent years, collective reparations delivery was favored and there was not a serious commitment to implement the five other economic reparations programs, health, education, symbolic restoration of rights and housing; important and urgent programs to implement, given the comprehensive nature that reparation must have.

During 2011 the start of the process of individual economic reparations was announced and, through Supreme Decree No. 051-2011-PCM<sup>14</sup>, establishing guidelines to be taken into account to guarantee that victims have access to financial reparation. This Decree provides for the completion of the determination and identification of beneficiaries of economic reparations program, ordering the closure of the Victims Register (RUV) to December 31, 2011.

This provision not only violates the law No. 28592 of the Comprehensive Reparations Plan, which states that the RUV is permanent, but is discriminatory with victims who could not

---

<sup>14</sup> Supreme Decree N° 051-2011-PCM, published in the Official Newspaper El Peruano on June 16th 2011.

register to date because they were unable to because of geographical inaccessibility, lack of funds or lack of knowledge of the Integral Reparations Plan.

Likewise, the Decree provides that the amount to be paid to victims is 10,000 nuevos soles, contrary to the figure stipulated previously in the country, as was the case of self-defense committees (CAD) and the “*ronderos*”, to which disability and death resulting from a confrontation with terrorists<sup>15</sup>, granted them, on average, three times as assigned by the Supreme Decree No. 051-2011-PCM.

Accordingly, the decree is establishing questioned prioritization<sup>16</sup> criteria to be considered for access to the first stage of economic repair, as having over 65 years of age, in the case of spouses or partners, and 80 years for the parents of the victims, and taking into account the poverty situation they could be going through. So, who can be a beneficiary has before, to prove their poverty situation, otherwise they may not have access to financial compensation.

The questionable form of distribution of the amount allocated for repairs should be noted, and that this, in addition to be minimal and ridiculous (10,000 soles, about \$ 3,500), to be divided: 50% to the wife, spouse or partner, and the remaining 50% is distributed among the rest of the family, such as children or parents of the victim. In practical terms, would be \$ 1,700 for couples and \$ 1,700 for other parents and children of the victims.

While CMAN has noted that by 2012 they count with a budget of approximately 149 million soles (the annual average was 40 million), it has been determined that 100 million soles will be for financial reparations and that the remaining 49 million, about 32 million will go to collective reparations and 14 million to health reparations, education and symbolic ones. A small amount (1 million soles) will be destined for actions of Memory, Peace and Reconciliation. If this announcement becomes effective, it would be a step forward, but it should be supplemented with the redesign of the guidelines herein questioned.

It is relevant to note, also, that the repairs do not yet have a national public policy that is orderly, inclusive and consistent, to undertake the repairs comprehensively and with a clear budget, which goes hand in hand with the progress in the process of search for truth, access to justice for victims and their families, as well as in the construction of a memory that sets precedents for the future.

**21. Please provide information on measures taken to comply with the obligation to provide adequate compensation to victims of torture and other cruel, inhuman and degrading treatment. In particular, please provide information on the performance of repairs identified by the Interamerican Court of Human Rights and the Human Rights Committee for violations of torture and other cruel, inhuman and degrading treatment.**

Since 2005 there are resources from the Presidency of the Council of Ministers, to meet individually and communally victims of political violence (obviously including torture victims), however in the past (2010) it was evident that health personnel had no information about the Comprehensive Health System as a right in health repair that they could have free access to for being victims of political violence, rather, both staff and users prefer the same record or register under the criteria of poverty than affected by political violence, because they feel stigmatized and prefer to be served without generating this load making themselves invisible on the one hand, the high number of people who were affected by the internal armed conflict and therefore require specialized care.

---

<sup>15</sup> The guidelines to grant economic repair to the “*ronderos*” and members of the Self Defense Committees (CAD), issued by Supreme Decree N° 077-92-DE, and the compensation amounts were set by Supreme Decree N° 068 – DE/SG

<sup>16</sup> However, the Justice Ministry has offered to modify this item.

Regarding the coverage of mental health services of the Ministry of Health, through programs of the Comprehensive Health System (SIS) and Universal Insurance for the population living in poverty and extreme poverty they are grouped into a set of basic health services (particularly physical health) for victims of state violence during the internal armed conflict. However, these SIS services are not differentiated for those victims of torture that do not belong to the period 1980-2000. A person who has been the victim of torture since 2000 until now can access the SIS if their socio-economic poverty qualifies, but not because they are victims of torture. This population is invisible before the public health services. There are not either any specialized services in ESSALUD, insurance for employees and their families, or at municipal level.

Furthermore, it seems important to highlight the problems that arise in judicial proceedings regarding the compensation aspect observed in criminal sentences for torture cases, according to our experience, we have observed that the amount of compensation ordered in convicted cases of torture is not only ridiculous, but that does not take into account the standards set by the Interamerican Court of Human Rights or any other supranational body of human rights. Thus, despite punishing those criminally responsible, the economical repair which is set for the victim is given poorly, and therefore, full compensation is even more distant.

- 22. Please indicate what type of care - both medical and psychological, as well as rehabilitation - is available for victims of torture or cruel, inhuman or degrading treatment. Please provide information about the care provided by state institutions as well as on the activities carried out by NGOs. What is the budget allocation of state resources for this purpose?**

As the Peruvian State has indicated in the information provided to the Committee against Torture, our country does not have a specialized program in the medical and psychological care and rehabilitation for victims of torture. Some institutions who are members of the National Coordinator of Human Rights, like the Center for Psychosocial Care (CAPS), who have been taking charge of some cases, but this task belongs to the State and not to the NGOs. While the scope of work of these institutions is comprehensive care for victims of torture, it just is, or should be, only complementary work of the duties and obligations of the Peruvian State.

We should report that although the situation is evidently precarious for victims of torture, the Peruvian government does not have a specialized program, has not considered any funds to subsidize rehabilitation services for mental health organizations and human rights civil society organizations that attend these cases. This measure would contribute decisively to expand coverage, access and quality of services, as recommended in Article 14 of the Convention.

## **OTHERS**

- 25. Please indicate if a national preventive mechanism has been appointed and launched to conduct regular visits to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment.**

The Peruvian state is part of the Facultative Protocol since 2006, which aims to prevent torture in all its forms. It establishes the obligation of States to establish national bodies for the prevention of torture. The National Human Rights Council, chaired by the Minister of Justice, agreed that the appointment of MNP lies with the Ombudsman's Office, approving a proposed

bill on December 1, 2010<sup>17</sup>, but until now it awaits approval by the Cabinet and submission to Congress, largely exceeding the time limit established by the Facultative Protocol, which was for Peru October 14, 2007. Moreover, the situation of the MNP Bill got so entangled that the Ombudsman submitted a letter to the Ministry of Justice and Human Rights stating that without the proper financial resources allocated they would not assume that role<sup>18</sup>.

## **GENERAL INFORMATION ON THE SITUATION OF HUMAN RIGHTS AT NATIONAL LEVEL INCLUDING NEW MEASURES RELATING THE IMPLEMENTATION OF THE CONVENTION**

**31. Please provide details of new policies, administrative regulations and other measures taken to promote and protect human rights at the national level since the submission of the previous periodic report, including programs and action plans for human rights, means and resources allocated for further development of the objectives and the results obtained with them.**

**a. Prosecution of human rights violations:**

After verifying the high cost of human lives left by the internal armed conflict (1980-2000), the TRC recommended the creation by Congress<sup>19</sup> law of the specialized system for processing serious crimes committed during this period.

In the period under review it has been shown, from approved regulations, acts and pronouncements of senior government officials, the intention of closing the process of prosecution of these crimes, establishing impunity<sup>20</sup>, which was reflected very well with approval of the now repealed Legislative Decree 1097<sup>21</sup>, a sort of disguised amnesty. Also, there was a permanent and sustained disinformation and attacks on the work of the TRC, and the intention to withdraw from the jurisdiction of the InterAmerican Court of Human Rights and the InterAmerican System of human rights protection. The present government has also made pronouncements in this regard<sup>22</sup>. This has been a strong political and media pressure for judicial bodies (prosecutors and judges).

---

<sup>17</sup> The Work Group against Torture of the CNDDHH contributed with a normative proposal to establish the MNP. CAPS, CEAS, FEDEPAZ, REDINFA, IDL, Vicaría de Solidaridad de Sicuani and COMISEDH – institution in charge of coordinating the group.

<sup>18</sup> Official written document N° 184-2012-DP March 7th 2012 addressed by the Ombudsman to the Ministry of Justice about the National Mechanism of Prevention of Torture.

<sup>19</sup> Finally, it was implemented by a Supreme Decree and other administrative norms. By Administrative Resolution N° 170-2004-CE-PJ, it was provided that the National Criminal Court has competence to know crimes against humanity, common crimes which constitute human rights violations and related crimes. Also creates the Supra provincial Criminal Courts of Lima and the First Supra provincial Criminal Court of Ayacucho – on the base of the specialized courts in terrorism crimes – who have the same competence as the National Criminal Court. The Administrative Resolutions No. 060-2005-CE-PJ and 075-2005-CE-PJ, pinpointed that the Supra provincial Criminal Courts of Lima have competence to know the crimes aforementioned in all the national territory.

<sup>20</sup> See statements regarding the issue of former defense minister Rafael Rey en: <http://enlacenacional.com/2009/09/04/ministro-de-defensa-rafael-rey-reconoce-que-falta-trabajo-de-inteligencia-en-el-vrae/>. See also statements of former defense minister Daniel Mora, in: (<http://ideeleradio.blogspot.com/2011/08/mora-sobre-juicio-militares-debemos.html>) (web page visited on January 17th 2012)

<sup>21</sup> The legislative Decree N° 1097 called: “Procedural norms for cases of human rights violations”. By the said Decree, currently derogated, a new cause was created to exempt the defendant for human Rights violations on the base of the deadline of the formal term, denaturalizing the figure of dismissal – only applicable to approbatory issues – and violating the constitutional Courts statements and the InterAmerican Human Rights Court about procedural obstacles.

<sup>22</sup> See the following link: (<http://www.terra.com.pe/noticias/noticias/act2428624/peru-plantearetro-parcial-corte-interamericana-derechos-humanos.htm>)

### **The Public Ministry: minimum formalization of complaints and high number of cases shelved**

The investigations to the military involved in serious human rights violations have been weak and most cases are shelved. According to official information from the Public Ministry, by the end of 2009 its total caseload nationwide amounted to 1,626 cases. Of these, 673 were under investigation, while 953 were part of what they call "productivity", according to the indications of the Public Ministry, these are the cases in which criminal charges were formalized or where they were provided for shelving. Only 69 of them formalized criminal charges<sup>23</sup>. Official information, also from the Public Ministry, to March 2011, showed that 743 is the number of investigations shelved to date<sup>24</sup>. Its official figures on investigations that result in legal proceedings speaks for itself: no formalized complaint for crimes against humanity by the supra provincial prosecutors of Lima (four in total) from January 2010 to March 2011, of 29 cases designated as "current load"<sup>25</sup>.

In Ayacucho, worst hit by the violence and with the highest record of victims nationwide, of 162 investigations pending in the First Supra provincial Prosecutor, and 96 that are in the same condition in the Second Supra provincial Prosecutor, only two complaints were formalized in the same period. You can see the same trend in other prosecution offices which record information<sup>26</sup>.

One of the main reasons for the near absence of complaints is the reluctance of the Ministry of Defense to deliver or send prosecutors according to request, information on the Army staff which was stationed at military bases located in places where human rights violations were produced or part of certain actions and like documentation that verifies it so (relevant documents as reports or operation handbooks, intelligence reports, etc.). This refusal is a systematic practice that has become the greatest obstacle to the progress of the investigations.

### **The performance of the judicial authorities**

The courts of law<sup>27</sup> deciding these cases have been issuing rulings and very questionable decisions. This is also a great contradiction in relation to other sentences given by the same instances, and with the principles laid down in the ruling in the criminal proceedings against former President Alberto Fujimori for grave human rights violations. This important ruling, part of the prosecution process, is an exception and has failed to be taken as a valid precedent and monitored by the Peruvian courts. Most of these acquittals were overturned by the Supreme Court, precisely because of the defects and criteria we questioned<sup>28</sup>.

#### **• Human Rights defenders**

In 2011, human rights defenders are still imprisoned, legally harassed, have been victims of smear media campaigns, threats by telephone and/or e-mail.

The causes have remained the same in recent years, concern for the environment, the rights of indigenous peoples, determined action to denounce human rights violators during the internal armed conflict, as well as fighters for the women's rights and LGBT activists.

---

<sup>23</sup> Public Ministry, Official written document N° 901-2009-FSPNC-MP-FN, November 10th 2009.

<sup>24</sup> Public Ministry, Official written document N° 77-2012-MC-SPN, March 6th 2012

<sup>25</sup> Ibid.

<sup>26</sup> Ibidem.

<sup>27</sup> The National Criminal Court is the judicial body created for the knowledge of these cases and the supra provincial courts.

<sup>28</sup> Rivera Paz, Carlos. "El balance del proceso de justicia de crímenes contra los derechos humanos. Una década no es suficiente". In: (<http://www.justiciaviva.org.pe/notihome/notihome01.php?noti=717>)



From January 2007 until December 2011 there have been 255 registered incidents against members of human rights organizations, environmental advocates, witnesses, victims and justice officials. Almost all perpetrators or incidents authors are free and almost all cases remain in absolute impunity.

During 2011, the Ombudsman's Office reported approximately 250 conflicts per month. A recent report shows us that between January 2006 and September 2011, there were 195 deaths<sup>29</sup> and 2,312 wounded both civilians and military. In late 2011 and early 2012, there have been six people killed in contexts of social conflicts, as well as more than 100 injured.

- **Indigenous People's and the Environment**

The Law of consulting indigenous or native peoples under the ILO Convention 169, won the approval of national indigenous organizations such as the Interethnic Association of Development of the Peruvian Rainforest (AIDSESP), the Peasant Confederation of Peru (CCP), the National Agrarian Confederation (CNA), the National Confederation of Communities of Peru affected by Mining (CONACAMI) and the Confederation of Amazonian Nationalities of Peru (CONAP).

This process began on November 22, 2011, with the installation of a Multisectoral Commission represented, initially, of 14 deputy ministers<sup>30</sup> and six national indigenous organizations: AIDSESP, CONACAMI, CCP, CONAP, CNA and the National Organization of Andean and Amazonian Indigenous women (ONAMIAP).

It should have followed the process set out in the Act of Prior Consultation for approving the Regulation, then, as established in the Act, they should have been identifiable stages (of the measures and peoples to be consulted), advertising, information, prior evaluation, dialogue and decision.

In practice, the stages of information and advertising were not performed, no reasonable time period was given for both the state itself and for national organizations of indigenous peoples, in order to deliver their bases the technical information of the proposal, to achieve the legal expertise to understand the information, and discuss it in their decision spaces – assemblies-, and then participate in the dialogue process with a proposal or approach agreed, validated and supported by the bases.

That is why the regional macro events of previous evaluation, funded by the State to meet the indigenous peoples in different parts of the country, had no time of prior knowledge of organizations or the Consultation Act (which most people did not know about), or of the proposed regulation, which prevented that the attending representatives could provide consensus input to their bases.

The result of this first process was that four of the six organizations that observed the process withdrew from the negotiation, seeking the review of the articles of the Law on Prior Consultation already in force.

In the final dialogue stage only two nationally representative indigenous organizations decided to participate (CCP and CONAP), they faced the eighteen deputy ministers and their advisers, which is totally unfair. This phase ended with the drafting a Memorandum of Consultation signed by all participants, which clearly contains articles where an agreement was reached and those where they didn't reach an agreement, the agreements being binding on both parties, as the provisions of Convention 169 and the Law on the Right to Consultation.

---

<sup>29</sup> Report No 156 "Violence in social conflicts"- Ombudsman

<sup>30</sup> Finally 18 deputy ministries intervened in the dialogue process.

On April 3, 2012, published in "El Peruano" the Supreme Decree No. 001-2012-MC, Regulation of Law No. 29,785, Law Right to Prior Consultation with Indigenous or Native Peoples recognized in the Convention 169 of the International Labor Organization. The regulation has failed to collect 5 of the agreements reached between the state and indigenous organizations that participated:

- Article 5a), based on the obligation to consult.
- Article 9.2, according to the minutes appeal it produces a suspensive effect in the process, but the final text indicates the opposite;
- Article 20.6 states that the dialogue stage is 30 days, but according to the minutes this term could be extended to 30 days by agreement of the parties;
- Article 23, has been removed in 23.3 that appears in the minute, referred to the situation of partial agreement.
- Article 27.4 which regulates the consultation of regulations of laws already consulted.

Failure on behalf of the state of some points in which agreements were reached, those listed in the "Consultation Minute", constitutes a serious violation of the rights of indigenous peoples. Also, additional items have been added that were not in the original proposal of the Regulation and therefore were not discussed or analyzed by indigenous organizations, for example, the addition of the 120-day deadline for the consultation process, the exemption of consultation in cases of health, education and public services, the coordination in processes promoting private investment, the definition of an indigenous representative, among others, these items have not been consulted so they become unconstitutional.

All these problems were not picked up by the dialogue, so there is great concern, since, if these conditions are not delivered, the situations prior to the enactment of the law will continue, whereby social conflicts may continue to occur, with the serious risk of its consequences on the rights of people.

Finally, it is contradictory that while the Convention 169 holds constitutional rank, this fact is not reflected in the development of public policy and government decisions, but, on the contrary, is advancing the adoption of norms and granting rights to third parties, which affect the rights of indigenous peoples without proper consultation, requirement that the State must guarantee.

On July 22, 2010, the Peruvian government created the Ministry of Culture. Under this rule, this entity has the priority to promote culture in the country and is responsible to arrange, coordinate and articulate the various levels of government, advocacy, technical assistance, support and popular consultation to the integral development of Andean, Amazonian and Afro-Peruvians. It is also responsible for coordinating the actions for physical and legal reorganization under Peru's Constitution and international treaties on indigenous peoples.

The rule was passed without mediating any prior consultation process with indigenous peoples, which shows the indifference of the State to defend the rights of these peoples, as well as establish the fact of such rights guardian authority to the Ministry of Culture, which priority concern is to keep the culture of the people, but not the fundamental rights of indigenous peoples.

In this sense, the reality is that Peru has not, at this time, any state agency assuming the defense of the rights of indigenous peoples.

- **Women's rights**

An important development that we welcome is the classification of the crime of femicide in our Criminal Code, which provides a term of 15 to 25 years in prison for husbands, boyfriends, partners, and lovers who murdered their partner.

According to the Crime Observatory of the Public Ministry<sup>31</sup>, between 2009 and 2011 there were 369 victims of femicide in the country. 25.2% of them had between 25 and 34 years of age, 24.7% between 18 and 24 years of age, 16.5% between 35 and 44 years of age, 9.2% between 45 and 54 years of age, and 6% were over 55 years of age. This is concerning because, according to the cases analyzed by the Ombudsman on killings of women by their partners or former partners (intimate femicide), it has been identified that during the investigation they are not taking into account the violence facts or previous complaints filed by the victim<sup>32</sup>, elements that could constitute reasonable evidence of the liability of the defendant. This is due, among other reasons, to the lack of a register of victims of violence.

Crimes against sexual freedom committed against women are also an obvious problem in our country. 93% of rape denunciations received by the National Police between 2000 and 2009 relate to women victims (complainants 58.874), while only 7% of victims are male (4.661 complainants). These figures show an even more seriousness upon evidence that complaints focus on victims ranging in age under 18 years<sup>33</sup>.

In this regard, the Ombudsman's noted in a recent study<sup>34</sup> that security measures in favor of the complainant are not announced, as established in paragraph 2 of Article 248 of the new Criminal Procedure Code, except the identity being kept private. This situation is even more alarming when you consider that the study reports that most coercive measures imposed on the defendants consist of the "appearance", implying that the accused be tried in freedom and, therefore, may threaten or otherwise press the victim in order to weaken the complaint against him.

Another type of obligations on behalf of the Peruvian State is related to guarantee the full exercise of sexual and reproductive rights of all women, access to family planning methods and protection against sexually transmitted infections (STIs), sexually transmitted diseases (STDs), HIV-AIDS, and oral emergency contraception (OEC), in addition to the decriminalization of abortion and therefore generate the treatment protocol for therapeutic abortion, about which specific actions have not yet been established thereon.

As for OEC, the ban imposed by the Constitutional Court<sup>35</sup> to MINSA health services is a public health issue, while preventing women with limited economic resources to have a scientifically recognized method to prevent unwanted pregnancy.

Meanwhile, the adoption of the Protocol of Therapeutic Abortion is also a measure aimed at reducing the number of maternal deaths, for therapeutic abortion occurs if it is the only mean to safeguard the health or life of the mother and therefore it is an obligation of the State to implement it as soon as possible<sup>36</sup>.

---

<sup>31</sup> See in: ([http://www.rpp.com.pe/2012-01-02-mas-de-360-victimas-de-femicidio-se-registraron-entre-2009-y-2011-noticia\\_436770.html](http://www.rpp.com.pe/2012-01-02-mas-de-360-victimas-de-femicidio-se-registraron-entre-2009-y-2011-noticia_436770.html))

<sup>32</sup> *Adjuntía* report N° 004-2010-DP/ADM "Femicidio en el Perú: Un estudio de casos judiciales". Lima: 2010, pp. 160 y 161.

<sup>33</sup> See report: *Violaciones Sexuales en el Perú 2000-2009. Un Informe sobre el estado de la situación*. By Jaris Mujica. Promsex. Lima, November 2011. Pages 75 to 79.

<sup>34</sup> See report in: (<http://www.defensoria.gob.pe/modules/Downloads/documentos/boletin-adm-2012.pdf>)

<sup>35</sup> Sentence N° 02005-2009 – PA/TC October 16th 2009.

<sup>36</sup> See in: (<http://www.defensoria.gob.pe/modules/Downloads/documentos/boletin-adm-2012.pdf>)

- **Situation of persons and LGBT communities**

Peru has a conservative behavior against the recognition and protection of the rights of people and lesbian, trans (transvestites, transgender, transsexuals), gay and bisexual (LGBT). Paradoxically, while voting in favor of the resolutions of the Organization of American States (OAS) on the recognition and protection of the rights of LGBT people, it does not implement any of the commitments made in this and other supranational organizations. Nor has ratified international human rights protection explicit about protecting LGBT people and has signed the UN declarations on violence based on sexual orientation and gender identity (2008 and 2011) nor the resolution of the UN's Human Rights Council (2011).

The conservative stance against the recognition and protection of the rights of LGBT people and communities is expressed nationally in the central power (executive and legislative, in particular). Since 2008, Congress has not passed any national initiative for LGBT people and their communities. They have systematically eliminated the concepts of sexual orientation and/or gender identity in all legislative initiatives where these concepts were initially included. And they passed the Law No. 29356 of the Disciplinary System of the National Police of Peru with the inclusion of an article which punishes homosexual relationships in this state institution.

Each week a LGBT person is murdered in Peru. These crimes are the most extreme and exaggerated (from intimidation, harassment, physical or sexual assault, even murder) motivated by sexual orientation or real gender identity or that perceived by the victim, constituting a message of hatred and rejection to the community to which he/she belongs. The cruelty is its main feature. These crimes often go unpunished and silenced.

- **Children's and adolescents rights**

**Health:** For 2010, the maternal mortality rate -child/birth, results in 98 deaths per 100,000 live births (2008). Also, the rate of maternal mortality in the last 20 years in Peru fell from 265 to 103 cases per 100 thousand live births, and is expected to be reduced to only 65 in 2015.

According to the ENDES Demographic Survey 2009, maternal mortality in Peru has dropped from 185 to 103 deaths per hundred thousand live births. However, this figure places us as the second country in South America with the highest rate of maternal mortality, surpassing only to neighboring Bolivia.

The figure has decreased over the last 10 years, but the pace of growth recorded in Peru, these figures should be higher. Cases like Huancavelica and Cusco, with rates (20% and 21%) remain high.

**Nutrition:** Chronic child malnutrition, now affects more than 700,000 children under five years of age. The implementation of a nutrition program in schools, program implementation of *Cuna Mas* to provide comprehensive care for children less than three years of age in the 800 poorest districts of Peru and expanding the *Juntos* program are three specific announcements in favor of early childhood development.

**Teenage pregnancy:** According to a survey conducted by the Peruvian Institute of Responsible Fatherhood, thirteen of 100 Peruvian women, between 15 and 19 years old are mothers or are pregnant for the first time, according to the latest report in 2009. The statistic increases in the poorest areas and away from the capital. Such is the case of Loreto, where 30 out of 100 teenagers are pregnant. To date there is no sex education in schools to prevent these alarming statistics of teenage pregnancy and the spread of sexually transmitted diseases: no public health policy allows adolescents to attend clinics without the presence of their parents. 47 of every 100 women who have no education have become pregnant sometime.

**VIH:** As of January 2010, there are 25,748 people living with AIDS and 40,181 HIV cases in Peru. The epidemic in our country is concentrated among men who have sex with men and transgender population. 97% of people living with HIV/AIDS contracted the disease through sexual intercourse, 2% for vertical transmission and 1% through blood transfusions. Although the prevalence rate of adult men in Peru is 0.5% and 0.3% for women, over the years, the number of who have contracted HIV has increased. According to the Health Ministry, the rate of male/female was 12/1 in 1990, while in the last nine years has been to 3/1 and remains so. Younger populations are more vulnerable to HIV/AIDS. Indeed, 41% of cases occur in people between 25-34 years. The highest prevalence rates are found in the cities of Peru.

**Education:** While Peru has improved coverage levels of education and assistance, Peru is lagging in relation to most Latin American countries regarding indicators of educational quality. The students of the highland regions generally have a lower performance than those living on the coast. In rural areas, 30% of students are at least a year behind in school, while this figure is only 13% in urban areas. 53% of school adolescents in rural areas have at least a year behind in their learning, compared with 26% for urban areas. Peru's educational system offers bilingual education programs, but only 37% of indigenous children receive bilingual education, because there are not enough teachers sufficiently trained. Bilingual education programs are not present in urban areas, and have been criticized for their lack of relevance to the everyday realities of children of native peoples.

**Child labor:** Public investment should be directed to gradually phase out child labor and its worst forms. The latest official data indicates that the incidence of child labor in Peru remains at the same level as in the last 10 years. An estimated 2.3 million children ages 6 to 17 works, or 29.8% of the total age group. Nationally, 22% of children between 6 and 13 are economically active, while 40% of adolescents aged 14 to 17 works.

Regarding public policies, the most important issue of 2011 was the design of the new National Plan of Action for Children and Adolescents (PNAIA). Indeed, the precedent PNAIA was completed in 2010 and 2011 remained a blank year, because the new plan was not yet in force.