

REDRESS

Ending Torture, Seeking Justice for Survivors



Joaо Nataf
Secretary
United Nations Committee against Torture
Human Rights Treaties Division
Office of the High Commissioner for Human Rights
CH-1211 Geneva 10
Switzerland

13 February 2014

Dear Mr Nataf,

Subject: List of Issues Prior to Reporting –Peru

We write to bring the Committee's attention to a number of key concerns in relation to Peru in advance of the adoption of the List of Issues Prior to Reporting at the 52nd Session of the Committee to be held from 28 Apr 2014 to 23 May 2014. What follows is a list of those concerns, which we submit for the Committee's consideration for inclusion in the list.

1. The Need for amending the Criminal Code.

The definition of torture contained in Article 321 of the 1991 Criminal Code is not in line with Article 1 of the UNCAT. Notably, it does not include discrimination as an element of the definition of torture and contains a 'gravity' requirement which risks allowing some cases of torture to be catalogued as 'abuse of authority' or personal injury.¹ Although a draft law has been pending for 7 years², the Peruvian authorities have so far not implemented the Committee's recommendation to amend its Criminal Code to include a definition of torture that covers all of the elements laid out in Article 1 of the Convention (See paragraph 7 of the *Concluding observations on*

¹ Please see *Torture in Peru: Alternative Report Submitted to the Human Rights Committee*, REDRESS and Coordinadora Nacional de Derechos Humanos, March 2013. Available at: <http://www.redress.org/downloads/publications/Peru%20HRC%20shadow%20report%20FINAL%20for%20website.pdf>

² Law on Crimes against International Human Rights and International Humanitarian Law , Bill No. 1615-2012/CR

the combined fifth and sixth periodic reports of Peru, adopted by the Committee at its forty-ninth session).

2. Establishment of National Preventive Mechanism (NPM)

The Peruvian authorities have failed to implement the Committee's recommendation for the establishment of a National Prevention Mechanism "without further delay" and "in full compliance with the Optional Protocol and in particular to grant it sufficient financial, human and material resources in order to assume its mandate effectively" (*See paragraph 11 of the Concluding Observations*). A draft law for the creation of a National Prevention Mechanism has been approved by the Congressional Human Rights committee but has yet to be discussed and voted upon by the full Congress. Furthermore, the proposed legislation has removed the provision for coordination and cooperation with civil society organizations that had been included in the previous text of the bill. Lastly, the proposed bill is not sufficiently specific or concrete and requires further dialogue and deliberation regarding possible measures for implementation.

3. Excessive use force by police and security forces in the context of social protests

The use of unnecessary and disproportionate force and infliction of inhuman treatment by the police and the armed forces against people taking part in peaceful social protests remains a problem in Peru. The Peruvian authorities have failed to implement the Committee's recommendation to "ensure that law enforcement officials receive training on the absolute prohibition of torture, and on international standards on the use of force and firearms, including on the liabilities in cases of excessive use of force". Furthermore, they have failed to fully comply with the recommendation to "expedite the investigation and prosecution of such cases and sanction officials found guilty of such offences with appropriate penalties" (*See paragraph 12 of the Concluding Observations*).

4. Publication of the report of the Sub-Committee on the Prevention of Torture (SPT) and implementation of its recommendations

The Sub-Committee on the Prevention of Torture (SPT) visited Peru in September 2013 and submitted its report to the Peruvian Authorities. The Report has not been made public and its publication would promote awareness of the practice of torture amongst the Peruvian citizenry and facilitate reform initiatives. Inclusion of this matter in the list of issues prior to reporting may encourage such publication.

5. Discriminatory practices and their impact on the causes and consequences of torture in Peru

In recent years, we have drawn to the attention of UN special procedures and treaty bodies the impact of discrimination on the torture of particularly vulnerable groups in Peru. In particular, we, together with the organization PROMSEX have drawn attention to the torture of lesbian, gay, bisexual and transgender individuals.³ We

³ See, REDRESS, CNDH and PROMSEX, 'Torture and the Rights of Lesbian, Gay, Bisexual and Transgender

have also drawn attention to cases of sexual violence committed against women during the country's internal armed conflict, many if not most of which would amount to torture under the UNCAT definitions, and the challenges of investigations into such cases.⁴ We respectfully recommend that the issue of discrimination both as a cause of torture and as a factor impeding investigations and prosecutions should be included in the List of Issues for follow-up with Peru.

We hope that you will find the above useful in the preparation of the list of issues and we will be happy to provide further information and clarification should you so require. We look forward to future work with the Committee in our ongoing efforts to eradicate the practice of torture in Peru and throughout the world.

Sincerely,



Carla Ferstman
Director

On behalf of REDRESS and Coordinadora Nacional de Derechos Humanos (CNDDHH)

'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>.

⁴ Available at <http://www.redress.org/downloads/publications/July2007%20Peru%20English.pdf>.