UPR Submission
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I. Summary

Peru made history in 2009 for the conviction of former President Alberto Fujimori for human rights violations during his first presidency. Fujimori is currently serving a 25-year prison sentence. Progress in holding others responsible for abuses during Peru's internal armed conflict remained slow.

There have been several incidents in which police have overstepped international norms on the use of lethal force in controlling protests and demonstrations. Torture, although not practiced systematically, continues to be a problem.

Other significant outstanding human rights concerns include threats against journalists, the disenfranchisement of people living with disabilities, and a continued lack of action on abortion rights.

II. Human Rights Issues

Confronting Past Abuses

Peru's Truth and Reconciliation Commission estimated that almost 70,000 people died or were subject to enforced disappearances during the country's internal armed conflict between 1980 and 2000. Many were victims of atrocities committed by the Shining Path and other insurgent groups, as well as human rights violations by state agents.

Efforts to prosecute those responsible for these abuses have had mixed results and Peru should intensify its efforts to implement recommendation 9 to investigate all cases of human rights violations committed during the twenty-year armed conflict and bringing to justice those responsible in trials meeting international standards, addressed to it during the UPR in 2008. In August 2011 the Constitutional Tribunal rejected former President Fujimori's appeal requesting annulment of the verdict of a Supreme Court panel that had unanimously confirmed his 25-year prison sentence for killings and "disappearances" in 1991 and 1992. In July 2011, amid rumors that Fujimori might have cancer, politicians linked to President García's party and presidential candidate Keiko Fujimori advocated that he receive a "humanitarian pardon," but he continued to serve his sentence at this writing.

Progress in other cases has been slow. According to the Institute for Legal Defense (IDL), a rights organization that monitors trials, by December 2010 the National Criminal Court—which was given jurisdiction in many human rights cases in 2004—had handed down only 20 sentences, of which 85 percent were acquittals. The only sentence of note by another court was the conviction of 19 former military personnel for kidnapping and killing 35 victims in three different incidents during Fujimori's government.

A major obstacle has been the military's failure to cooperate by identifying officers present at army bases during the conflict.

Senior officials of García's administration, including the minister of defense and the vice-president, frequently criticized human rights trials. In August 2010 García signed a decree that would have halted prosecutions in many cases by applying a statute of limitations. He later withdrew it after intense domestic and international criticism. Officials of the current government have also opposed human rights trials, including the current minister of defense, retired Gen. Daniel Mora,

who said in a September 2011 radio interview: "I think that we should arrive at a full-stop solution and reconciliation of the country."

Unjustified Use of Lethal Force

In June 2011 the human rights ombudsman reported more than 200 ongoing social conflicts, many related to new mining ventures. Several have resulted in violent clashes between protesters and police, in which the latter appear to have used unlawful force. In April 2011, for example, three civilians were killed and more than 31 injured in Islay province when police reportedly opened live fire to clear a roadblock during protests against a proposed copper mining project. In May 2011 a civilian judge opened trial proceedings against two police generals and three other police officers for killing protesters during violent clashes in June 2009 in Utcubamba and Bagua provinces, in which 23 police and 10 civilians were killed. As of January 2012, the trial was underway.

Torture

Beatings by police and military personnel, prison guards, and members of municipal security patrols is a serious problem in Peru, according to the National Human Rights Ombudsman. In April 2011, for example, police in San Borja, Lima, detained 26-year-old Gerson Falla, reportedly after he sought refuge in a bakery thinking he was going to be robbed. Police arrested him and allegedly beat him brutally. Falla died 48 hours later. A police video featured on television showed officers twisting his arm behind his bruised back and dragging him across the floor.

Military Justice

Military courts that lack independence and impartiality continue to conduct trials of police and military officials accused of human rights abuse. Decrees 1094, 1095, and 1096—issued by President García in September 2010—gave military officers on active service powers to investigate and judge abuses committed by police and military personnel engaged in policing duties. This violates international principles on fair trial and earlier rulings of Peru's Supreme Court and Constitutional Tribunal. It also demonstrates that Peru has made no progress in implementing recommendation 4 (a) addressed to it during the UPR in 2008 to ensure that the military criminal justice system does not carry out investigations.

Reproductive Rights

Women and girls in Peru have the right to seek therapeutic abortions in specific cases of medical necessity. The United Nations Human Rights Committee in the 2005 case *K.L. v. Peru* concluded that Peru needed to provide clear national protocols for when abortions may be performed legally. Human Rights Watch found that the absence of such protocols endangers the lives and health of women and girls, because it is nearly impossible to have an abortion in a public facility without clear guidelines on the legality of procedures. Women prevented from receiving therapeutic abortions sometimes turn to unsafe and clandestine procedures that can threaten their lives and safety, and violate a women's fundamental right to the highest attainable standard of health, life, non-discrimination, physical integrity, and freedom from cruel, inhuman or degrading treatment. The Ministry of Health is currently reviewing national protocols.

Disenfranchisement of People with Disabilities

People with disabilities face persistent barriers to political participation. Two of the main barriers are the placement of persons with disabilities - including people with intellectual or psychosocial disabilities and those with multiple sensory disabilities - under guardianship ("judicial interdiction") thereby depriving them of the capacity to vote, and the legacy of an official policy which excluded over 23,000 people with disabilities from the voter registry.

Peru has no system in place to support people with disabilities in making their own decisions so people with disabilities and their families sometimes have little choice but to seek interdiction. Interdiction is a legal process provided for in Peru's Civil Code by which a judge declares a person either absolutely or partially incompetent to take care of one's self and property and imposes another person as guardian to act on their behalf. The interdicted person cannot vote. The process of interdiction is incompatible with respect for the right of people with disabilities to enjoy legal capacity on an equal basis with others in all aspects of life. The Organization of American States' Committee for the Elimination of all Forms of Discrimination against Persons with Disabilities has called on states parties to ensure the recognition of legal capacity of all persons, including all persons with disabilities, for example, by replacing interdiction and related practices with supported decision-making.

Possession of an identity card with voting allocation is essential in Peru to vote. However based on a policy of el Registro Nacional de Identificación y Estado Civil (RENIEC), the government agency responsible for the electoral rolls, in force between 2001 and October 2011, people with intellectual or psychosocial disabilities were either unable to obtain a national identity card that is required for voting, or were issued with identity cards that labeled them as persons who were not entitled to vote. Following elections in 2010, RENIEC acknowledged the exclusion of these citizens from the registry, and invited them to re-register prior to the 2011 presidential elections. However, with limited time and poor communication, fewer than 60 people with disabilities were added back to the registry before the 2011 presidential elections. In October 2011, RENIEC issued a resolution to nullify its policy barring people who had not been interdicted from voting and pledged to ensure prompt resolution of this situation.

Aside from the policy, people with disabilities who live in institutions face particular problems obtaining identity cards, and RENIEC acknowledges that people in institutions across Peru remain undocumented. In November 2011, RENIEC established a government working group to monitor efforts to address disenfranchisement linked to undocumented status, and also launched a campaign to provide identity cards with voting assignments to people living in institutions. In 2011, the Ministry of Health and RENIEC issued identity cards to more than 100 people with disabilities institutionalized in Lima.

People with disabilities have the right to accommodations (such as accessible buildings, Braille ballots, wheelchair assistance). The National Office of Election Processes (ONPE) policy also requires training for electoral officials on facilitation of voting for persons with disabilities. However, in practice, these accommodations were not always made or properly advertised during elections, making it difficult – and in some cases, effectively impossible – for people with disabilities to vote.

Involuntary Detention Based on Disability or Drug Dependence Status

Peruvian legislation permits involuntary detention for treatment of certain disabilities and for drug or alcohol dependence. Peru's Civil Code permits family members of people who are dependent on drugs or alcohol -- and in some cases the government -- to seek their judicial interdiction. Legal guardians of those interdicted can "volunteer" their admission for drug or alcohol treatment and rehabilitation without their consultation or consent. Peruvian Law No. 29765, which governs therapeutic communities, specifically authorizes legal guardians of those interdicted and of minors to seek admission for treatment; treatment can also be required by judicial order.

In July 2011, the government approved Law No. 29737, which amended article 11 of the General Health Law, to permit family members in certain circumstances to authorize detention for people suffering from "mental health problems" (defined to include people with psychosocial disabilities and those with drug or alcohol dependence).

Human Rights Watch is concerned that Law No. 29737, if not modified to comply with international standards, could permit involuntary detention of people with psychosocial disabilities and people who use drugs in circumstances that are overly broad and open to abuse. This would

threaten rights to liberty and security protected under the International Covenant on Civil and Political Rights (ICCPR) Article 9(1) and the Convention on the Rights of Persons with Disabilities, Article 14, and ICCPR and ICESCR protections guaranteeing people dependent on drugs the right to access medically appropriate, effective drug dependence treatment, tailored to their individual needs and the nature of their dependence. International human rights standards further require that drug dependence treatment be based on free and informed consent (which includes the right to refuse or withdraw from treatment), be scientifically and medically appropriate and of good quality, culturally and ethically acceptable, and respect fundamental rights to health, privacy and bodily integrity, liberty, and due process.

Compulsory treatment for "mental health problems" also contravenes CRPD protections guaranteeing legal capacity of persons with disabilities on an equal basis with others in all aspects of life (Art. 12), including the right to medical treatment, and to an equal right to health care, provided on the basis of free and informed consent and without discrimination based on disability. (Art. 25) According to the UN Special Rapporteur on Torture, compulsory treatment of an intrusive and irreversible nature, such as neuroleptic drugs and other mind-altering drugs, without the informed consent of the individual may constitute torture or ill-treatment if it lacks a therapeutic purpose, or is aimed at correcting or alleviating a disability.

The Public Ombudsman, as well as domestic and international civil society organizations, have documented serious abuses of the rights of persons with disabilities in psychiatric institutions, including cases of people detained without consent and against their will. In January 2012, a fire that swept through "Christ is Love," a privately run drug rehabilitation facility, killing 27 people who were trapped behind locked doors and barred windows raised concerns about inhumane and abusive conditions at drug treatment facilities.

Freedom of Media

Journalists in Peru's provinces face intimidation and threats. Peru has made little progress to implement part of recommendation 13 to "expedite prosecution of cases of violence and intimidation of the media".

Individuals supporting or working for municipal authorities have assaulted and been implicated in murders of journalists who publicize abuses by local government officials. In 2010, in a measure intended to ensure these cases are brought to justice, the judiciary's executive branch placed violent crimes against journalists under the jurisdiction of the Lima-based National Criminal Court. The court specializes in serious crimes like human rights violations and terrorism.

In July 2011 a parliamentary commission approved a bill to end the imprisonment of journalists convicted of criminal defamation. If passed in the plenary, the bill will replace prison sentences of up to three years, as stipulated in the current law, with community service and fines. When the bill was approved, several journalists faced prison for criticizing public officials. They included Francisco Andrade Chávez, a journalist for America TV in Chepén province, who was sentenced in July 2011 to two years in prison, a fine, and civil damages, for defaming a municipal official. As of October 2011 President Humala had not yet signed or endorsed the bill.

Radio La Voz de Bagua faced legal reprisals in 2011 for its coverage of the civil unrest in Bagua. In June 2009 the government revoked its broadcasting license after government officials and ruling party leaders accused the station of inciting violence. The license was provisionally restored in October 2010, and a Ministry of Communications and Transport investigation into the station's allegedly unauthorized use of broadcasting frequencies was closed. However, in February 2011 a local prosecutor accused the station's owner of "aggravated theft of the radio spectrum" in relation to the same events. The accusation was dismissed on appeal, but reinstated in June 2011 by an Utcubamba appeals court. The station's owner could face four years in prison if convicted.

Human Rights Defenders

High-level officials in the Peruvian government have sought to discredit respected human rights organizations in the country. Peru should make progress on implementing recommendations 14 to ensure that human rights defenders, witnesses, and victims can carry out their work without fear of intimidation, addressed to it during the UPR in 2008. For example, in September 2011, in a speech in Congress, the minister of defense accused two of Peru's best known human rights organizations, the National Coordinator for Human Rights and the Institute for Legal Defense, of seeking "to destroy the armed forces." Both organizations have advocated for years for accountability for human rights violations during the armed conflict. They were the target of similar comments by the vice-president and defense minister during García's presidency.

III. Recommendations to be made to the government of Peru

Regarding the Prosecution of Past Abuses and Military Justice

- The National Criminal Court should ensure timely prosecution of human rights cases still outstanding before the court.
- The government of Peru, in particular the Ministry of Defense, should collaborate with ongoing criminal investigations into past abuses.
- The government of Peru should refrain from using military tribunals to try human rights cases.
- Government officials should refrain from making public statements in opposition to human rights trials, and support all efforts of the National Criminal Court to prosecute these cases.

Regarding Unjustified Use of Legal Force and Torture

- The Peruvian National Police (PNP) should refrain from all use of unlawful force against persons during civil demonstrations or protests. In accordance with international standards, lethal force should only be used as a last resort, and in self defense or defense of others against the imminent threat of death or serious injury.
- The Peruvian National Police (PNP), armed forces, municipal security officers, and prison guards should refrain from all cruel and inhuman treatment of citizens and prisoners.

Regarding Reproductive Rights

- The government of Peru should develop and implement national protocols for medical providers to ensure women are able to fulfill their right to seek therapeutic abortion, as allowed under domestic law.
- The Ministry of Health should take steps to inform women and girls of their rights under domestic law to access reproductive health services, including legal abortion services in certain instances.
- The Ministry of Health should ensure implementation of the national protocol through accountability mechanisms.

Regarding Disenfranchisement of People with Disabilities

- The government of Peru should comprehensively review all domestic legislation and make amendments to fully comply with the Convention on the Rights of Persons with Disabilities, including revision of the definition of disability in the General Law on Persons with Disabilities, Law No. 27050, and the law on legal capacity to create a system in which all people with disabilities have access to the support they need in making decisions and exercising their rights on an equal basis with others.
- The National Office of Election Processes should take measures to ensure all buildings open to the public and used as voting stations or public meeting spaces are universally accessible.
- The National Office of Election Processes should take measures to anticipate the needs of people with disabilities to ensure that they can access polling stations, and have the necessary support (including Braille ballots) to register their vote.

Regarding Involuntary Detention based on Disability or Drug Dependence Status

- The government of Peru should ensure that no one is subject to forced detention in the name of addiction or "mental health" treatment in violation of international standards.
- The government of Peru should act promptly to close forced drug rehabilitation facilities, and establish voluntary, effective drug treatment in their place.

Regarding the Freedom of Media and Human Rights Defenders

- The government of Peru should support efforts to repeal criminal defamation laws.
- Government officials should ensure that journalists reporting on government activities, protests, and demonstrations do not suffer reprisals for their work.
- The government of Peru should should refrain from—and publicly retract —unfounded public statements against rights civil society organizations, and engage constructively with human rights defenders in seeking solutions to address Peru's human rights problems.