

PERU: NOTHING TO CELEBRATE

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 28TH SESSION OF THE UPR WORKING GROUP, NOVEMBER 2017



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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Peru in November 2017. In it, Amnesty International evaluates the implementation of recommendations made in the previous UPR, assesses the national human rights framework and the human rights situation on the ground, and makes recommendations to the government of Peru to address the human rights challenges mentioned in this report.¹

Amnesty International is concerned about weaknesses in the Ombudsperson function, outstanding ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and inadequate legislation to protect Indigenous Peoples' right to land.

Amnesty International also raises concerns about impunity for past human rights violations, obstacles in the enjoyment of sexual and reproductive rights, persistent discrimination against LGBTI persons, violent repression of social protests by the security forces, and attacks against human rights defenders.

FOLLOW UP TO THE PREVIOUS REVIEW

During the second cycle of the UPR in November 2012, Peru received 129 recommendations from other states.² Peru fully accepted 120 recommendations³ and partially accepted one recommendation,⁴ and of these it considered seven recommendations to have been already

¹ Although submitted to the Office of the High Commissioner for Human Rights in March 2017, the information has subsequently been updated as of May 2017.

² Human Rights Council, Report of the Working Group on the Universal Periodic Review – Peru, A/HRC/22/15, 27 December 2012, paragraph 116-119.

³ A/HRC/22/15, paragraphs 116, 117, 118, and 119, and A/HRC/22/15/Add.1, page 4.

⁴ A/HRC/22/15/Add.1, page 3.

implemented or in the process of being implemented. Peru also rejected eight recommendations.⁵

In this submission, Amnesty International focuses on the recommendations it considers to be most relevant in light of the human rights situation in Peru.

SEXUAL AND REPRODUCTIVE RIGHTS

Peru accepted a number of recommendations related to sexual and reproductive rights, including to ensure access to sexual and reproductive health services for women and girls as well as access to therapeutic abortion; however, abortion remains criminalized, except in cases where the health or life of the pregnant woman and girl is at risk. Since the approval by the Ministry of Health of technical guidelines on therapeutic abortion in 2014, by 2015 only 24 legal abortion procedures had been registered at the national level.⁶ Despite the adoption of the guidelines clandestine and unsafe abortions are predominant.⁷

Peru also accepted a recommendation aimed at achieving justice and reparation for the victims of forced sterilization during the government of former President Alberto Fujimori between 1990 and 2000, yet the victims have not been granted comprehensive reparations, nor have the perpetrators been punished.⁸

HUMAN RIGHTS DEFENDERS

Peru committed to guarantee the protection of human rights defenders in the face of threats and intimidation and to work with them to tackle violations of their human rights. However, human rights defenders remain unprotected in Peru and continue to be subjected to violence and harassment.

RIGHTS OF INDIGENOUS PEOPLES AND RURAL COMMUNITIES

Despite advances in the implementation of the right of Indigenous Peoples to free, prior and informed consent in relation to projects and activities which affect their territory and way of life, and in accordance with accepted recommendations aimed at ensuring the effective implementation of the Consultation Law, ¹⁰ the Peruvian government has approved legislation on licenses for and development of extractive projects, such as Law 30230 of 2014, which fails to allow for due recognition of the rights of Indigenous Peoples to the land and territory they have traditionally occupied. Currently, the constitutionality of Law 30230 is under review by the Constitutional Tribunal.

EXCESSIVE USE OF FORCE

Despite the fact that the Peruvian government has committed to adopt measures to avoid human rights violations by the armed forces and the national police force during civil unrest, ¹¹ excessive

⁵ A/HRC/22/15/Add.1, pages 2-5.

⁶ There are no updated figures on legal abortions carried out to date and it is the government's responsibility to compile this information and make it public.

⁷ A/HRC/22/15, recommendations 116.94 (Iraq), 116.97 (Finland), 116.98 (Mexico), 119.6 (France), 119.7 (Portugal), 119.8 (Slovenia), 119.9 (Norway) and A/HRC/22/15/Add.1.

⁸ A/HRC/22/15, recommendations 116.31 (Slovakia), 116.56 (Belgium).

⁹ A/HRC/22/15, recommendations 116.72 (Australia), 116.74 (Netherlands).

¹⁰ A/HRC/22/15, recommendations 116.108 (Greece), 116.109 (Trinidad & Tobago), 116.111 (Germany), 116.112 (Hungary), 116.113 (Mexico).

¹¹ A/HRC/22/15, recommendations 116.34 (Poland), 116.53 (Canada).

force is still used during times of unrest and has led to death and injury. In addition, Amnesty International is concerned at the lack of investigation to determine those responsible for such actions.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Amnesty International is concerned about the reduced level of action by the Ombudsperson to guarantee respect for human rights in the country. Changes in staffing in 2016 have weakened specialized areas within the institution, such as human rights, constitutional matters, civil unrest and Indigenous Peoples. Amnesty International is also concerned that despite the passing in 2015 of a law which designates the Ombudsperson as the National Preventive Mechanism against Torture (NPM), this law has yet to be implemented.

The Vice-Minister for Human Rights and Access to Justice is currently carrying out a consultation with civil society and rights-holders in order to create the 2017-2021 National Human Rights Plan. This includes consultation with LGBTI persons, women, Indigenous Peoples, human rights defenders and people with disabilities.

RATIFICATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

In 2016, Peru ratified the Agreement on Privileges and Immunities of the International Criminal Court, ¹⁵ and the UN Arms Trade Treaty. ¹⁶ In addition, Peru recognized the competence of the UN Committee on Enforced Disappearances to receive and review communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation of the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance. However, the government has yet to recognize the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under the Convention (article 32). Additionally, Peru maintains its declaration on the application of the 1968 Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity to crimes that are committed after its entry into force for Peru. ¹⁷

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¹² National Human Rights Coordinator In defence of the Ombudsperson. Available at: http://derechoshumanos.pe/2016/12/en-defensa-de-la-defensoria/.

¹³ National Human Rights Coordinator Statement in defence of the Ombudsperson 23 December 2016. Available at: http://derechoshumanos.pe/2016/12/en-defensa-de-la-defensoria/.

¹⁴ A/HRC/22/15, recommendations 116.16 (Morocco), 116.17 (Mexico), 116.18 (Spain).

¹⁵ Supreme Decree No. 070-2016-RE, 6 September 2016.

¹⁶ Supreme Decree No 004-2016-RE, 13 January 2016.

¹⁷ Declaration of Peru on the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity.

Amnesty International considers that such a declaration is a disguised reservation and should be promptly withdrawn.

The Peruvian government has still not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, despite committing during the last review to promote dialogue and public debate on its adoption.

HUMAN RIGHTS DEFENDERS

There is currently no public policy aimed at safeguarding the work of human rights defenders in Peru. This increases the risk they face, in particular peasant farmers and Indigenous leaders who are harassed and threatened for protesting against extractive projects which affect their land, territory and the environment. Lawyers defending victims of human rights violations also face persecution and legal harassment to prevent them from carrying out their work effectively.

RIGHTS OF INDIGENOUS PEOPLES

The government's implementation of the Law on Prior Consultation has been inadequate, in particular in relation to international standards on the rights of Indigenous Peoples, including in cases involving mining projects. In addition, the rules of procedure of Congress have not been amended to allow for the free, prior and informed consent of Indigenous Peoples on legislation affecting their rights and way of life.

Legislation has been approved which undermines the exercise by Indigenous Peoples of their rights to land, territory and natural resources. This includes Law No 30230, which allows the expropriation of Indigenous land and weakens the requirement to assess the environmental impact of large-scale extractive projects in consultation with Indigenous Peoples, in violation of their human rights, including land rights.

HUMAN RIGHTS SITUATION ON THE GROUND

IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

Impunity for human rights violations committed during the internal armed conflict in the period 1980-2000 continues to be a cause of great concern to Amnesty International, notwithstanding several emblematic rulings.

After 31 years, 10 military personnel were found guilty in August 2016 of the extrajudicial execution of 69 people, among them 23 children, during an army patrol in 1985 (the Accomarca case). In addition, Vladimiro Montesinos and other former high-ranking army officers were found guilty of the enforced disappearance of two university students and a professor in 1993. The sentencing confirmed that during the internal armed conflict the government of Alberto Fujimori repeatedly used furnaces in the basement of the Army Intelligence Service building to disappear those they had abducted.

The search for and identification of the disappeared remain an outstanding task for the Peruvian government. The number of victims of enforced disappearance is estimated to lie between

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13,000 and 16,000.18 Following demands from the victims' families and human rights organizations, in June 2016 the Law on the Search for the Disappeared was passed, and in December the same year the Plan for the Search for the Disappeared was approved by the Ministry of Justice. However, the lack of standardized statistics risks obstructing the search and identification work.

SEXUAL AND REPRODUCTIVE RIGHTS

Women and girls continue to face obstacles in exercising their sexual and reproductive rights. Despite a number of positive measures taken by the government, ¹⁹ Amnesty International is concerned about the increase in adolescent pregnancy rates and the maternal mortality ratio due to preventable causes related to pregnancy and childbirth. In Peru, 58 under-age girls give birth every day; three of them under the age of 15. In some regions of the Amazon, the pregnancy rate for 15-19 year-olds has reached 32.8%, while 60% of adolescent pregnancies among girls aged 12-16 years old are the result of sexual abuse. The main consequences are maternal deaths and adolescents dropping out of school.²⁰

Abortion continues to be criminalized in Peru including in cases of severe or fatal foetal impairment or sexual violence. Women and girls who become pregnant as a result of sexual violence are denied access to safe and legal abortion services and post-rape care.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX **PERSONS**

Amnesty International is concerned about the persistent discrimination and social exclusion of LGBTI people in Peru due to their sexual orientation or gender identity. Prejudice, stigma and stereotypes fuel homophobia and transphobia which in turn create barriers to accessing comprehensive health services, education, work, housing and freedom of movement. LGBTI people also suffer harassment and violence due to their sexual orientation or gender identity from within their own families as much as in public spaces and institutions.

Transgender persons are only allowed to change their name and sex in the civil registry via a civil court.²¹ Moreover, despite the 2016 judicial order recognising same-sex marriages contracted abroad in the Peruvian civil registry, persons of the same sex are not allowed to marry, in violations of their right to equality and non-discrimination.

HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF PROTESTS

Amnesty International is concerned that social protests have been violently repressed by security forces and law enforcement officials. In the past four years, some 78 people have lost their lives in situations where the security forces have used violence and lethal weapons indiscriminately to

¹⁸ Figures of the International Committee of the Red Cross, the Public Prosecution Service and the Peruvian Forensic Anthropology Team available at: Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Peru, A/HRC/33/51/Add.3, 3 July 2016, para 10.

¹⁹ Some of these measures include the incorporation of a focus on gender equality and comprehensive sexual education in school curricula, the approval of a resolution which allows teenagers to access information on sexual and reproductive health in health centres without the need for them to be accompanied by their parents, the issue of a judicial resolution which orders the Ministry of Health to distribute emergency oral contraception (EOC) free of charge and approval of the Intercultural Health Protocol.

²⁰ Amnesty International. The rights of women, girls, Indigenous Peoples and LGBTI people are at risk. Available at: https://www.amnistia.org.pe/noticia/derechos-en-riesgo/

²¹ A/HRC/22/15, recommendations 116.15 (Canada), 116.32 (Slovenia).

repress protests.²² In the majority of cases there is no record of any advances in the investigations into these deaths or punishment of the perpetrators; rather impunity persists for these crimes.

When Indigenous Peoples and rural communities have protested against extractive projects their rights to freedom of expression and assembly have been violated and they have also frequently faced arbitrary detention and violence by the security forces.

Amnesty International is concerned that Article 20, subparagraph 11, of the Criminal Code absolves "any member of the Armed Forces or National Police Force of Peru who, in discharge of their duties and using their weapons or any other means of defence, causes injury or death" of criminal responsibility. It risks undermining the right to life and physical integrity and fuelling impunity for the security forces when using excessive force.²³

INDIGENOUS PEOPLES AND RURAL COMMUNITIES

Amnesty International is concerned at the lack of respect for the right of Indigenous Peoples to free, prior and informed consent in projects which affect their way of life and territory. Indigenous organizations and human rights organizations have expressed concern at the lack of intercultural dialogue, the lack of participation in decisions that affect them, particularly of women on equal terms with men, the lack of clarity in relation to the obligation by the government to carry out consultation with Indigenous Peoples at all stages of extractive projects which affect them, and the lack of political will to implement the outcome of such consultations in the context of mining projects.

The lack of a public policy and an official registry of land titles for Indigenous Peoples and rural communities has led to legal uncertainty as to the ownership and possession of the land. Moreover, the impact of extractive activities on the rights of Indigenous Peoples and rural communities is alarming. In 2016 alone, 12 oil spills were registered in the Northern Peruvian Oil Pipeline, contaminating bodies of water and Indigenous territory in the Amazon River basin. The impact on the health, life and territory of the affected communities has so far not been dealt with effectively.

HUMAN RIGHTS DEFENDERS

Human rights defenders face violence, harassment and attacks at the hands of both state and non-state actors. Amnesty International is particularly concerned about the situation of defenders working on land, territory and the environment who voice their objection to projects related to natural resource extraction and infrastructure.

One case is that of Hitler Ananías Rojas Gonzales, the president of the Rio Marañón Defence Front, who was killed on 28 December 2015, one day after becoming mayor of the town of Yagén in the district of Cortegana, Celendín, in the department of Cajamarca. Hitler was a well-known defender of the environment and opposed to the Chadin II hydro-electric project on the Marañón River.

Amnesty International is also concerned about the situation of women defenders, who face gender-based violence, both physical and symbolic, smear campaigns resorting to defamation

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²² EFE. Mining-related conflicts have left 50 people dead and 750 injured in Peru since 2011. 13 July 2016 Available at: http://www.efe.com/efe/america/sociedad/los-conflictos-mineros-dejan-en-peru-50-muertos-y-750-heridos-desde-2011/20000013-2984807. Ombudsperson, Monthly Reports on Civil Unrest August 2016 to February 2017. Available at: http://defensoria.gob.pe/temas.php?des=3#r.

²³ Amnesty International. Law 30151 sends a dangerous message and could lead to impunity in cases of human rights violations. Available at: http://www.amnistia.org.pe/publicaciones/ley-30151-envia-una-senal-peligrosa-podria-dar-lugar-impunidad-en-casos-de-violaciones-de-derechos-humanos/

and rumours about their sexuality and womanhood. These kinds of tactics risk reinforcing gender stereotypes and damaging women's leadership of organizations and other movements.

The misuse of criminal law to criminalize the work of defenders is also a concern. Máxima Acuña and her family, who are peasant farmers from Cajamarca, have been involved in a legal dispute with the Yanacocha mining company since 2011 over the ownership of the land which she and her family have lived on since 1994.²⁴ On 3 May 2017, the Supreme Court of Justice, after nearly five years of proceedings in relation to unfounded criminal charges of land invasion, ruled that there was no grounds to pursue the trial of Máxima Acuña for land invasion. Precautionary measures had been issued by the Inter-American Commission on Human Rights to safeguard her life and physical integrity; however, these have not been implemented by the state.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF PERU TO:

INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

- Provide the Ombudsperson with the necessary means to implement the National Preventive Mechanism against Torture;
- Accept the competence of the UN Committee on Enforced Disappearances under Article
 32 of the Convention for the Protection of All Persons from Enforced Disappearance;
- Withdraw its declaration on the application of the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity.

IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

- Guarantee the rights of all victims of human rights violations committed during the internal armed conflict to know the truth and to receive fair and adequate reparations;
- Implement the National Plan for the Search for the Disappeared in a manner which is
 effective and respects the dignity of the disappeared and their families, including by
 allocating the resources necessary.

SEXUAL AND REPRODUCTIVE RIGHTS

- Abolish all legislation which classifies abortion as a crime and guarantee access to medical services, including safe and legal abortion, for survivors of sexual violence;
- Guarantee women and girls' access to comprehensive sexuality education, including
 information on sexual and reproductive health and rights, to enable and empower them
 to make informed decisions, and ensure they can access to all forms of modern
 contraception and family planning;
- Guarantee access to truth, justice and comprehensive reparations for the thousands of

²⁴ Amnesty International Peru: Defender Máxima Acuña criminalized by a groundless criminal charge of land invasion, 14 March 2017 AMR 46/5879/2017.

Peruvian women who were subjected to forced sterilization between 1996 and 2001.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

- Enact legislation to recognize LGBTI people's equal rights to enter into marriage and found a family;
- Enact legislation that guarantees transgender people's right to legal recognition of their gender identity, including by establishing a quick, accessible and transparent administrative process to change their name and sex in official documents which respects their dignity and privacy;
- Ensure that laws provides protection against all crimes perpetrated against individuals or their property because of their real or perceived sexual orientation or gender identity.

VIOLATIONS OF HUMAN RIGHTS IN THE CONTEXT OF PROTESTS

- Ensure that the use of force and firearms is regulated in law in accordance with international standards, and that reports of violations of human rights which occur during protests are investigated and the perpetrators brought to justice;
- Abolish Article 20, subparagraph 11, of the Criminal Code without delay.

INDIGENOUS PEOPLES AND RURAL COMMUNITIES

- Ensure the effective implementation of the right of Indigenous Peoples to free, prior and informed consent in all development projects which affect their territory and way of life, with the appropriate resources and in a manner consistent with international standards;
- Establish public policy to process claims of acknowledgment and property titles for peasant farmer communities and Indigenous Peoples in an effective manner, in order to provide legal security for their land and territory;
- Revoke any laws or measures which affect the rights of Indigenous Peoples, including Law 30230, which violates the legal security of Indigenous territories.

HUMAN RIGHTS DEFENDERS

- Create and implement public policy to protect and provide effective assistance to human rights defenders, and consult them on the design of the policy;
- Develop awareness-raising actions to increase the legitimacy, acknowledgment and safety of human rights defenders.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE25

Peru: Peruvian authorities put an end to the criminalization of defender Máxima Acuña, 3 May 2017.

Defender Máxima Acuña criminalized by a groundless criminal charge of land invasion, 14 March 2017 (Index: AMR 46/5879/2017).

Indigenous community at risk due to threats, 15 February 2017 (Index: AMR 46/5688/2017).

Further information: indigenous community remains displaced, February 2017 (Index: AMR 46/5787/2017).

Empresa estatal debe reparar a comunidades indígenas por derrame de petróleo, March 2016 (Index: AMR 46/3554/2016).

Carta abierta a los candidatos presidenciales de la República de Perú, February 2016 (Index: AMR 46/3510/2016).

Obligaciones del estado peruano hacia las víctimas de esterilizaciones forzadas de acuerdo al derecho internacional de los derechos humanos, January 2016 (Index: AMR 01/3308/2016).

Further information: over 2,000 women once again denied justice, August 2016 (Index: AMR 46/4623/2016).

Risk of impunity in cases of forced sterilizations, 6 July 2016 (Index: AMR 46/4402/2016).

Family harassed by mining company personnel, February 2016 (Index: AMR 46/3392/2016).

Máxima Acuña- atacada por la policía por hablar abiertamente, November 2016 (Index: AMR 46/4514/2016).

Máxima Acuña- atacada por la policía por hablar abiertamente, December 2016 (Index: AMR 46/4515/2016).

Further information: family attacked by mining company personnel, September 2016 (Index: AMR 46/4860/2016).

Peru: human rights organizations demand justice for the victims of Bagua and a fair trial for the defendants, December 2015 (Index: AMR 46/3084/2015).

Three killed, hundreds injured during protests, May 2015 (Index: AMR 46/1681/2015).

UN Human Rights Council: oral statement on abortion laws for interactive dialogue with the working group on the issue of discrimination against women, June 2015 (Index: IOR 40/1917/2015).

Further information: family continues facing police harassment, February 2015 (Index: AMR 46/0002/2015)

Amnistía internacional exige investigación por muerte de agricultor durante protestas por proyecto minero Tía María, April 2015 (Index: AMR 46/1553/2015).

²⁵ All these documents are available on Amnesty International's website: https://www.amnesty.org/en/countries/americas/peru/

Amnistía Internacional exige que fuerzas del orden respeten los derechos humanos durante marcha contra ley de fomento del trabajo juvenil, January 2015 (AMR 46/001/2015).

Defending human rights in the Americas: necessary, legitimate and dangerous, December 2014 (Index: AMR 01/0003/2014)

Further information: family receives threats and faces eviction: Máxima Acuña, December 2014 (Index: AMR 46/004/2014).

Indigenous leaders killed, community at risk, September 2014 (Index: AMR 46/007/2014).

Protocolo de aborto terapéutico debe cumplir con obligaciones internacionales de derechos humanos, June 2014 (Index: AMR 46/006/2014).

Perú no debe perder la oportunidad de llevar justicia a Bagua, January 2014 (Index: AMR 46/005/2014).

Further information: family receives threats and faces eviction: Máxima Acuña, February 2014 (Index: AMR 46/004/2014).

Family at risk of violence and forced eviction, July 2013 (Index: AMR 46/004/2013).

Over 2,000 women in Peru denied justice, January 2014 (Index: AMR 46/003/2014).

La justicia da la espalda a más de 2.000 mujeres en Perú, January 2014 (Index: AMR 46/003/2014).

Thousands of indigenous women forcibly sterilized may be denied justice, January 2014 (Index: AMR 46/002/2014).

Nueva ley envía una señal peligrosa y podría dar lugar a impunidad en casos de violaciones de derechos humanos, January 2014 (Index: AMR 46/001/2014).

Cuatro testimonios a diez años del informe final de la Comisión de la Verdad y Reconciliación, September 2013 (Index: AMR 46/007/2013).

Comisión de la Verdad y Reconciliación: Diez años después y aun no hay justicia, verdad ni reparación, August 2013 (Index: AMR 46/006/2013).

Llamado de Amnistía Internacional sobre el uso de la fuerza en manifestaciones en Cajamarca, June 2013 (Index: AMR 46/003/2013).

A cuatro años de los trágicos sucesos de Bagua, el estado peruano continúa sin garantizar los derechos de todas las víctimas y de sus familiares a la verdad, la justicia y la reparación integral, June 2013 (Index: AMR 46/002/2013).

Amnesty International welcomes Peru's legislation on the right of indigenous peoples to prior consultation, but concerns on implementation remain, March 2013 (Index: AMR 46/001/2013).

Peruvian rights defenders suffer intimidation, December 2012 (Index: AMR 46/009/2012).

Transforming pain into hope: human rights defenders in the Americas, December 2012 (Index: AMR 01/006/2012).

Further information: human rights defenders given protection, November 2012 (AMR 46/008/2012).

Human rights defenders' lives threatened, October 2012 (Index: AMR 46/007/2012).

Perú ratifica la Convención sobre Desapariciones Forzadas pero omite reconocer la competencia clave del Comité, September 2012 (Index: PRE 01/457/2012).

El Estado debe prevenir y sancionar el uso excesivo de la fuerza durante protestas, September 2012 (Index: IOR 41/019/2012).

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