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HUMAN RIGHTS COMMITTEE COUNTRY REPORT

Peru

Independent information for the 107th session

of the Human Rights Committee (HRC)

**HUMAN RIGHTS LITIGATION AND INTERNATIONAL ADVOCACY CLINIC
AND HUMAN RIGHTS PROGRAM
UNIVERSITY OF MINNESOTA**

CRITICAL ISSUES

Right to Life (Article 6)

Excessive use of force with firearms by law enforcement and security forces

Due diligence to prevent killings and injuries with small arms and light weapons (SALW) by private actors

PROPOSED QUESTIONS FOR THE GOVERNMENT OF PERU

1. Law enforcement has routinely used firearms to quell demonstrations, leaving over 80 dead and more than 800 injured since 2006. With regard to Item 10 on the List of Issues to be taken up in connection with the consideration of the fourth periodic report of Peru (excessive force by the police and military),¹ please explain what measures, if any, have been taken to improve police and military SALW training programs and emergency response planning and organization in order to prevent the loss of life by SALW, in particular the use of SALW in social conflict situations, including against peaceful protestors.
2. With regard to Item 5 on the List of Issues (domestic and gender-based violence),² given the increased risk of death in the context of domestic violence when firearms

¹ List of Issues to be Taken up in Connection with the Consideration of the Fifth Report of Peru (CCPR/C/PER/5), adopted by the Committee at its 105th Session (9-27 July 2012) (17-Aug. 2012), U.N. Doc. CCPR/C/PER/Q/5 (2011), *available at* <http://www2.ohchr.org/english/bodies/hrc/hrcs107.htm> [hereinafter List of Issues].

² *Id.*

are present, please explain what measures have been taken to integrate SALW issues into domestic violence prevention programs, and to remove firearms from the homes of those who have a domestic violence record, and to prevent such persons from future purchase or possession.

3. With regard to Item 10 on the List of Issues,³ please explain how the Government of Peru coordinates with local communities in order to curb the sale of unlicensed, homemade or otherwise illegal arms and ammunitions.

INTRODUCTION

As of 2009, there are an estimated 750,000 civilian-owned firearms in Peru.⁴ Of those, only 236,338 were legal and registered with the government; an estimated 500,000 civilian firearms were unlawfully possessed.⁵ Manufacture, trade, possession and use of civil, non-military weapons are regulated by Peruvian Laws Nos. 29954 and 25054.⁶ Law 29954 requires that firearms be licensed and registered, and that licenses be renewed regularly, with proof that the owner has no criminal record.⁷ On December 7, 2012, Legislative Decree No. 1127 changed the renewal period from every five, to every one year for re-licensing firearms.⁸ Licenses are required for a number of activities, including manufacture, repair, marketing, reloading, and possession of arms and ammunition, and limit the purposes of possession to defense, sport, hunting, and security and armed guard work.⁹ There are also

³ *Id.*

⁴ Aaron Karp, *Surplus Arms in South America*, Small Arms Survey Working Paper No. 7, 49–51, Aug. 2009, available at <http://www.smallarmssurvey.org/fileadmin/docs/F-Working-papers/SAS-WP7-Surplus-Arms-in-South-America.pdf>. Illegal markets for SALW were common in Peru during and after the Shining Path War, particularly in peripheral and border regions, leading to some less conservative estimates that the actual number of SALW in the hands of civilians and civilian militias is closer to 1,120,000. *Id.* at 50–51.

⁵ *Id.* Peruvian media estimates that the number is closer to 182,000, as of 2012. Óscar Chumpitaz & Consuelo Alonzo, *Desde Hoy, 182.193 Armas de Fuego Circulan en el País en Forma Ilegal*, LA REPUBLICA (Aug. 30, 2012), available at <http://www.larepublica.pe/30-08-2012/desde-hoy-182193-armas-de-fuego-circulan-en-el-pais-en-forma-ilegal>.

⁶ Ley No. 25054, Norma la fabricacion, Comercio, Posesion y Uso por Particulares de Armas y Municiones que no son de Guerra, El Peruano, June 20, 1989 (as amended by Law 29954) [hereinafter Law No. 29954], available at <http://www.congreso.gob.pe/ntley/lmagencs/Lcycs/25054.pdf>; Dec. 2012); Press Release, DICSCAMEC (February 2013), available at http://www.dicsamec.gob.pe/com_feb_2013.html.

⁷ *Id.* at art. 13.

⁸ Government of Peru, Legislative Decree No. 1127, Title 7(8) (Dec. 7, 2012), available at http://www.mef.gob.pe/contenidos/servicios_web/conectamef/pdf/normas_legales_2012/NL20121207.pdf.

⁹ Law No. 29954, *supra* note 6, at art. 15.

provisions to grant licenses for special circumstances or temporary possession and use.¹⁰ All licensing and registration is regulated through the Peruvian government agency La Dirección de Control de Servicios de Seguridad y Control de Armas, Municiones y Explosivos de Uso Civil (DICSCAMEC).¹¹

The Peruvian military is estimated to hold 216,000 arms, including 83,000 surplus unused weapons.¹² Small Arms Survey reports that the Peruvian military is operating below its authorized capacity, but has been unable to afford to destroy surplus weapons.¹³ The Peruvian national police force maintains confidentiality about the size of its weapons inventories, but Small Arms Survey estimates that the police force holds 170,000 firearms, with a surplus of 50,000 obsolete SALW in storage.¹⁴

Peru is estimated to have the greatest number of Man-Portable Air Defense Systems (MANPADS)¹⁵ interceptors in South America, including Javelins, SA-7s, and SA-16s.¹⁶ The MANPADS are reportedly in poor condition, and are not securely stored.¹⁷

In addition to the traditional State armed forces, there are a number of armed local militias, known as Comités de Autodefensas, which were created to defend communities against attacks by guerrilla groups, and were legally recognized in 1991.¹⁸ It is estimated that the Peruvian military has armed the Comités de Autodefensas with over 15,000 firearms, none of which have been returned, despite the official conclusion of the Shining Path War and post-war decline in guerrilla activity.¹⁹

¹⁰ *Id.*

¹¹ DICSCAMEC, <http://www.dicscamec.gob.pe/> (last visited Feb. 9, 2012).

¹² Karp, *supra* note 4, at 49.

¹³ *Id.* at 48.

¹⁴ *Id.* at 49–50.

¹⁵ *Id.* at 50. Small Arms Survey estimates this number to be between 1,300 and 1,600. *Id.* The Federation of American Scientists estimates this number to be significantly lower—though still of great concern—at around 300. *Peru*, FED. OF AM. SCIENTISTS, 3 MISSILE WATCH 12–13 (2010), available at http://www.fas.org/programs/ssp/asmp/issucarcas/manpads/Missile_Watch_Vol3_Issuc2_Junc2010_final.pdf. MANPADS can also be described as shoulder-launched surface to air missiles.

¹⁶ Small Arms Survey reports that Peru may also possess SA-18 MANPADS, though that variety is less-widely reported. Karp, *supra* note 4, at 50. The Javelin missiles are of the greatest concern, because they are the most resistant to countermeasures. The SA-7 is the least sophisticated of this type of weapon, but can engage an aircraft flying below 1500 meters when launched from behind the target. *Man-Portable Air Defense System (MANPADS) Proliferation*, FED. OF AM. SCIENTISTS, <http://www.fas.org/programs/ssp/asmp/MANPADS.html> (last visited Feb. 3, 2013). SA-16s have smaller, but more lethal warheads with much greater range, capable of engaging targets at a distance of 3500 meters. *Id.*

¹⁷ Karp, *supra* note 4, at 50.

¹⁸ *Id.* at 49–50.

¹⁹ *Id.* Despite the decline in the immediate post-war period, small factions of Shining Path have recently reemerged in regions of Peru. *See infra* notes 86–88.

I. STATE OBLIGATIONS WITH REGARD TO SMALL ARMS AND LIGHT WEAPONS

In order to prevent the violation of human rights committed with small arms, Governments and State agents shall ensure strict enforcement of the rules and regulations they adopt, including a clear chain of command over all officials authorized by law to use force and, in particular, small arms. Governments shall ensure that arbitrary or abusive use of force carried out with small arms, including but not limited to force used by any State agent, is punished as a criminal offence.²⁰

A. State Obligation Not to Violate the Right to Life with Small Arms and Light Weapons

A State's first duty under the SALW Principles is negative; not to violate the right to life in its officials' acts or omissions regarding the use of small arms and light weapons.²¹

1. Legislative Action and Programme of Action Initiatives

Pursuant to its commitments under the UN Programme of Action, the State Party is to be commended for measures taken to curb illicit transfer and dissemination of SALW and ammunition.²²

In May 2007, Peru created the National Commission against the Illicit Manufacture of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials (CONATIAF).²³ According to its 2012 report to the UN Programme of Action, Peru's 2011–12 work programme included the formation of four working groups focused on planning and operational aspects, strengthening policy, strengthening training and international cooperation, and promoting prevention and a culture of peace.²⁴ Between January 2000 and June 2011, there have been nearly 19,000 cases of weapons smuggling, with a 62% increase

²⁰ Prevention of Human Rights Violations Committed with Small Arms and Light Weapons, endorsed by Sub-Comm. on the Promotion and Protection of Human Rights res. 2006/22, U.N. Doc A/HRC/Sub.1/58/L.11/Add.1 at 3 (24 Aug. 2006) [hereinafter SALW Principles].

²¹ *Id.* at 8.

²² *Country Profile: Peru*, U.N. PROGRAMME OF ACTION IMPLEMENTATION SUPPORT SYSTEM [hereinafter *POA Country Profile: Peru*] <http://www.poa-iss.org/CountryProfiles/CountryProfileInfo.aspx?CoI=155&pos=10> (last visited Feb. 13, 2013).

²³ *Id.*

²⁴ Informe Nacional sobre la Implementación del Programa de Acción 2001 de las Naciones Unidas para Prevenir, Combatir y Eliminar el Tráfico Ilícito de Armas Pequeñas y Ligeras en Todos sus Aspectos del período 2010 -2011, at 1 (2012) [hereinafter Programme of Action 2012], available at <http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2012@155@Peru-PoA-2012-S.pdf>.

in smuggling during the period of 2006–10 as compared to the period of 2001–05.²⁵ In 2011, 1,024 firearms were found or confiscated.²⁶ Weapons which are for exclusive use by the armed forces or police are made available to the Comando Conjunto de las Fuerzas Armadas (CCFFAA)²⁷ or Directorate General of the national police, as appropriate.²⁸

In a coordinated initiative with the Organization of American States, in November 2008, the State Party collected and destroyed over 42,000 firearms.²⁹ Since that time, Peru has maintained efforts to decommission arms. Peru reports having collected and destroyed 3,168 firearms in 2010, 1,517 of which were homemade; in 2011, the State destroyed 2,067 firearms, including 838 homemade firearms.³⁰

The State party has implemented a number of amnesty periods to encourage those who possess unlawfully owned arms, ammunition, grenades, or explosives to relinquish or properly register the SALW without criminal penalty.³¹ Amnesty Law No. 29858 was passed in May 2012, and the amnesty period was in effect until August 2012.³² According to DICSCAMEC, this amnesty phase reportedly resulted in the recovery of 288 illegal firearms, 500 license applications, and 2,000 license renewals.³³ In 2011, the International Action Network on Small Arms (IANSA) member Red Peruana para el Desarme Civil, la Cultura de Paz y la Seguridad Ciudadana (REPEC) criticized the practice of having temporary gun amnesties, as not adequate to address the problem of illicit trafficking.³⁴ IANSA's 2011 UN

²⁵ *Id.* at 10.

²⁶ *Id.* at 17.

²⁷ The CCFFAA is a joint command of the armed forces established in the 1950s. It is responsible for the planning of operations in accordance with international humanitarian law, implementation and use of plans in armed conflict, and coordination of military resources. Misión & Historia, Comando Conjunto de las Fuerzas Armadas, *available at* <http://www.ceffaa.mil.pe/> (last visited Feb. 9, 2013).

²⁸ Programme of Action 2012, *supra* note 24, at 17.

²⁹ POA Country Profile: Peru, *supra* note 22.

³⁰ Programme of Action 2012, *supra* note 24, at 18.

³¹ POA Country Profile: Peru, *supra* note 22.

³² Government of Peru, Law No. 29858: Ley que otorga amnistía por la posesión irregular o ilegal de armas de uso civil, armas de uso de guerra, municiones, granadas de guerra o explosivos y regulariza su tenencia (Law that grants amnesty for the irregular or illegal possession of civil arms, military arms, ammunition, military grenades or explosives and regularizes possession of arms) (May 2012), *available at* <http://www.dicscamec.gob.pe/Dispositivos%20generales/amnistia/11Ley%2029858.PDF>.

³³ DICSCAMEC Recuperó Casi 300 Armas de Fuego Ilegales en el Último Día de Amnistía, AMÉRICA NOTICIAS PERU (Aug. 29, 2012), *available at* <http://www.americatv.com.pe/portal/noticias/actualidad/dicscamec-recuper-casi-300-armas-de-fuego-ilegales-en-el-ultimo-d-de-amnist>.

³⁴ Peru: IANSA Member Calls for Debate on National Gun Law, IANSA (Sept. 7, 2011, 11:00 PM), <http://www.iansa.org/news/2011/09/peru-iansa-member-calls-for-debate-on-national-gun-law> (noting that Congress had begun debating a draft firearms law in 2010 to address arms trafficking, but that the process had stopped).

Bulletin noted that Peru had identified illicit transfers as an area of concern and stated a need for strict controls of arms and oversight of transfers.³⁵

Another period of amnesty is expected to be in effect from December 2012 to June 2013.³⁶

2. Use of Firearms by Police and Armed Forces in Law Enforcement Operations to Quell Demonstrations

Law enforcement has routinely used firearms to quell demonstrations, leaving over 80 dead and more than 800 injured since 2006.³⁷ The gravest conflict occurred on June 5, 2009, when confrontations between police officers and civilian demonstrators peacefully blockading a stretch of highway in the province of Bagua led to the death of 23 police officers and ten civilians, including five indigenous people.³⁸ At least 200 people were injured, 82 of whom suffered firearm wounds.³⁹ The División de Operaciones Especiales (DINOES) (Division of Special Operations)—an elite police force trained for counter-terrorism operations that intervened—carried military-style weapons including grenades and AKM rifles and reportedly shot indiscriminately and without warning at unarmed protesters, including children.⁴⁰ Twelve of the police officers were reportedly disarmed by protesters and killed with their own weapons.⁴¹

³⁵ IANSA, UNITED NATIONAL BULLETIN 3 (2011), available at

http://www.iansa.org/system/files/IANSA_UN_Bulletin_Dccember_2011.pdf

³⁶ PERUVIAN TIMES, *Peru Implements Tougher Gun Licensing Regulations*, Dec. 29, 2012, available at <http://www.peruviantimes.com/29/peru-implements-tougher-gun-licensing-regulations/17776/>.

³⁷ *Peru's Lethal Anti-Riot Tactics*, FOX NEWS LATINO (July 14, 2012),

<http://latino.foxnews.com/latino/news/2012/07/14/peru-lethal-anti-riot-tactics/> (reporting statistics from the independent National Coordinator for Human Rights). According to the Office of the Ombudsman, since 2006, there have been 540 social conflicts registered with the office, 109 of which resulted in injury, with 195 people killed and another 2,312 injured. DEFENSORIA DEL PUEBLO, *VIOLENCIA EN LOS CONFLICTOS SOCIALES* 52–53 (2012) [Report of the Ombudsman], available at

<http://www.defensoria.gob.pe/modules/Downloads/informes/defensoriales/informe-156.pdf>.

³⁸ AMNESTY INTERNATIONAL, *PERU: BAGUA, SIX MONTHS ON 7* (2009) [hereinafter *AI, BAGUA, SIX MONTHS ON*], available at

<http://www.amnecsty.org/cn/library/asset/AMR46/017/2009/cn/fca8db2d-a1c1-4440-9d5c-a13d3631e555/amr460172009en.pdf>.

³⁹ *Id.*

⁴⁰ *Id.* at 14–17. An investigation by the Junta de Fiscales de Amazonas (Board of Prosecutors of Amazonas department) found that none of the protesters carried firearms, although some were armed with spears. *Id.*

⁴¹ *Id.* Eleven of the officers were murdered at a nearby state-owned oil company pumping station where they were being held hostage when the operation to remove the blockade commenced. *Id.* at 15.

In April 2010, police intervention to control a demonstration by thousands of miners protesting legislative measures in the province of Caraveli resulted in the death of five men⁴² and the injury of 29 others, including police.⁴³ In August 2010, Amnesty International reported that the deaths resulting from use of firearms during police intervention of demonstrations was becoming an “all too frequent occurrence in Peru” and that dozens of deaths that year were a result of the “government’s failure to ensure that security forces are adequately trained and equipped.”⁴⁴ In April 2011, three civilians were killed and more than 30 injured when police opened fire on protestors of a copper mining project in Islay province.⁴⁵ In June 2011, six protesters were reportedly fatally shot in an attempt to take over the Juliaca Airport in protest against mining operations.⁴⁶ That same month, the Office of the Human Rights Ombudsman reported more than 200 ongoing social conflicts, many of which involved the protesting of new mining ventures.⁴⁷ In July 2012, at least 20 civilians were shot and four fatally wounded after police and military forces fired on protesters in Clendín.⁴⁸ In September 2012, one man was killed and at least four injured when demonstrators clashed with police forces at Barrick Gold’s Pierina mine in the Callejon de Huaylas, in Ancash region.⁴⁹

According to a March 2012 report from the Office of the Ombudsman on violence in social conflict, there have been 540 social conflicts since 2006, 109 of which have escalated to violence, resulting in nearly 200 killed and over 2,000 injured.⁵⁰ In an effort to reduce the

⁴² *Peru: More Deaths as a Result of Police Response to Demonstration*, AMNESTY INT’L (Apr. 7, 2010), <http://www.amnesty.org/fr/library/asset/AMR46/004/2010/fr/0d7bd4be-d283-4422-a5da-7cb26dc3f0bd/amr460042010cn.html> (last visited Jan. 12, 2013).

⁴³ U.S. STATE DEP’T BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011: PERU 2 (2011) [hereinafter STATE DEP’T, COUNTRY REPORTS 2010], available at <http://www.state.gov/documents/organization/160473.pdf>.

⁴⁴ *Peru: More Deaths as a Result of Police Response to Demonstration*, *supra* note 42.

⁴⁵ HUMAN RIGHTS WATCH, WORLD REPORT 2012: EVENTS OF 2011 274 (2012), available at http://www.hrw.org/sites/default/files/related_material/peru_2012.pdf.

⁴⁶ U.S. STATE DEP’T BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2011 HUMAN RIGHTS REPORT: PERU 2 (2012) [hereinafter STATE DEP’T, COUNTRY REPORTS 2011], available at <http://www.state.gov/documents/organization/186746.pdf>.

⁴⁷ *Id.* Social conflict refers to collective protest action in general and is not further defined by size or motivation factors. *Id.* at 40.

⁴⁸ Letter from José Miguel Vivanco of Human Rights Watch to President Ollanta Humala (Sept. 20, 2012) [hereinafter Letter from Human Rights Watch], available at <http://www.hrw.org/news/2012/09/20/peru-letter-presidente-ollanta-humala> (noting that witnesses reported seeing soldiers fire directly at unarmed civilians).

⁴⁹ *Peru to Investigate Death in Barrick Gold Protests*, PERUVIAN TIMES (Sept. 22, 2012), <http://www.peruviantimes.com/22/peru-to-investigate-death-in-barrick-gold-protests/16960/>.

⁵⁰ Report of the Ombudsman, *supra* note 37, at 3. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism expressed concern over the “tendency . . . to associate human rights defenders and social protest movements with terrorism.” HCR, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, U.N. Doc

number of social conflicts, the Law of Prior Consultation was approved by the new government in August 2011.⁵¹ The law requires the government to consult with indigenous groups prior to issuing permits or concessions to extractive industries⁵² and was intended to bring Peru in compliance with the International Labour Organization Convention No. 169, the Indigenous and Tribal Peoples Convention, ratified by Peru in 1994; indigenous groups have criticized this law as leaving too much power in the hands of the Peruvian government.⁵³ In addition, the use of force by police and armed forces against unarmed civilian protestors remains an issue.

The Government of Peru states that it has established policies and procedures to effectively plan and implement police operations in accordance with human rights principles,⁵⁴ as well as international human rights law training programs for security forces, sponsored by the National Research Centre and the Centre for Human Rights and International Humanitarian Law.⁵⁵ The Government of Peru specifically notes Ministerial Resolution No. 1452-2006-IN, which was passed in 2006 and incorporates elements of the Code of Conduct for Law Enforcement Act and the Basic Principles on the Use of Force and Firearms by Officials Responsible for Enforcing the Law into the Peruvian National Police

A/HRC/16/51/Add.3 at ¶ 47 (Dec. 15, 2010), *available at* <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-51-Add3.pdf>. The Office of the Ombudsman does not regard public social conflict as a form of violence in itself, but a risk scenario for violence that is dependent on the origin of conflict, the nature of problems that motivate protest (economic, social, cultural, etc.), the actors involved (mobilized populations, gangs, agitators), and the state's response (restoration of law and order as well as consultation with protesting party). Report of the Ombudsman, *supra* note 37, at 43. The Office of the Ombudsman distinguishes the violence that may be calculated or intentional from that which may develop spontaneously, as reactive to social or political pressure or stimulated by other acts. *Id.*

⁵¹ STATE DEP'T, COUNTRY REPORTS 2011, *supra* note 46, at 24.

⁵² *Id.*

⁵³ International Labour Organization, Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), June 27, 1989, *available at* <http://www.ilo.org/dyn/normlex/en/>. See also, *Peru Implements Law to Calm Mining, Oil Disputes*, REUTERS (Apr. 3, 2012, 11:07 am), <http://www.reuters.com/article/2012/04/03/peru-consultation-idAFL2E8F34LA20120403>. The new regulations were published in April 2012 and include a seven-stage consultation process to occur over a period of approximately 120 days. *Peru Approves Prior Consultation Regulations*, PERUVIAN TIMES (Apr. 4, 2012), <http://www.peruviantimes.com/04/peru-approves-prior-consultation-regulations/15459/>. According to the Peruvian Times, indigenous leaders have criticized the regulations for reserving to the government the right to make the final decision on projects indigenous communities reject. *Indigenous Communities Reject Prior Consultation Law Rules*, PERUVIAN TIMES (Jan. 13, 2012), <http://www.peruviantimes.com/05/indigenous-communities-reject-prior-consultation-law-rules/15477/>.

⁵⁴ Responses by the Government of Peru to the List of Issues, U.N. Doc. CCPR/C/PER/Q/5/Add.1, ¶¶ 81, 163 (2013), *available at* <http://www2.ohchr.org/english/bodies/hrc/hrcs107.htm>.

⁵⁵ *Id.* at ¶¶ 84–85.

Manual.⁵⁶ The Government of Peru notes that in situations where public order has been disrupted, the police human rights handbook contains guidelines to ensure action is consistent with international norms, including the Basic Principles on the Use of Force and Firearms.⁵⁷ Under the Basic Principles, “[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms” and when use of firearms is unavoidable, shall “exercise restraint” and “act in proportion to the seriousness of the offence and legitimate objective to be achieved.”⁵⁸

Despite these initiatives, other legislation before the Government of Peru may undermine efforts to curb police misuse of SALW. Draft Law No. 81/2011–CR, approved by Congress, authorizes police use of firearms in situations extending beyond international norms regarding use of force⁵⁹ and guidelines adopted by the Interior Ministry.⁶⁰ The draft law extends the use of force authorization beyond protection of life to protection of personal

⁵⁶ *Id.* at ¶ 80.

⁵⁷ Fifth Report of Peru, U.N. Doc. CCPR/C/PER/5, ¶ 303 (2011), *available at* <http://www2.ohchr.org/english/bodies/hrc/hrcs107.htm>.

⁵⁸ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27–Sept. 7, 1990, at 2, *available at* <http://www2.ohchr.org/english/law/pdf/firearms.pdf> [hereinafter Basic Principles on the Use of Force and Firearms].

⁵⁹ COMISEDH & INT’L COMM. JURISTS, JOINT PARALLEL REPORT ON THE SITUATION OF TORTURE IN PERU, Submission to the Committee Against Torture, 49th Session, Oct. 29–Nov. 23, 2012, ¶24–25 (2011), *available at* http://www2.ohchr.org/english/bodies/cat/docs/ngos/ICJ-COMISEDH-Peru-AlternativeReport_en.pdf; *see also* *Actas de Sesiones, Proyectos Dictaminados: 81/2011-CR Dictamen (Mayoría) de la Comisión de Defensa Nacional, Orden Interno, Desarrollo Alternativo y Lucha Contra las Drogas*, CONGRESO DE LA REPUBLICA DEL PERU, June 18, 2012, [⁶⁰ Government of Peru, Law No. No. 27238, requires that police forces adhere to the principles of the Code of Conduct for Law enforcement Officials” \(art. 10\), as well as the Regulation of the Law of the National Police of Peru \(approved by Supreme Decree No. 008-2000-IN\). The Law on the Disciplinary Regime of the National Police of Peru \(Law No. 28857\) requires that members of the police force “Respect and put into practice the principles contained in the Code of Conduct for Law enforcement Officials” \(art. 66, section 7\). COMISEDH & INT’L COMM. JURISTS, *supra* note 59. Ministerial Resolution No. 1452-2006-IN, passed in 2006 incorporates human rights principles into the Peruvian National Police Manual, and is in align with the Code of Conduct for Law Enforcement Act and the Basic Principles on the Use of Force and Firearms by Officials Responsible for Enforcing the Law. Responses by the Government of Peru to the List of Issues, *supra* note 54, ¶ 80.](http://www.congreso.gob.pe/Sicr/Comisiones/2011/com2011defnacordintdesaltlucdro.nsf/actas; Code of Conduct for Law Enforcement Officials, adopted by G.A. Res. 34/169, Dec. 17, 1979; Basic Principles on the Use of Force and Firearms, <i>supra</i> note 58, at 2.</p></div><div data-bbox=)

freedom in such a way as to allow use of firearms to disperse demonstrators blocking roads and preventing travel.⁶¹ Furthermore, it contains no requirement for prior warning.⁶²

Under Legislative Decree No.1095, adopted by the government in 2010 to regulate the use of force by the military in situations of non-international conflict, the military is authorized, absent police action, to counteract activities of “hostile groups,” among other operations.⁶³ The U.N. Special Rapporteur on Human Rights and Counter-Terrorism expressed “grave concern” regarding Decree No. 1095.⁶⁴ Beyond recognition that it represents a “serious misconception of the legal application of international humanitarian law,” the Special Rapporteur expressed “deep concern” that the term “hostile groups” had been ambiguously defined to encompass situations of social conflict and potentially even unarmed protesters.⁶⁵ While the decree has been challenged on grounds that it is unconstitutional, it remains in force.⁶⁶

The Office of the Ombudsman has recommended that the government enact legislation to develop and specify the means and methods by which the police may employ the use of force and firearms, in accordance with international human rights law, the Code of Conduct, and the UN Basic Principles.⁶⁷ This includes proper equipment, including non-lethal anti-riot gear, specialized training for responding to social conflict and criteria for use of firearms, obligations regarding treatment of the wounded, and reporting.⁶⁸ In addition, the Office of the Ombudsman recommended revisions designed to reduce the discretion of state officials, including clarification of when armed forces may be deployed, and a reminder that control of internal order in cases of violent social conflicts lies with the police.⁶⁹ The report notes that due to the nature of their training, preparation, and equipment, military forces may generate risk scenarios and thus should not intervene in the work of restoring law and order.⁷⁰

⁶¹ *Id.* at ¶ 25.

⁶² *Id.*

⁶³ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *supra* note 50, at ¶ 47.

⁶⁴ *Id.*

⁶⁵ *Id.*; *United Nations Special Rapporteur on Human Rights and Counter-Terrorism Concludes Fact-Finding Mission to Peru*, U.N. OHCHR (Sept. 8, 2010), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10320&LangID=E>.

⁶⁶ CNDDHH ET AL., JOINT ALTERNATIVE REPORT ABOUT TORTURE SITUATION IN PERU, Submission to the Committee Against Torture, 49th Session, Oct. 29–Nov. 23, 2012, at 4 (2011), *available at* http://www2.ohchr.org/english/bodies/cat/docs/ngos/CNDDHH_CEAS_CAPS_COMISEDH_peru_CAT49.pdf.

⁶⁷ Report of the Office of the Ombudsman, *supra* note 37, at 132.

⁶⁸ *Id.*

⁶⁹ *Id.* at 133.

⁷⁰ *Id.*

Where excessive force has been used by police and military officials, accountability remains a problem. While Amnesty International reported in 2012 that a military-police court had convicted two generals from the National Peruvian Police and a senior army officer for deaths and injuries in Bagua in 2009,⁷¹ human rights organizations criticized the investigation for failure to question key authorities and a majority of the police involved.⁷² Human Rights Watch reported that the military courts lack both independence and impartiality.⁷³ Legislative Decree 1095 grants jurisdiction to military courts for “illicit conduct” by military forces during social protests, which is in violation of international human rights standards.⁷⁴ Additionally, Legislative Decrees 1094 and 1096, also adopted in 2010, give active service military officers the authority to conduct investigations and judge abuses committed by police and military personnel performing their duties.⁷⁵

While the government has taken recent action to provide police officers with non-lethal anti-riot gear, some of these measures have also resulted in fatalities.⁷⁶ Additionally, military intervention and the use of force for purposes beyond protection of life remain a concern. The Working Group on the Universal Periodic Review has suggested that inadequate training with regard to the police and armed forces and planning and preparation

⁷¹ AMNESTY INT’L, ANNUAL REPORT 2012: THE STATE OF THE WORLD’S HUMAN RIGHTS 271 (2012), available at http://files.amnesty.org/air12/air_2012_full_en.pdf.

⁷² STATE DEP’T, COUNTRY REPORTS 2010, *supra* note 43, at 3.

⁷³ HUMAN RIGHTS WATCH, COUNTRY SUMMARY: PERU 3 (2012), available at http://www.hrw.org/sites/default/files/related_material/peru_2012.pdf.

⁷⁴ Letter from Human Rights Watch, *supra* note 48 (citing U.N. Human Rights Committee, Comments on Columbia, U.N. Doc. CCPR/C/79/Add.76 (1997), which recommended “that the jurisdiction of the military courts with respect to human rights violations be transferred to civilian courts.”). The Inter-American Court of Human Rights in *Durand and Ugarte v. Peru* limited military jurisdiction to “restrictive and exceptional scope.” *Id.* See also Jessica Lynd, *Criminalizing Social Movements in Peru*, HUMAN RIGHTS BRIEF (Nov. 7, 2010), <http://hrbrief.org/2010/11/criminalizing-social-movements-in-peru/> (stating that decision reiterated states’ obligation to discontinue practice of prosecuting military personnel in military courts for human rights violations).

⁷⁵ HUMAN RIGHTS WATCH, COUNTRY SUMMARY: PERU 3 (2012), available at http://www.hrw.org/sites/default/files/related_material/peru_2012.pdf.

⁷⁶ *Policía contará con 10 mil equipos para controlar los conflictos sociales*, ANDINA (Sept. 3, 2012), <http://www.andina.com.pe/Ingles/noticia-policia-contara-10-mil-equipos-para-controlar-los-conflictos-sociales-426896.aspx> (announcing the provision of full non-lethal anti-riot equipment to 10,000 police in February 2013, at a cost of 21 million soles (\$8 million) and new laws to reshape the regulatory framework of the police). *But see* Elyssa Pachico, *Deadly Police Clash Point to Peru’s Inability to Tackle Coca Crops in Key Valley*, IN SIGHTCRIME (Aug. 30, 2012), <http://www.insightcrime.org/news-briefs/police-coca-eradication-peru-monzon-valley> (reporting two deaths in a confrontation between police and 800 coca growers after police began firing tear gas and rubber bullets); *see also* Miriam Wells, *Peru to Increase Coca Eradication 50% in 2013*, IN SIGHTCRIME (Jan. 15, 2013), <http://www.insightcrime.org/news-briefs/peru-to-increase-coca-eradication-50-in-2013> (calling attention to the government’s aggressive plan to eradicate coca production and the fierce opposition it faces).

of missions have contributed to human rights violations.⁷⁷ The State party is encouraged to implement SALW training programs and equipment for police as outlined by the Office of the Ombudsman and take all necessary action to ensure that military forces are deployed in accordance with international law and only when essential to support police action.

B. States' Due Diligence Obligation to Prevent Small Arms and Light Weapons Violations by Private Parties

*The due diligence standard to protect the right to life from violence by small arms and light weapons includes the responsibility "to take steps to prevent reasonably foreseeable abuses by private actors" (occurring within a state's own territory).*⁷⁸

1. Crime, Violent Factions, and Gang Violence

The year of 2011 marked the highest rate of crimes reported to police in a decade,⁷⁹ and according to Latinobarómetro, an independent research organization, Peru has one of the highest rates of violent crime in the region.⁸⁰ As the rate of crime has risen in the past decade, crimes committed with firearms increased from 10.4% to 14.6%.⁸¹ Coastal cities in Peru, namely Chiclayo and Trujillo, are some of the most common sites of firearm use.⁸²

Trafficking of weapons remains an issue in Peru, with a black market that supplies firearms to muggers, gang members, and organized crime groups. According to the 2012 National Survey of Victims by Ciudad Nuestra, 14.6% of Peruvians said they had been threatened by someone with a gun and nearly 70% feared that they would be a victim of a crime in the next 12 months.⁸³ It has been reported that there are 13,000 gang members in

⁷⁷ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Peru, U.N. Doc. A/HRC/22/15, Dec. 27, 2012, at ¶¶ 48, 78, 98, 116.34, 116.53, 116.55, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PESession14.aspx>; see also AI, BAGUA, SIX MONTHS ON, *supra* note 38, at 14–15.

⁷⁸ SALW Principles, *supra* note 20, at 10.

⁷⁹ CIUDAD NUESTRA, VICTIMIZACIÓN 2012: RESULTADOS EN 10 CIUDADES DEL PERU 2–4 (2012), available at http://ciudadnuestra.org/facipub/upload/cont/3226/files/segunda_encuesta_nacional_29_10_12.pdf.

⁸⁰ *Id.*; Marta Lagos, *La Seguridad Ciudadana: El Problema Principal de América Latina*, CORPORACIÓN LATINOBARÓMETRO 26 (2012).

⁸¹ CIUDAD NUESTRA, *supra* note 79, at 4. Crimes with knives increased from 18.6% to 20.7%. *Id.*

⁸² *Id.* at 17.

⁸³ *Id.* at 2–4.

Peru, with the large majority in or around Lima and Callao.⁸⁴ While the gangs are known to arm themselves with a variety of weapons, homemade guns are an inexpensive choice for poor and young gang members.⁸⁵

Another concern is the resurgence of certain factions of Sendero Luminoso, or Shining Path. IANSA's 2011 UN Bulletin notes that Peru, amongst other countries, was "especially concerned about the risk of small arms being diverted to violent terrorist, criminal or separatist groups."⁸⁶ There are reports that Shining Path is currently comprised of two factions—one in the Upper Huallaga Valley (though its leader acknowledged defeat in September, it still claims affiliated members), and the stronger faction in the Apurimac and Ene River Valley.⁸⁷ Between the two factions, there are an estimated 200 members, and the groups are reportedly affiliated with narcotics trafficking in the region. In 2011, Shining Path carried out 74 terrorist attacks most of which involved the use of SALW, and which resulted in the death of five civilians and fourteen military personnel.⁸⁸

In response to concerns about private SALW misuse, the Peruvian government enacted Law No. 29954 in 2012, amending Law No. 25054, which regulates the manufacture, trade, possession, and use of civil, non-military weapons.⁸⁹ Law No. 29954 modifies 25054 by increasing restrictions on acquisition and use of firearms. Section 16 provides that firearms and ammunition can only be acquired by presenting a license at an authorized site, and ammunition may only be purchased by those who are licensed to possess weapons.⁹⁰ The list of amended forbidden activities in Law No. 29954 illuminates a number of the concerns about SALW misuse in the country. Article 27 forbids anyone from modifying weapons without authorization, removing or altering identification symbols and serial numbers from weapons, possessing or using a weapon without a license, using silencers or altering devices or concealing weapons, using weapons or ammunition as collateral items for a deposit or delivery, using armor-piercing weapons or ammunition, privately importing or using Luger 9mm or Parabellum weapons, using weapons for unauthorized purposes, or carrying a weapon that is not specifically licensed to the carrier.⁹¹ Recently, the Government of Peru

⁸⁴ Hannah Stone, *So Far. Peru Steers Clear of Iron Fist Against Gangs*, IN SIGHT CRIME (Oct. 7, 2011), <http://www.insightcrime.org/news-analysis/so-far-peru-steers-clear-of-iron-fist-against-gangs>.

⁸⁵ Elyssa Pachico, *Homemade Guns Point to Peru's Gang Struggles*, IN SIGHT CRIME, <http://www.insightcrime.org/news-briefs/homemade-guns-point-to-perus-gang-struggles>.

⁸⁶ IANSA, *supra* note 35, at 3.

⁸⁷ U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2011 ch. 2 (2012), *available at* <http://www.state.gov/j/ct/rls/crt/2011/195546.htm>.

⁸⁸ *Id.* at ch. 2.

⁸⁹ Law No. 29954, *supra* note 6.

⁹⁰ *Id.* at § 16.

⁹¹ *Id.* at Art. 27.

also tightened the renewal period for gun licensing and registration from every five years to every year, a measure intended to curb unlawful possession and use of firearms.⁹²

Though these legal responses are to be commended, the Government of Peru and Peruvian police forces are encouraged to coordinate with local communities, arms manufacturers, and sellers in order to curb the sale of unlicensed, homemade, or otherwise illegal arms and ammunition. In addition, the Government of Peru is encouraged to enforce penalties against those who violate SALW regulations, in order to curb impunity for unlawful possession, sale, and manufacture of dangerous weapons.

2. SALW and Domestic Violence

From 2008 to June 2012, 435 women were killed by current or former intimate partners in Peru.⁹³ As of 2008, firearms were reportedly used in 18.2% of femicides, and most often used to kill the victim without warning.⁹⁴ In 2010, there were an average of 10 femicides and four attempted femicides each month.⁹⁵ Between January and June 2012 alone, 26 women were killed in circumstances of domestic violence.⁹⁶ In their study of the effect of firearms on women, Amnesty International, IANSA, and Oxfam International found that, in the context of domestic violence, whatever the immediate cause of violence, the presence of firearms invariably exposes women to a particularly high risk of death.⁹⁷ Amnesty International found

⁹² Legislative Decree No. 1127, *supra* note 8, at Title 7(8).

⁹³ *Feminicidios en el Perú: 26 Mujeres Fueron Asesinadas en lo Que Va del Año*, El COMERCIO, June 10, 2012, available at <http://elcomercio.pe/actualidad/1426485/noticia-feminicidios-peru-26-mujeres-fueron-asesinadas-lo-que-va-ano> [hereinafter *Feminicidios en el Perú*]. Fifty percent of women in Lima and Cusco reported suffering some form of physical or sexual violence at the hands of an intimate partner. FLORA TRISTAN CENTRO ET AL., LIBRES DE VIOLENCIA: FEMINICIDIO 11 (July 2008), available at http://www.flora.org.pe/pdfs/Feminicidio_8-11-08.pdf [hereinafter LIBRES DE VIOLENCIA].

⁹⁴ LIBRES DE VIOLENCIA, *supra* note 93, at 5–6. Knives and other blunt objects are reportedly used in 33.2% of femicides, and 33% of victims were asphyxiated. *Id.* The number of firearm-related femicides is relatively consistent with earlier data. In 2003, 19% of femicides were committed with firearms; in 2004, 20%; and in 2005 24%. AMNESTY INT’L-PERU & FLORA TRISTAN CENTRO, LA VIOLENCIA CONTRA LA MUJER: FEMINICIDIO EN EL PERÚ 27 (2005), available at <http://www.flora.org.pe/pdfs/Feminicidio.pdf> [hereinafter LA VIOLENCIA CONTRA LA MUJER].

⁹⁵ *En el 2010 Fueron Asesinadas 117 Mujeres a Manos de sus Parejas*, El COMERCIO, Jan. 9, 2011, available at <http://elcomercio.pe/actualidad/696060/noticia-2010-fueron-asesinadas-117-mujeres-manos-sus-parcjas>.

⁹⁶ *Feminicidios en el Perú*, *supra* note 93.

⁹⁷ AMNESTY INT’L ET AL., LOS EFECTOS DE LAS ARMAS EN LA VIDA DE LAS MUJERES 11, 21 (2005), available at <http://www.oxfam.org/sites/www.oxfam.org/files/efectos.pdf>; LA VIOLENCIA CONTRA LA MUJER, *supra* note 94, at 28. The Peruvian Ministry of Women and Social Development highlights the presence of SALW in the home as a factor for investigating the potential of femicide, and recommends the removal of firearms from the homes of domestic

that the presence of firearms in homes at risk for domestic violence increases the likelihood that intimate partner violence will be fatal due to the severity of the wounds caused by firearms and the probability that the threat to mortality posed by the presence of a firearm will reduce a victim's capacity to resist or escape.⁹⁸ Some perpetrators of femicide who were interviewed by Amnesty International and the Flora Tristan Center reported that when planning the attack against their intimate partner or ex-partner, they chose a weapon that was more likely to end the lives of their victims, and that their possession of the weapon heightened their sense of power.⁹⁹

A number of legal reforms have been proposed and implemented to respond to the incidence of femicide and gender-based violence in Peru.¹⁰⁰ In 2007, the state established psychotherapeutic treatment programs for male domestic violence offenders; as of 2011, 402 offenders have participated.¹⁰¹ In response to the high numbers of domestic violence cases in 2009, a judicial protection division was established at the headquarters of the Lima High Court with specific jurisdiction over domestic violence cases.¹⁰² In addition, the National Programme to Combat Violence against Women, overseen by the Ministry of Women and Social Development has over 174 emergency women's shelters as of 2012, and has offered psychological, legal, and social services to victims,¹⁰³ as well as domestic violence awareness raising events across Peru.¹⁰⁴ In 2008, Law No. 26260 was enacted, which provides that domestic violence offenders may have their rights to possess and carry weapons suspended.¹⁰⁵ In 2009, the Peruvian Ministry of Women and Social Development

violence offenders. PERÚ MINISTERIO DE LA MUJER Y DESARROLLO SOCIAL, REGISTRO FEMINICIDIO Y TENTATIVAS EN EL PERÚ 24, 35 (2009), available at <http://sgdatabase.unwomen.org/uploads/Registro%20feminicidio2009.pdf> [hereinafter REGISTRO FEMINICIDIO Y TENTATIVAS].

⁹⁸ LA VIOLENCIA CONTRA LA MUJER, *supra* note 94, at 28–30.

⁹⁹ *Id.* at 28.

¹⁰⁰ *Apply Stringent Laws and Life Imprisonment for Women Offenders*, EL COMERCIO, Nov. 22, 2012, available at <http://elcomercio.pe/actualidad/1499708/noticia-se-aplicara-leyes-severas-cadena-perpetua-agresores-mujeres-feminicidio-seria-sancionado-hasta-con-25-años-de-cárcel-según-proyecto-del-ejecutivo>, EL COMERCIO, Oct. 21, 2012 available at <http://elcomercio.pe/actualidad/1485564/noticia-feminicidio-seria-sancionado-hasta-25-anos-carcel-según-proyecto-ejecutivo>.

¹⁰¹ Responses by the Government of Peru to the List of Issues, *supra* note 54, at ¶ 54.

¹⁰² Fifth Report of Peru, *supra* note 57, at ¶ 53. This judicial protection division was adopted by Administrative Resolution No. 186–2009-CE-PJ. *Id.*

¹⁰³ Responses by the Government of Peru to the List of Issues, *supra* note 54, at ¶¶ 52 – 53. The Committee has specifically noted the National Plan to Combat Violence against Woman that the Peruvian government implemented from 2002–2007 and again from 2009–2010. List of Issues to be Taken Up in Consideration of Fifth Periodic Report, *supra* note 77, at ¶ 5.

¹⁰⁴ Fifth Report of Peru, *supra* note 57, at ¶ 42.

¹⁰⁵ Law of the Government of Peru No. 26260, Ley de Protección frente a la Violencia Familiar (Nov. 27, 2008), available at http://www.mimdes.gob.pe/files/programas_nacionales/pncvfs/legislacion/nacional/ley26260.pdf

recommended that the government mandate the removal of firearms from homes of domestic violence offenders and established Ministerial Resolution 110-2009, which defined femicide as the murder of a woman, committed by the partner or ex-partner of the victim, or by a person who has demonstrated discriminatory intent against women.¹⁰⁶

In order to prevent further loss of life as a result of domestic or gender-based violence, the State party is encouraged to implement effective measures to prevent domestic violence with small arms and light weapons.

CONCLUSION

The Government of Peru has taken a number of significant measures to curb SALW misuse in the country. Despite these efforts, a number of issues of concern remain. In order to prevent further loss of life through military and police misuse of force, the State party is encouraged to take all necessary action to ensure that small arms and light weapons are used by military and police forces in accordance with international law. In addition, it is important that the State continue to work with private groups to address grievances through institutional processes, and interface between police forces and private actors to encourage the development of cooperative and non-violent responses, including limiting the availability of illegal arms and ammunition. Finally, domestic and gender-based violence remains of grave concern, and the State party is encouraged to integrate or strengthen measures to prevent perpetrators of domestic violence from acquiring or using small arms and light weapons.

We thank the Committee for its interest and hope that attention to SALW issues can assist in deterring future violations.

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¹⁰⁶ REGISTRO FEMINICIDIO Y TENTATIVAS EN EL PERÚ, *supra* note 97, at 2, 24, 35.