

PROMSEX

Centro de Promoción y Defensa de los
Derechos Sexuales y Reproductivos



Torture and the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Peru

Alternative Report submitted to the
Committee Against Torture

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I. Introduction

Members of Peru's Lesbian, Gay, Bisexual and Transgender (LGBT) community face daily discrimination on account of their sexual orientation,¹ violence, including murder, rape, arbitrary arrest and detention, as well as torture, cruel, inhumane and degrading treatment. These acts, which constitute serious human rights violations, have had a detrimental impact both on the victims and Peru's society at large. Consequently, this is a matter of acute concern, which we seek to bring to attention of the Committee Against Torture. While this situation is well known, the State has to date failed to adopt the legal or other measures necessary to prevent and respond to such violations.

This report demonstrates that Peru's legal system provides inadequate protection against torture of members of the LGBT community as it lacks adequate safeguards and protection mechanisms, as well as monitoring and training on the prevention of torture. The report also identifies a series of difficulties experienced by members of this group who have suffered torture, especially in respect of registering torture cases, pursuing complaints and obtaining rehabilitation for the violations suffered.

This Report highlights that measures taken by the State party to prevent and combat torture are insufficient and inadequate not only in relation to the general population but particularly regarding members of the LGBT community. It underscores the need for the State party to put a system in place that enhances visibility and transparency, which requires recording the number, nature and context of cases of violations committed against members of the LGBT community. Such system should form an integral part of developing a policy aimed at effectively protecting the rights of LGBT persons not to be subjected to torture or other ill-treatment, whether by State or non-State actors. This policy needs to include adequate protection, as well as legislative, institutional and practical measures effectively to investigate allegations of torture and ill-treatment of LGBT persons, and to provide effective remedies and reparation, including adequate rehabilitation services.

II. Substantive Part

1. Article 2

1.1. Paragraph 1: Please include information that allows the Committee to have a clear vision of the situation regarding the protection against torture

Even if torture in Peru is no longer considered to be a systematic practice, as it was during the period of internal armed conflict in the decades of the 1980s and 1990s,² it is still widespread across the country. Several reports by civil society organisations document cases of torture at the hands of members of the armed forces and, most prominently, by members of the

¹ Sexual orientation refers to the capacity of each person to feel profound emotional, affective and sexual attraction towards persons of the same gender, as well as being able to have intimate and sexual relations with these persons. Gender identity refers to the internal and individual experience of gender. This could correspond or not to the sex assigned at the moment of birth. See Principles of Yogyakarta. The Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, available at <http://www.yogyakartaprinciples.org/>

² Peruvian Truth and Reconciliation Commission, Torture and other cruel, inhumane and degrading treatment, Vol. VI, available at <http://www.cverdad.org.pe/ifinal/pdf/TOMO%20VI/SECCION%20CUARTA-Crimenes%20y%20violaciones%20DDHH/FINAL-AGOSTO/1.4.LA%20TORTURA.pdf>

National Police, as well as agents of the National Penitentiary Institute and of the Serenazgo.³ In 2010, PROMSEX documented 18 incidences of murder and 19 violations of the personal integrity of members of the LGBT community, the majority of which were perpetrated either by personnel of the National Police or of Serenazgo, the municipal security service.⁴ In 2011, PROMSEX reported 14 incidences of murder and 17 cases of violations of the personal integrity of members of the LGBT community. Of these cases, five were committed by the National Police, one by members of Serenazgo and another by both services together. The most common forms of abuse of power include severe to moderate infliction of physical harm, extortion (blackmail), theft as well as verbal and sexual harassment and abuse.⁵ As there are no official statistics or systematic ways of compiling information (see below), these figures are by no means representative.

Torture, cruel and inhuman and degrading treatment is primarily, but not exclusively, committed in places of detention and military quarters (against soldiers or young men during their mandatory military service). It is also committed against vulnerable groups such as members of the LGBT community, who are routinely subjected to violations by the members of the National Police and the Serenazgo. Yefri Edgar Peña Tuanama, who is transgender, was denied urgent assistance from the Police after being beaten by unknown assailants, and as a result nearly died in 2007. Luis Alberto Rojas Marín was raped with a rubber baton by three members of the National Police in 2008. ‘Yanet’, a gay transgender person was subjected to extortion in 2011 from police officers who demanded money in return for not denouncing him as a pimp.⁶ Luis Alberto and Yanet were illegally and arbitrarily detained, subjected to verbal abuse and threats. Neither Luis Alberto nor ‘Yanet’ had access to justice. In the case of Luis Alberto, proceedings were filed but evidence was insufficient; ‘Yanet’ did not bring a complaint because of his fear of reprisals.

1.2.Paragraph 4: Please indicate if the Prosecutors Office has established a national registry of the complaints received by people who allege to have been victims of torture, cruel, inhumane or degrading treatment

The Prosecutors Office does not have a national registry of complaints for acts of torture, cruel, inhumane or degrading treatment. In fact, the Public Prosecutor’s Criminal Record Office,⁷ which is the virtual space that contains all information regarding crimes committed at the national level, contains no information about the crime of torture.

³ Serenazgo is a private security service subcontracted by the municipality, tasked with protection of individuals or property and maintaining public order. An official description of Serenazgo’s functions is available here:

http://www.miraflores.gob.pe/_contenTempl1.asp?idpadre=4958&idhijo=5300&idcontenido=5441

⁴ See case of Martin Jaime Ballero in PROMSEX (2011), *Annual Report on the Human Rights of Transgender, Lesbians, Gays and Bisexual persons in Peru 2010*, Lima, available at

<http://www.promsex.org/docs/Publicaciones/informeannualddhhtlgb2010.pdf>

⁵ See the case of Beatriz Ramirez in PROMSEX (2012) *Annual Report on the Human Rights of Transgender, Lesbians, Gays and Bisexual persons in Peru 2011*, pp. 55 – 56, available at <http://promsex.org/docs/Publicaciones/INFORME-ANUAL-DDHH-TLGB.pdf>

⁶ PROMSEX and others (2011) *Our Voices: Lesbians, Gays, Bisexual and Transgender before the IACHR [Nuestras Voces: Lesbianas, Gays, Bisexuales y Trans ante la CIDH]*, Lima, pp.52 and following, available at

<http://www.promsex.org/docs/Publicaciones/NUESTRAS-VOCES-LESBIANAS-GAYS-BISEXUALES-TRANS-ANTE-CIDH.pdf>

⁷ Observatorio de Criminalidad del Ministerio Público

In its response to Paragraph 4 of the list of issues, the State party recognises that there is no specific registry for cases of torture. It refers to other registries where information can be found in relation to complaints of torture brought, such as the *Sistema de Apoyo al Trabajo Fiscal (FIAFT)*, the *Observatorio de la Criminalidad*, the *Registro Nacional de Detenidos y Sentenciados a pena privativa de la Libertad efectiva* (RENADESPPLE) and the *Sistema de Información Defensorial (SID)* from the Ombudsman's Office.

However, these registries either have no specific information regarding torture, or, in the case of the registry of the Ombudsman's Office, (i) they do not provide a full record of cases and (ii) they do not contain disaggregated data about the identity, including sexual orientation, or specific circumstances of the case, so as to facilitate the determination of how many members of the LGBT community have been subjected to torture or other forms of ill-treatment.

In the absence of an official registry of acts of torture against members of the LGBT community, civil society organisations and their networks and activists have been compiling information regarding the cases that have come to their knowledge either through their social networks, the media, or through members of the LGBT community who report violations directly. However, this way of systematising the information has its limitations. Although it is indicative of the general situation, it cannot address the problem of inadequate registration of incidences, which results in a lack of clarity about the extent of violations, particularly torture and ill-treatment, faced by members of the LGBT community.

Further factors contributing to the under-registration of torture cases, which are of a generic nature, stem from victims' unwillingness to lodge formal complaints before the competent authorities because of fear of retaliation, lack of trust in the system and fear of discrimination and stigma.⁸ In addition, where complaints are filed, prosecutors frequently qualify them as a crime of minor assault or abuse of power, and not as torture, or cruel, inhumane or degrading treatment.

Recommendation: With a view to implementing adequate measures aimed at preventing and combating torture, the State party should establish a complete, integral and gender specific registry system. This system should contain the requisite information to identify the extent of torture and track the measures taken in response to, and outcome of complaints made by or on behalf of persons who allege to have suffered torture or other forms of ill-treatment. In particular, such registry should specifically include the categories of gender identity and sexual orientation⁹ so that cases of torture and ill-treatment against LGLBT persons can be identified and monitored, and their outcome evaluated.

⁸ Criminal Chamber of the Supreme Court of Justice (2002) Oficio Nº 087-2012-MC-SPN, dated 13 March 2012: Information provided by the Criminal Chamber of the Supreme Court of Justice, the entity in charge of cases of human rights violations. Between September 2004 and December 2011, the Chamber had received 138 cases of torture, convicting 35 accused while absolving the other 103. According to updated information until March 2012, 8 of the judicial proceedings that are pending for acts of torture were in the stage of preliminary investigation and 3 were before the courts.

1.3. Paragraph 6. Please indicate what measures have been adopted to ensure that the Prosecutors Office and the Institute of Forensic Medicine have the appropriate resources and training in order for their personnel to comply with their functions

Paragraph 10: Please indicate if training has been provided for the medical personnel on the detection and diagnostic of the cases of torture, as well as for those who assist victims with their rehabilitation.

The Prosecutors Office has taken some steps to ensure that the prosecutors and the medical experts at the Institute of Forensic Medicine receive training. The adoption of a Manual on the Examination of Psychological Injury (Guía para la Valoración del Daño Psíquico) took place,¹⁰ though it is unclear if the manual meets the standards provided in the Istanbul Protocol. According to the 2012 Annual Operative Plan from the Prosecutor's Office,¹¹ during the present year only one training session was planned for the members of the Institute of Forensic Medicine. The training: "Course II: Evaluation of Physical and Psychological Torture," took place in May 2012, and lasted three days, with around 60 members of the Institute in attendance. In August 2011, around 200 members of the Institute had received a three day training called "Workshop on the Medical Evaluation of Torture cases".¹² In the same year, members of the Institute received a training session called "Workshop of Training for the Pilot Application of the Protocol on the Valuation of Psychological Harm in Victims of Violence", which took place in January. It was attended by 30 psychologists and psychiatrists from the judicial districts of Lima, Huánuco, Cusco, Piura, Junín, Ucayali, Ancash, Loreto, San Martín, Puno, Arequipa, Madre de Dios, Huancaavelica, Tumbes, La Libertad, Ayacucho, Cajamarca, and Lambayeque. This event was organised in coordination with member organizations of the Coordinadora Nacional de Derechos Humanos (CNDDHH) such as Manuela Ramos and the Centro de Atención Psicosocial (CAP).

Even though the members of the Institute have been receiving training on preventing and combating torture and similar violations, the courses and training sessions do not cover all of the relevant personnel, and there is no follow up and continuous training. In practice, the training provided has not resulted in visible changes; it is therefore questionable whether its nature and scope to date is adequate to enhance compliance with international standards and best practices.

In some cases known to us, physicians who conducted medical examinations of victims of torture expressly stated in their findings that the injuries suffered did not amount to torture. This was despite having registered physical signs of injury produced by beatings (such as swelling or subcutaneous effusions of blood caused by blows, etc.) arguing that given that there were no signs of hanging, use of electrical discharges in the genitals, drowning or other similar techniques, it was impossible to talk of torture. The findings and reasoning reveal a fundamental misunderstanding of torture and lack of familiarity with internationally recognised standards of documenting torture as set out in the Istanbul Protocol. In one of the cases reported to the organisations submitting this report, namely torture of Luis Ismael Ugaz Veasquez,¹³ the psychologist examining the victim found that there was no torture and noted

¹⁰ Adopted by Resolution of the Office of the Prosecutor Nº 2543-2011-MP-FN dated 26 December 2011.

¹¹ See Operative Plan 2012 from the School of the Public Prosecutor, available at http://www.mpfn.gob.pe/escuela/contenido/plan_operativo/PLAN_2012.pdf

¹² *Ibid.*

¹³ Luis Ismael was detained and tortured in a police quarter on 31 March 2012. Although an investigation was launched, the case was considered one of bodily harm and abuse of power rather than one of torture.

that as she did not have access to the Manual on the Examination of Psychological Injury, she did not use it in the case.

Recommendation: Considering the challenges highlighted above, which are indicative of broader capacity problems rather than isolated individual shortcomings, it is necessary to ensure further training for public officials on what constitutes torture and the multiple forms it can take. In particular, it is essential that physicians confine their findings to medical statements, avoiding legal opinions as to the legal qualification of the injuries. Medical reports should be confined to the degree of consistency between the injury found, if any, and the trauma described by the person undergoing the examination. The training of medical personnel and officials needs to be part of a continuous programme involving all the personnel of the relevant institutions. Medical personnel in particular should be provided with training aimed at raising their awareness of the rights of members of the LGBT community not to be discriminated against. The impact of the training sessions needs to be assessed constantly in order to identify problems, good practices, successes and failures.

2. Article 11

- **Paragraph 17: Please inform what measures have been adopted in the detention centers to supervise the behavior of public servants in charge of persons deprived of their liberty and access to health and legal services.**

Members of the LGBT community have been particularly affected by the growing number of arbitrary and illegal detentions to which they are subjected and during which they have no access to safeguards against torture. In effect, while mandatory directives for police personnel are in place to ensure humane treatment and guarantee the rights of all detained,¹⁴ these are still widely ignored in practice.

PROMSEX has reported the practice of arbitrary detention of members of the LGBT community by members of the National Police and the Serenazgo across the country.¹⁵ Arrests and detention are often part of operations against sex workers (though prostitution is not a criminal offence) or are simply made under the pretext of maintaining public order, which has been widely used as excuse for repressive measures. LGBT individuals are frequently denied access to a lawyer, the right to inform family members, and the right to be regularly examined by a doctor, which exacerbates their vulnerability to torture and other forms of ill-treatment.

Resolution N° 627 – 2000 –MP –CEMP¹⁶ of the Executive Commission of the Public Ministry stipulates that victims of torture should be evaluated by medical personnel in conformity with the Istanbul Protocol. However, this provision has not been complied with in a considerable number of cases, where members of the LGBT community were detained and allegedly tortured.

¹⁴ Ministry of the Interior (2005) Directive No. DPNP N° 17 – 02 – 2005 – B, dated 3 January 2005; and the Manual of Human Rights applied to the Police Functions, approved by Ministerial N° 1452 – 2006 – IN from 31 May 2006.

¹⁵ PROMSEX, (2011) *Annual Report on the Human Rights of Transgender, Lesbians, Gays and Bisexual persons in Peru 2010*, Lima, available at <http://www.promsex.org/documentacion/publicaciones>

¹⁶ Executive Commission of the Public Ministry (2000) Resolution N° 627 – 2000 –MP –CEMP. Published in *Diario El Peruano* on 12 September 2000, available at <http://www.mpfm.gob.pe/descargas/normas-iml/94new.pdf>

Recommendation: Officers responsible for the detention of persons should be provided with targeted training on the rights of LGBT persons, particularly their right not to be discriminated against on account of their sexual orientation, including by subjecting them to torture and ill-treatment. Equally, the State party should adopt legislative and other measures to prevent the arbitrary detention of LGBT persons and provide them with adequate safeguards in detention, while sanctioning those who are responsible for arbitrary arrests and detention and failure to adhere to custodial safeguards.

3. Article 14

- Paragraph 22. Psychological and medical assistance

As the State has acknowledged in the information submitted to the Committee, Peru does not have a programme providing specialised medical and psychological services to victims to victims, including rehabilitation. Instead, it has been non-governmental organizations, members of the National Coordinator of Human Rights, such as the Centre for Psychosocial Attention (CAPS), which have provided these services in practice.

Recommendation: The State party must comply with the right to reparation by developing public policies for the rehabilitation of victims of torture. These should include both national and local programmes providing victims with free medical and psychological assistance by specialised personnel, as well as other services as required for a speedy recovery. The State party should allocate sufficient annual funds to ensure adequate implementation of these programmes and the provision of services for victims of torture.